

San Francisco Bay Conservation and Development Commission

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April 13, 2018

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Staff Recommendation on BCDC Permit Application No. 2017.007.00, Oyster Point Development Project at the Oyster Point Marina, in the City of South San Francisco, San Mateo County
(For Commission consideration on April 19, 2018)

Recommendation Summary

The Commission staff recommends approval, as conditioned herein, of BCDC Permit Application No. 2017.007.00 to Oyster Point Development, LLC and the City of South San Francisco, for the Oyster Point Phases IC, ID, and a portion of IIC project, in the City of South San Francisco, San Mateo County, which will result in:

1. Within the Commission's Bay jurisdiction, the placement of approximately 88 cubic yards of sand and soil over an approximately 3,914-square-foot area to repair the existing landfill clay cap within tidal marsh. The area would be restored to tidal marsh following the placement of the fill. Additionally, the applicants would remove a portion of an outfall pipe;
2. Within the Commission's 100-foot shoreline band jurisdiction, the demolition of approximately 64,400 square feet of infrastructure; regrading of the former landfill to support park, office/R&D, and hotel uses; and the realignment of 400 linear feet of Marina Boulevard;
3. Within the Commission's 100-foot shoreline band jurisdiction, the enhancement and creation of a portion of an approximately 6.48-acre Marina Waterfront/Beach shoreline park area with a replenished beach and an accessible path, a lawn area,



a picnic area with tables and barbeque pits, a flexible gravel area with seating, a 137-space parking lot, and a widened 18-foot-wide, 2,200-foot-long Bay Trail segment; and

4. Within the Commission's 100-foot shoreline band jurisdiction, the construction of a 41-foot-wide service lane and a 210-square-foot portion of the office/R&D complex.

Project construction has commenced for areas outside of the Commission's jurisdiction. Work within the Commission's jurisdiction is scheduled to commence in April 2018 and be completed by the end of 2019. The project will result in a total of approximately 9.99 acres of new or enhanced public areas (including areas outside of the Commission's jurisdiction).

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. Subject to the conditions stated below, the permittees, Oyster Point Development, LLC and the City of South San Francisco are hereby granted permission to conduct activities, in the Bay and within the 100-foot Shoreline Band as part of the Oyster Point Development Phases IC, ID, and a portion of IIC, at the Oyster Point Marina, partially within an area designated as a "waterfront park/beach" priority use area on the San Francisco Bay Plan Map No. 5, in the City of South San Francisco, San Mateo County.

In the Bay:

1. Phase IC

- a. Place approximately 88 cubic yards of sand and soil over an approximately 3,914-square-foot area to repair the clay cap covering the existing landfill;
- b. Restore and maintain an approximately 3,914-square-foot area tidal marsh; and
- c. Remove approximately 75 linear feet of an 18-inch-diameter outfall pipe.

Within the 100-foot Shoreline Band and partially within the Waterfront Park, Beach Priority Use Area:

1. Subdivision of property on approximately 36-acres into six (6) new parcels and one (1) remainder parcel (after-the-fact).
2. **Phase IC**
 - a. Demolish approximately 64,400 square feet of infrastructure and remove approximately 25 feet of an 18-inch-diameter outfall pipe;
 - b. Regrade an approximately 265,600-square-foot (6.10 acre) area;

- c. Place, use, and maintain approximately 1,944 cubic yards of material across an approximately 26,250-square-foot area to repair the landfill cap;
- d. Construct, use, and maintain an approximately 400-foot-long portion of Marina Boulevard and approximately 4,400 square feet of sidewalk;
- e. Enhance, use, and maintain an approximately 2,200-foot-long portion of public access trail and construct, use, and maintain approximately 1,500 linear feet of public access pathways;
- f. Place, use, and maintain approximately 1,200 cubic yards of material to replenish the approximately 13,000-square-foot beach and construct, use, and maintain a six-foot-wide accessible beach path from the trails to the beach, an approximately 185-square-foot portion of an eight-foot-wide wooden overlook deck, and an approximately 900-square-foot maintenance trail;
- g. Install, use, and maintain a portion of an approximately 200-square-foot public restroom with a changing station and shower, a portion of an approximately 1,500-square-foot public and private restroom, and an approximately 750-square-foot private restroom;
- h. Construct, use, and maintain a public access area including an approximately 6,470-square-foot portion of a lawn, an approximately 3,480-square-foot portion of a picnic area, a 3,350-square-foot portion of a flexible gravel area, and an approximately 4,400-square-foot-portion of a parking lot;
- i. Construct, use, and maintain two (2) 130-foot-long ramps, two (2) 100-foot-long ramps, and two (2) stairways to connect to the Oyster Point Marina gates to Dock One through Dock Seven;
- j. Landscape a shoreline area with approximately 71,200 square feet of salt marsh vegetation and approximately 51,500 square feet of low groundcover planting; and
- k. Hydroseed an approximately 40,600-square-foot (0.93-acre) area of the edge of the Parcel 5 Park Area.

3. Phase ID

- a. Regrade an approximately 35,000-square-foot area;
- b. Construct, use, and maintain an approximately 41-foot-wide (approximately 28,462 square feet) service lane with an approximately 32-inch tall (approximately 812-foot-long) guardrail, an approximately 174-foot-long retaining wall, and an approximately 210-square-foot portion of an office/R&D complex;
- c. Construct, use, and maintain an approximately 236-square-foot portion of an overlook; and
- d. Landscape an approximately 32,600-square-foot area.

4. Phase IIC

- a. Place approximately 1,200 cubic yards of clay soil over an approximately 31,435 square foot area to repair the clay cap; and
 - b. Construct, use, and maintain a set of stairs to the existing windsurfer launch.
- B. Permit Application Date.** This authority is generally pursuant to and limited by the application dated September 8, 2017, including all accompanying and subsequent correspondence and exhibits, subject to the modifications required by conditions hereto.
- C. Deadlines for Commencement and Completion of Authorized Activities.** The activities authorized herein must commence prior to May 31, 2019, or this permit will lapse and become null and void. All construction work authorized herein must be diligently pursued to completion and completed within three years of project commencement or by May 31, 2022, whichever is earlier, unless an extension of time is sought from the Commission by the permittee and 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 property interests, including leases, are valid.
- D. Project Summary**
1. **Bay Fill.** The project will result in the placement of 88 cubic yards of fill over an approximately 3,914-square-foot area of tidal marsh along the northern shoreline at the Marina Waterfront area. The fill would repair the clay cap covering the existing landfill to provide the full four feet of Title 27 and Regional Water Quality Control Board required cover over the landfill. To mitigate for the impacts of the fill, the project would restore the impacted area by replanting tidal marsh species and would monitor the area for three years.
 2. **Public Access.** The project site is currently a mix of developed areas and open space. Approximately 9.97-acres of open space or public access areas exist today at the site, including areas that were previously required by BCDC Permits 1977.001.00 and 2008.001.00. The public access improvements would include a widened Bay Trail (from 14 feet to 18 feet), a 3.51-acre park, a replenished beach, a lawn area, a picnic area, and a flexible gravel area. These public spaces would include restrooms, a shower, seating, and bicycle parking. The project will replace and expand a BCDC required overlook, required in BCDC Permit No. M1990.037.01.
- E. Related BCDC Permits.** The project site is associated with the following BCDC Permits: 1977.001.17 for the Oyster Point Marina and public access improvements; M1990.037.01 for a UPS facility and public access improvements; 1999.008.00 (never constructed) for a hotel parking structure and public improvements; 2008.001.00 for the South San Francisco Water Emergency Transportation Authority ferry terminal and public improvements; and M2017.006.00 for a temporary road during construction.

II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the Standard Conditions contained herein:

A. Specific Plans and Plan Review

1. **Construction Documents.** The improvements authorized herein shall be built generally in conformance with the following documents:

a. Grading

- (1) The plan set entitled "Oyster Point- Refuse Relocation & Cap Repair Construction Documents," prepared by Wilsey Ham Engineering, Surveying, and Planning, and dated October 10, 2017; and
- (2) The plan set entitled "Oyster Point- Phase IC Streets and Utility Design," prepared by Wilsey Ham Engineering, Surveying, and Planning, and dated October 30, 2017.

No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment. No further plan review of the grading work described in these documents is required unless substantial changes are made. As-built documents should be submitted upon completion of grading to note any changes made.

b. Landscape Plans

- (1) The plan set entitled "Oyster Point Development Phase IC 100% Design Development Submission," prepared by James Corner Field Operations, and dated September 20, 2017, including minor changes as shown in Exhibits A through E;
- (2) The plan page entitled "Oyster Point Development Phase IC Overall Material and Furnishing Plan L-1.00," dated November 17, 2017 and provided to Commission staff on December 4, 2017 in the submittal packet entitled "Attachment M- Oyster Point Restroom Description"; and
- (3) The schematic design set entitled "Oyster Point-Phase 1D, Warm Shell Schematic Design Update," prepared by DGA, and dated July 28, 2017 and the plan set entitled "Oyster Point Ph. 1D BCDC Overlook Analysis," prepared by BKF, and dated March 23, 2018.

c. Mitigation

- (1) The plan entitled "Abbreviated Phase IC Mitigation and Monitoring Plan," prepared by SKS and WRA, and provided to the Commission staff and the staff response, both on March 13, 2018.

Except as otherwise provided, plan review is required for all landscape and other site development work, including work associated with the plan sets described in II.A.1.b, pursuant to Special Condition II.A.2.

The permittee is responsible for assuring that all construction documents accurately and fully reflect the terms and conditions of this permit and any legal instruments submitted pursuant to this authorization. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.

2. **Construction Documents Review and Approval.** No work whatsoever shall commence pursuant to this permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed within 60 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. A summary list of any changes that have taken place between the approved plans referenced in Special Condition II.A.1 and the final plans submitted for plan review shall be provided with the request for review. If the final construction document review is not completed by or on behalf of the Commission within the 60-day period, the permittee may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A.1 of this permit.
 - a. **Document Details.** All construction documents shall be labeled with: Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band; property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas required herein.
 - b. **Conformity with Final Approved Documents.** All authorized improvements and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.
 - c. **Discrepancies between Approved Plans and Special Conditions.** In case of a discrepancy between final approved documents and the special conditions of this permit or legal instruments, the special condition shall prevail.
 - d. **Reconsideration of Plan Review.** The permittee may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of

such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the permit and/or consultation with the Commission's Design Review Board.

- e. **Construction.** The final plans submitted pursuant to this condition shall generally conform to Exhibits A through E to this permit. Final plans for the construction of the structures authorized herein shall be prepared and submitted for Commission review as described below. No changes to the design of the project shall be made without the prior written approval of the Commission staff.

B. Public Access

1. Area

- a. **Total Public Access Area.** The required public access for this project, including the Marina Waterfront/Beach area and the Parcel 5 Park Area, is comprised of approximately 9.99 acres (435,000 square feet) as follows:
 - Public access in the shoreline band: approximately 138,500 square feet (3.18 acres).
 - Public access out of the shoreline band: approximately 296,500 square feet (6.81 acres).
 - b. **Marina Waterfront/Beach.** The approximately 6.48-acre (282,300-square-foot) "Marina Waterfront/Beach" area, not including the 3.51-acre "Parcel 5 Park Area," along approximately 1,700 linear feet of shoreline, as generally shown on Exhibit A, shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, parking (within designated parking areas), and related purposes, except as otherwise provided in Special Condition II.B.8. If the permittees wish to use the Marina Waterfront/Beach area for purposes other than public access, it must obtain prior written approval by or on behalf of the Commission.
 - c. **Parcel 5 Park Area.** The approximately 3.51-acre (152,700-square-foot) "Parcel 5 Park Area", as generally shown on Exhibit A, shall be made available exclusively to the public for unrestricted public access, except as otherwise provided in Special Condition II.B.4.b.
 - d. **Other Public Access Areas.** This permit requires two areas that are outside of the total project area described herein. The 12-foot-wide North-South Connector path, as provided in Special Condition II.B.3, and the Phase ID Slough Overlook as provided in Special Condition II.B.11.
2. **Improvements Within the Total Public Access Area.** Prior to the use of any structure authorized herein, except as otherwise provided by this permit, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

- a. An approximately 3.51-acre "Parcel 5 Park Area," as described in Special Condition II.B.4;
- b. Within the Marina Waterfront/Beach Area, an approximately 13,000-square-foot replenished beach with a six-foot-wide accessible path from the paved path to the beach, an accessible beach mat to extend to the water's edge, an approximately 1,350-square foot wooden deck with seating, and an approximately 200-square-foot public restroom with a shower and changing station (Exhibit B);
- c. Within the Marina Waterfront/Beach Area, a waterfront park area with an approximately 4,000-square-foot picnic area with six picnic tables and three barbeque areas; an approximately 8,000-square-foot lawn; a 5,750-square-foot decomposed granite area with seating; and a public restroom within a portion of an approximately 1,500 square-foot public/private restroom (Exhibit C);
- d. Within the Marina Waterfront/Beach Area, an approximately 2,200 foot-long and 18-foot-wide paved path along the shoreline;
- e. Within the Marina Waterfront/Beach Area, an approximately 10-foot-wide path network between the beach area and the waterfront park area, connecting to the 18-foot-wide path and the adjacent public streets;
- f. Adjacent to the Marina Waterfront, a 137-space vehicle parking lot to be used for public shoreline parking and marina parking;
- g. Irrigated planting over the remainder of the 102,700-square-foot public access area as shown in Exhibit A;
- h. Approximately 20 bicycle racks and appropriate lighting throughout the public access areas; and
- i. No fewer than 5 public access signs and, when appropriate, Bay Trail signs, at appropriate trailheads and intersections throughout the site and Water Trail Signs at designated launches.

Such improvements shall be substantially consistent with the plans approved pursuant to Condition II.A.1 of this authorization and generally conform to the plans entitled "Oyster Point Development Phase IC 100% Design Development Submission," dated September 20, 2017, prepared by James Corner Field Operations and the plan review of the subsequent construction documents as required in Special Condition II.A.2.

3. **North-South Connector Path.** Within six-months following the completion of site grading, unless an extension of time is granted by amendment of this permit, the permittees, or their assignees, shall construct a temporary 12-foot-wide, accessible "North-South Connector Path" that will originate near the existing pedestrian bridge at the southern shoreline of the peninsula and connect through the "Parcel 6 Hotel Site," to the southern sidewalk on the newly constructed Marina Boulevard as shown on

Exhibit A. A permanent 12-foot-wide paved pathway shall be installed within three (3) years of issuance of the BCDC permit if a City of South San Francisco building permit has not been issued for the construction of the hotel on the "Parcel 6 Hotel Site". If a building permit is issued within three years of issuance of this BCDC permit, an extension of time will be granted by amendment of this permit to allow construction of the hotel and incorporation of a permanent North-South connector path through the hotel site. The final location and design of the permanent path shall be approved by or on behalf of the Commission pursuant to Special Condition II.A. The permanent North-South Connector Path shall be constructed of a durable all-weather, accessible material.

4. **Parcel 5 Park Area**

- a. **Construction.** The Parcel 5 Park Area shall be graded and hydroseeded and maintained as useable open space until a development plan is available. No later than five (5) years after issuance of the BCDC Permit, the permittees shall prepare and submit a development plan for the Parcel 5 Park Area for review and approval by or on behalf of the Commission pursuant to Special Condition II.A. Additional DRB review may be required, at the discretion of the Commission or Commission staff, for development within the Parcel 5 Park Area.

If the permittees wish to use the public access area within the Commission's jurisdiction for a use other than public access purposes, except as provided by Special Condition II.B.4.b., below, the permittees must obtain prior written approval by or on behalf of the Commission, pursuant to Special Conditions II.A and II.B.8.

- b. **Commercial Recreation Use.** An approximately 0.5-acre area within the Parcel 5 Park Area may be used for commercial recreation facilities, such as, but not limited to, kiosks or similar structures for a farmer's market, restaurant space of up to 7,500 square feet, and recreational equipment concession facility. The type and location of the commercial recreation uses shall be submitted to the Commission for review and approval pursuant to Special Condition II.A prior to the initiation of any construction for such facilities. The Commission shall not unreasonably withhold or condition approval of such commercial uses, provided that they would not diminish the ability of the public to freely enjoy the remainder of the required public areas.
5. **Maintenance.** The areas and improvements within the total 9.99-acre (435,000-square-foot) public access 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 trees or other plant materials that die or become unkempt due to a failure to maintain the trees or plant materials; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; maintenance and repairs of damage due

to flooding, and ensuring that the public access signs remain in place and visible. Within thirty (30) days after notification by staff of any maintenance deficiency, the permittee shall correct such deficiency or, if such deficiency is of a nature that cannot be feasibly be corrected within thirty (30) days, commence and thereafter pursue to completion correction of such deficiency.

6. **Sea Level Rise and Adaptation**

- a. **Flood Reporting.** If any portion of the public access required herein and described in Special Condition II.B.2 located in the Commission's jurisdiction is subject to flooding that results in a closure of any area, the permittee shall submit to the Commission a written report within 30 days after the closure of the public access area with documentation of: the date of the closure and duration; the location of the affected site; the recorded water levels during the closure period; the source of flooding (e.g., Bay overtopping of shoreline or stormwater backup or overland flow); the resulting damage or cleanup; and illustrative photographs with site details.
 - b. **Adaptation Plan.** Once the mean higher high water level reaches 10.63 feet (NAVD88), which corresponds with the elevation at which flooding of public access areas is predicted to occur during a 100-year storm event with 46.8 inches of sea level rise (as predicted for the year 2100, elevation 14.9 feet NAVD88), the permittees shall prepare and submit to the Commission an adaptation plan for the vulnerable public access areas for review and approval by or on behalf of the Commission. This plan shall include preferred adaptation strategies, the areas that are vulnerable, and anticipated timing of flooding. No permanent restrictions or closures of required public access areas may take place without additional approval by or on behalf of the Commission. If avoiding permanent closures is infeasible, the permittee shall provide equivalent public access to ensure public access to and along the shoreline in the event of permanent restrictions or closures contingent in part on the Commission's review and approval of such project modifications.
7. **Assignment.** The permittees may transfer maintenance responsibility to a public agency or another party acceptable to the Commission provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
8. **Special Events.** The permittees may conduct temporary non-ticketed and no-fee public special events within the public access area required herein. All equipment, garbage, waste or other event-related items shall be removed from the public access area immediately following the completion of the event.
- a. **Special Event Plan Review.** Prior to holding a special event as allowed herein, the permittee shall submit a special event plan review request to the Commission's staff a minimum of 30 days prior to the proposed event. The request must include the event date; the event's duration including set up and take-down

time, location, purpose; a description of any temporary structures proposed for the event; and an explanation of how the event would impact the public access areas required in Special Condition II.B.1. The special event shall ensure that no paths required by this permit would be closed as part of the event.

- b. **Five-Year Time Limitation.** The permittee is allowed to conduct special events, as described and restricted herein, for a period of five (5) years total, commencing from the completion of project construction. Within 180 days prior to the expiration of the five-year special events period, the permittee may request an amendment to this permit to extend the duration for holding special events at the project site. Authorization of an extension of special events will be based, in part, on the analysis of the special event plan review required above, the frequency of events held, and the return of the area used for the special event to full public use. In analyzing whether the special event time period may be extended, the Commission may require a change in the type of reporting for a future five year time period. If the permittees have complied with the requirements of Special Condition II.B above, the duration of the authority to conduct special events shall be extended for an additional five (5) years, provided there is continued compliance by the permittees with the requirements of Special Conditions II.B.8.a for subsequent five year periods.
9. **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 both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
10. **Windsurfer Launch.** The Phase IIC clay cap work at the windsurfer launch located at the eastern end of the Oyster Point peninsula shall not take place between June 1st to August 31st, which is the peak windsurfer season. The permittees shall coordinate with the San Francisco Water Trail, the San Francisco Boardsailing Association, and Commission staff to provide appropriate detours, signage plan, and a potential alternative launch location. The launch shall not be closed for a period longer than five months.
11. **Phase ID Slough Overlook.** Along Gull Drive, an approximately 450-square-foot overlook/seating area site to provide views of the slough along the southern shoreline and the Bay. The overlook shall include a bench, interpretive signage, and one trash container (Exhibit D). The overlook shall be constructed prior to the use of the Phase ID office/R&D complex. The area between the service road and the slough shall be landscaped with low cover plantings. Landscaping along the slough area with planting on the retaining walls for the Phase ID service lane and trees outside of the view shed from the overlook area.

- C. **Phase ID Slough Open Space Dedication.** Prior to the use of the Phase ID office/R&D complex authorized herein, the permittees shall permanently restrict as open space to remain in its current condition with no further filling or development, all portions of the property that the permittees own, leases, or controls within the approximately 68,450-square-foot shoreline area along the slough at the southern and southwest portions of the site as shown on Exhibit A.

The permittees shall comply with this condition by submitting to the Executive Director an instrument that creates such open space restriction and that includes a map that shows all appropriate boundaries, including the shoreline (Mean High Water Line or five feet above Mean Sea Level if marsh is present), and a metes and bounds description of the area being restricted as open space. The instrument shall be in a form suitable for recording in San Mateo County.

The Executive Director shall review and either approve or disapprove the proposed instrument within 30 days of its receipt. Approval or disapproval shall be based on the sufficiency of the instrument to create the required open space condition. If the Executive Director approves the instrument, the permittee(s) shall record the instrument on all parcels affected by the instrument within 30 days of its approval and shall thereafter provide the Commission with a copy of the recorded instrument. If the Executive Director disapproves the instrument, the permittee(s) shall correct all deficiencies and resubmit the corrected instrument for further staff review within 30 days of receipt of the written notification of disapproval. The Executive Director shall then review the corrected instrument in accordance with this review procedure, and the permittee(s) shall record the approved instrument on all parcels affected by the instrument within 30 days of its approval.

D. **View Corridor**

1. **Visual Access.** The permittees shall leave as open space and undeveloped in perpetuity a 76-foot-wide view corridor located on the along Oyster Point Boulevard as shown on Exhibit E to allow visual access from the public street to the Bay. The permittees shall not construct any structures that would impede views to the Bay within this corridor. The permittees shall landscape the view corridor only with plants or shrubs that do not exceed three feet in height and that have been approved by or on behalf of the Commission pursuant to Special Condition II.A to this permit (Exhibit E).
2. **Maintenance of Planting.** The permittees shall maintain the view corridor. Maintenance shall consist of the regular trimming of shrubs and any plants to prevent their exceeding three feet in height and clearing and replacing of any dead plants.

E. **Marsh Protection**

1. **Best Management Practices.** All construction operations shall be performed to prevent construction materials from falling into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at their expense.

2. **Marsh and Upland Plant Protection During Construction.** The work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing native upland vegetation, except for the approximately 3,914-square-foot tidal marsh area authorized to be filled pursuant to this permit and restored pursuant to Special Condition II.F. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the permittee shall restore the area to its previous condition, including returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, the permittee shall notify the Commission's staff and prepare a mitigation and monitoring plan detailing remedial actions. The permittee shall employ mitigation measures to minimize impacts to wetland areas, such as: (1) minimizing all traffic in marsh/mudflat areas; and (2) carefully removing, storing, and replacing wetland vegetation that has been removed or "peeled back" from construction areas as soon as possible following construction.
3. **Debris Removal.** All construction debris and any uncovered debris, such as concrete, asphalt, wood, plastics, etc., shall be removed from the project site for proper disposal outside of the Commission's jurisdiction, except as authorized in the "Final Closure Plan Oyster Point Landfill," dated September 8, 2017. Excavated debris may be temporarily stored within the Commission's jurisdiction, provided measures are employed to assure that material does not wash or erode into the surrounding marsh or waterways. In the event that any such material is placed in any area within the Commission's jurisdiction for an extended period (i.e. more than 60 days), the permittee, its 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.
4. **Protection of Special Status Animal Species**
 - a. **National Marine Fisheries Service.** The permittee shall construct the project authorized by this permit consistent with the consultation from the National Marine Fisheries Service (WCR-2017-8401), dated March 13, 2018. The permittees shall perform work within the tidal marsh area to repair the clay cap only during low tide.
 - b. **U.S. Fish and Wildlife Service.** Prior to the initiation of the clay cap repair work within the tidal marsh, the permittee shall provide the Commission with the final consultation documentation from the U.S. Fish and Wildlife Service. If the consultation documentation results in substantial changes to the project authorized herein, the permittees shall seek and obtain an amendment to this permit.

5. **Upland Transition Zone.** The permittees shall maintain the upland transition zone, coastal meadow area (shoreline planting area as shown on Exhibit A). Maintenance shall include, but not be limited to the removal of any plant materials that die or become unkempt due to a failure to maintain the plant materials and the replacement of such dead plantings.

- F. **Mitigation and Monitoring.** Within six months of the issuance of this permit, the permittees shall submit and obtain approval by or on behalf of the Commission pursuant to the procedure provided for in Special Condition II.A, of the final mitigation and monitoring plan. This plan shall be generally consistent with the Abbreviated Phase IC Mitigation and Monitoring Plan provided to the Commission staff and the staff response, both on March 13, 2018. The plan shall clearly identify the existing site conditions, establish success criteria that match the existing site conditions, and outline monitoring methods. The impacted wetland area shall be restored to equal, or better than, pre-construction conditions, and non-native and invasive species shall represent less than 5% of the total cover of the restored site. The permittees shall monitor the restored area for a period of three years. If the restored site has achieved the required conditions prior to the timeline outlined in the approved Phase IC Mitigation and Monitoring Plan, the permittees may terminate monitoring before the three year period. Annual monitoring reports shall be submitted by December 31st of each year.

- G. **Water Quality Certification.** All construction activities in the Bay authorized herein shall comply with the requirements of the water quality certification dated March 13, 2018, issued by the Regional Water Quality Control Board, San Francisco Bay Region, including the restriction of in-water work to low tide events, the requirement to submit a final Mitigation and Monitoring Plan, and the control of invasive non-native plant cover to less than 5% of the total vegetative cover.

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. **Bay Fill.** The Commission may authorize fill when the fill proposed complies with the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that (1) fill "should be authorized only when public benefits from fill clearly exceed public detriment" and "should be limited to water-oriented uses" or for minor fill for improving shoreline appearance or public access to the bay; (2) fill should be approved only when "no alternative upland location" is available; (3) the fill is the "minimum necessary to achieve the purpose"; (4) the "nature, location, and extent of any fill should be such that it will minimize harmful effects to the bay area" including water quality and fertility of fish and wildlife resources; and (5) the fill will "be constructed

in accordance with sound safety standards”; (6) the fill will establish a permanent shoreline; and (7) the applicants have valid title to the property where the fill would be placed.

- 1. Public Benefit v. Detriment and Water-Oriented Use.** Approximately 32.1 acres (1,400,000 square feet) of the project consists of a former landfill. Within the project area, the shoreline consists of a sandy beach and tidal marsh. Along the peninsula, outside of the project area, the shoreline consists of riprap rock revetment. In 2001, the Regional Water Quality Control Board issued a Water Board Order No. R2-2000-046 Waste Discharge Requirements for the landfill. Closed landfills are required to have a minimum of four feet of cover, pursuant to the standards for environmental protection of solid waste disposal sites in the California Code of Regulations Title 27. A Final Closure Plan for the Oyster Point Landfill was created on September 8, 2017. To comply with these requirements, the permittees must place approximately 88 cubic yards of clay and soil over an approximately 3,914-square-foot area along the shoreline to achieve the appropriate four-feet of cover of the clay cap protecting the historic landfill. According to the “Final Closure Plan Former Oyster Point Landfill, Oyster Point Properties- Phase I and II Development 379 Oyster Point Boulevard, South San Francisco, California” (Final Closure Plan), the clay cap protecting the existing landfill is deficient in some locations, with less than four feet of cover due to wave overtopping and ponding along the shoreline. The permittees will install additional cover to fix clay cap deficiencies over other portions of the site outside of the Commission’s Bay jurisdiction. The Final Closure Plan states that placement of fill in the Bay to protect the landfill cap would prevent the leaching of chemicals and waste into the Bay, which would harm Bay resources and create a hazard for human use of the Oyster Point Marina. The permittees will place the material over the existing wetland habitat at the shoreline and restore the wetland vegetation to pre-construction conditions. The public detriment in the form of the loss of wetland habitat is temporary. The public benefits to the project include protecting Bay resources from potential contaminants contained in the historic landfill, facilitating use of portions of the site for public access, and restoring wetland at the site.

Additionally, approximately 75 linear feet of an 18-inch-diameter outfall pipe will be removed from the Bay at the beach area. The outfall will not be used at the site by the new development. This removal will not impact surrounding tidal marsh.

Special Condition II.F requires restoration of the area of tidal marsh impacted by the clay cap cover, to ensure the remediation cap remains protected and the public benefits of the fill are achieved. Special Conditions II.E and II.G are included to ensure the project is built consistent with the concurrence from NMFS and the water quality certification from the RWQCB. In addition, Special Condition II.A and II.B are included to ensure the fill is constructed consistent with the McAteer-Petris Act and the San Francisco Bay Plan.

The fill is a shoreline protection project, as the fill will protect the upland clay cap that protects the historic landfill from becoming exposed and releasing contaminants into the Bay. As a result, the fill authorized by this permit constitutes fill for a water-oriented use.

The public benefits of the project authorized by this permit exceed the public detriments of the fill, and therefore are consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.

2. **Alternative Upland Location.** The fill is required under state law to resolve deficiencies in the clay cap over the historic landfill. It will only be placed in areas that have been mapped below the required four feet of cover. No alternative upland location is possible for the protection of the existing historic landfill clay cap, consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.
3. **Minimum Fill Necessary.** The fill will be placed exclusively within areas that have less than four feet of cover over the landfill. The project has been designed to use the minimum amount of fill necessary to achieve the four feet of cover over the clay cap and to support the replanted wetland vegetation. As a result, the fill authorized by this permit is the minimum amount necessary for the project consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.
4. **Effects on Bay Resources.** In addition to Section 66605(d) of the McAteer-Petris Act regarding the impacts of fill on Bay resources, the Bay Plan contains related policies, as cited below.
 - a. **Fish and Wildlife.** The Bay Plan Fish, Other Aquatic Organisms and Wildlife Policy No. 4 states, in part, that “[t]he Commission should consult with the California Department of Fish and [Wildlife] and the U.S. Fish and Wildlife Service or 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 give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat.”

On March 13, 2018, the National Marine Fisheries Service (NMFS) issued a concurrence letter for the proposed project, concluding that the project would not likely adversely affect species protected under the federal Endangered Species Act, including the Central California Coast steelhead and the North American green sturgeon southern species. The concurrence states that the effects of the project are “not expected to result in either a net change to existing habitat values in the action area or result in adverse impacts to designated critical habitat” for project species that occur in this area. NMFS determined that the project will result in increased turbidity, but that this would be minor and temporary. Additionally, NMFS determined that the clay cap work will result in the disturbance of benthic aquatic macroinvertebrates that steelhead and green sturgeon feed upon. However, the area is anticipated to be recolonized quickly

following construction. The California Department of Fish and Wildlife provided comments on the timing of the project within the wetland area and stated that because the work would take place during low tide, the work “is unlikely to impact state listed or commercially managed species.”

At the time of issuance of this permit, U.S. Fish and Wildlife Services (USFWS) had not provided a letter of concurrence with the U.S. Army Corp of Engineers determination that the project would not likely adversely impact protected species. USFWS staff communicated to the Commission’s staff that the USFWS did not have concerns about the project, and any recommendations in the letter of concurrence will be consistent with the recommendations of NMFS. Special Condition II.E.4 is included to ensure that the project is constructed in a manner that is consistent with the approval from NMFS. It also requires the permittees to submit the USFWS approval to Commission staff prior to the initiation of the clay cap repair work in the Bay. As conditioned, the fill authorized by this permit is consistent with the McAteer-Petris Act requirements and the San Francisco Bay Plan policies related to fish, other aquatic organisms, and wildlife.

- b. **Water Quality.** The Bay Plan policies on Water Quality state, in part, that “Bay water pollution should be prevented to the greatest extent feasible. The Bay’s tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality” and that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board’s (RWQCB) Basin Plan... [and] the policies, recommendations, decision, advice, and authority of the State Water Resources Control Board and Regional Board should be the basis for carrying out the Commission’s water quality responsibilities.” Additionally, the policies state, in part, that “[n]ew projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay...” Lastly, Policy 7 states that, “[w]henever practicable, native vegetation buffer areas should be provided as part of a project to control pollutants from entering the Bay, and vegetation should be substituted for rock riprap, concrete, or other hard surface shoreline and bank erosion control methods...”

On March 16, 2018, the RWQCB issued a water quality certification for the project, including the placement of fill for the clay cap repair work and the removal of an outfall. The fill will impact approximately 3,914 square feet of existing tidal marsh. As mitigation, the RWQCB required the impacted area to be restored to pre-construction conditions and the creation of a Mitigation and Monitoring Plan that would outline the existing site conditions and establish success criteria for the mitigation project. The RWQCB required the site to be controlled for invasive non-native sea lavender such that non-native and invasive

plants shall be less than 5% cover of the restored area. Special Condition II.G has been included to ensure that the project is constructed in a manner that is consistent with the water quality certification.

Pursuant to Special Condition II.F, the permittees will restore the tidal marsh on top of the fill required for the clay cap work instead of covering the area with a hard substrate, such as riprap, to avoid erosion. The use of tidal marsh vegetation in place of rock riprap will better absorb pollutants and create a more natural shoreline and provide more effective habitat for fish and wildlife.

As conditioned, the fill authorized by this permit is consistent with the McAteer-Petris Act requirements and the San Francisco Bay Plan policies related to water quality.

- c. **Tidal Marsh and Tidal Flats and Mitigation.** The Bay Plan policies on Tidal Marshes and Tidal Flats state, in part, that “tidal marshes and tidal flats should be conserved to the fullest possible extent” and that “[p]rojects should be sited and designed to avoid, or if avoidance is infeasible, minimize adverse impacts on any transition zone presented between tidal and upland habitats. Where a transition zone does not exist and it is feasible and ecologically appropriate, shoreline projects should be designed to provide a transition zone between tidal and upland habitats.” The Bay Plan policies on Mitigation state, in part, that “[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.” Furthermore, Policy 7 states, in part, that “a mitigation program should be reviewed and approved by or on behalf of the Commission as part of the project. Where appropriate, the mitigation program should describe the proposed design, construction and management of mitigation areas and include: (a) Clear mitigation project goals; (b) Clear and measurable performance standards for evaluating the success of the mitigation project, based on measure of both composition and function, and including the use of reference sites; (c) A monitoring plan designed to identify potential problems early and determine appropriate remedial actions. Monitoring and reporting should be of adequate frequency and duration to measure specific performance standards and to assure long-term success of the stated goals of the mitigation project; (d) A contingency plan...and (e) Provisions for the long-term maintenance, management and protection of the mitigation site...”

The fill will be placed over an approximately 3,914-square-foot area that is the location of existing tidal marsh. Because the fill material is required for the land-fill cap to be consistent with state law, it is not possible to avoid impacts to the tidal marsh. To mitigate for the adverse impacts to tidal marsh, the permittees

will restore the site to tidal marsh following the placement of fill to protect the landfill cap. Special Condition II.F has been included to require the permittees to restore the impacted tidal marsh area and to submit monitoring reports pursuant to a plan approved by or on behalf of the Commission. The “Oyster Point Development Phase 1C, Abbreviated Mitigation Monitoring Plan,” outlines that the area will be restored to pre-construction conditions and the area will be monitored for three years. Special Condition II.E has been included to ensure that the work adjacent to the wetland areas does not negatively impact wetland vegetation. Following permit issuance, a complete mitigation and monitoring plan will be developed analyzing the pre-construction conditions of the tidal marsh, performance standards, site maintenance, and monitoring techniques. The RWQCB required that the restored area limit the amount of cover by non-native sea lavender and other non-native or invasive species, resulting in a higher quality marsh habitat than exists today. Additionally, the larger project will provide a transition zone in the uplands for the marsh along the northern shoreline of the peninsula to migrate as sea levels rise. As a result, there will be no permanent adverse impacts to tidal marsh from the placement of fill.

As conditioned, the fill authorized by this permit is consistent with the McAteer-Petris Act requirements and the San Francisco Bay Plan policies related to mitigation and tidal marsh and tidal flats.

5. **Safety Standards.** In addition to Section 66605(e) of the McAteer-Petris Act regarding the seismic and flooding standards by which fill is designed and constructed, the Bay Plan contains related policies, cited below. The Bay Plan policies on Shoreline Protection state, in part, that “[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 protect, 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 construct to prevent significant impediments to physical and visual public access; and (e) the protection is integrated with current or planned adjacent shoreline project measures...” Furthermore, Policy 4 states that “[w]henver feasible and appropriate, shoreline protection projects should include provisions for non-structural methods such as marsh vegetation and integrate shoreline protection and Bay ecosystem enhancement, using adaptive management. Along shorelines that support marsh vegetation, or where marsh establishment has a reasonable chance of success, the Commission should require that the design of authorized protection projects include provisions for establishing marsh and transitional upland vegetation as part of the protective structure, wherever feasible.”

Further, the Bay Plan Climate Change Policy No. 2 states, in part: “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.” Climate Change Policy No. 3 state, in part, “[t]o 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...should be designed to be resilient to a mid-century sea level rise projection.” Climate Change Policy No. 7 states, in part, that until a regional sea level rise adaptation strategy can be completed, the Commission should evaluate each project proposed in vulnerable areas on a case-by-case basis to determine the project’s public benefits, resilience to flooding, and capacity to adapt to climate change impacts. The following specific types of projects have regional benefits, advance regional goals, and should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding... [including] a public park.”

The fill is necessary to raise the areas with deficient landfill cover areas to be consistent with Title 27 and RWQCB Order No. R2-2000-046. The covering of the capped areas with marsh vegetation will prevent further loss of landfill cap cover and will provide protection through a mid-century projection of sea level rise of 24-inches at a minimum. The fill is anticipated to last through the end of the century. The restored tidal marsh will connect into the surrounding marsh and will create a natural shoreline. The project will provide transitional marsh plantings in the upland areas, however the RWQCB expressed concerns about the elevation change and the ability of the marsh to migrate landward as sea levels rise. Special Condition II.E.5 has been included to ensure that the transition zone is maintained and promotes a healthy marsh.

The fill is resilient to flooding from sea level rise and storms through the end-of-century. In addition, the fill associated with the project supports development of Oyster Point, including the construction of an enhanced public access area along the shoreline. This project will achieve regional goals and provide regional benefits by enhancing public access to the Bay and improving water access at a former landfill.

As a result, the project is consistent with the requirements of the McAteer-Petris Act and with the Bay Plan policies on Shoreline Protection and Climate Change.

6. **Valid Title.** The project site is owned by Oyster Point Development, LLC., and the City of South San Francisco.

As conditioned, the project is consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan policies on fill.

- B. **Priority Use Area.** The project site is located within an area designated for Waterfront Park, Beach Priority Use in the Bay Plan Map No. 5 which provide that projects in this area should “Preserve and improve marina and shoreline park. Preserve picnicking, swimming, boating, hiking, windsurfing, and fishing opportunities. Possible ferry terminal. Allow if compatible with park and marina uses; serve with bus public transit to reduce traffic and parking needs. Some fill may be needed. Provide signage regarding fish consumption advisories for anglers.”

On September 16, 1999, the Commission adopted Bay Plan Amendment No. 2-99 and Resolution No. 99-06 to amend the San Francisco Bay Plan and Resolution 16 to delete approximately 37 acres from the waterfront park, beach priority use area designation on Plan Map 5. The remaining priority use area is 28.41 acres. The majority of the deletion was in the upland areas, but an approximately 0.5-acre area at the western end of the drainage channel (slough) located along the southern shoreline of the Oyster Point peninsula was also removed from the priority use area designation.

The area is subject to several existing BCDC permits. BCDC Permit No. 2008.001.00 authorized a Water Emergency Transportation Authority (WETA) ferry terminal. BCDC Permit No. 1977.001.17 requires the majority of waterfront park, beach priority use area for public access. Permit No. 1977.001.17 also requires a fishing pier on the eastern portion of the peninsula, which will not be changed as part of this project. The project will maintain, improve, and expand the existing public amenities required by the existing BCDC permits within the waterfront park, beach priority use area. Where public access areas are more specifically described in this permit, the required public access areas in BCDC Permit No. 1977.001.17 shall be superseded by this permit.

As part of the effort to fix landfill cap deficiencies, clay cap work will take place at the eastern corner of the peninsula within the Phase IIC area. However, the majority of work within Phase IIC is not designed at the time of issuance of this permit and will be subject to a future application and review by the Commission. The landfill clay cap work within the uplands in the Phase IIC area will involve the temporary closure of a portion of the Bay Trail and the windsurfer launch. Additional stairs will be added to the launch to conform to the new grading elevations from the clay cap work. Detour routes and timing of construction will be coordinated with the Commission and the San Francisco Boardsailing Association. Pursuant to Special Condition II.B.10, the project applicants will work with the San Francisco Bay Water Trail (Water Trail) and the San Francisco Board Sailing Association to ensure the new design meets the needs of the users. The construction at this location will take place during the windsurfing and kite surfing off seasons.

The peninsula was subdivided in the Fall of 2017, prior to the issuance of this permit. The subdivision created six new parcels and one remainder parcel. The subdivision removed the priority use area along the southern shoreline from the Parcel 5 Park Area and included this area in the remainder parcel instead. The subdivision of land is allowed pursuant to Regulation Section 10601(b)(6) and is a minor repair or improvement that requires a BCDC permit. Special Condition II.B requires the new parcel 5 as public access to mitigate for the fact that the priority use area on this portion of the peninsula will have inaccessible grading. As conditioned, the project is consistent with the Bay Plan Waterfront Park, Beach priority use designation.

- C. **Public Access; Recreation; and Views.** In assessing whether the project provides maximum feasible public access consistent with the proposed activities, the Commission has relied on the McAteer-Petris Act, the Bay Plan policies, and access requirements of similar previously permitted projects.

1. **Public Access Policies.** 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.” Section 66632.4 states, “[w]ithin any portion or portions of the shoreline band that are located outside the boundaries of a water-oriented priority land uses... the Commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline.”

The Bay Plan **Public Access** policies state, in part, that projects “should increase public access to the Bay to the maximum extent feasible” and that “...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...” Further, the policies state, in part, that “[a]ccess 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” that “diverse and interesting public access experiences should be provided.” Additionally, the policies state, in part, that public access “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.” Additionally, the policies provide that “[p]ublic access should be sited, designed, managed, and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding,” and that access should be designed consistent with the physical and natural environment. The policies also state, in part, that “[r]oads near the edge of the water should be designed as scenic parkways for slow-moving, principally recreational traffic. The road-way 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.” The policies state that “[p]ublic access should be sited, designed, managed and maintained to avoid significant

adverse impacts from sea level rise and shoreline flooding.” Further, the policies state, in part, that “[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” and that “[t]he Design Review Board should advise the Commission regarding the adequacy of the public access proposed.”

The Bay Plan **Recreation** policies state, in part, that “[d]iverse and accessible water-oriented recreational facilities, such as marinas, launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population... and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels...waterfront parks should be provided wherever possible.”

Recreation Policy 2 states, in part, that: “Waterfront land needed for parks and beaches to meet future needs should be reserved now.... [however] recreational facilities need not be built all at once; their development can proceed over time. Interim use of a waterfront park priority use area prior to its development as a park should be permitted, unless the use would prevent the site from being converted to park use or would involve investment in improvements that would preclude the future use of the site as a park.”

Recreation Policy 3 states, in part: “Recreational facilities, such as waterfront parks, trails, marinas...non-motorized small boat access, fishing piers, launching lanes, and beaches, should be encouraged and allowed by the Commission, provided they are located, improved and managed consistent with the following standards [including]...[d]ifferent types of compatible public and commercial recreation facilities should be clustered to the extent feasible to permit joint use of ancillary facilities and provide a greater range of choices for users; [s]ites, features or facilities within designated waterfront parks that provide optimal conditions for specific water-oriented recreational uses should be preserved and, where appropriate, enhanced for those uses, consistent with natural and cultural resource preservation; [a]ccess to marinas, launch ramps, beaches, fishing piers, and other recreational facilities should be clearly posted with signs and easily available from parking reserved for the public or from public streets or trails; [t]o reduce the human health risk posed by consumption of contaminated fish, projects that create or improve fishing access to the Bay at water-oriented recreational facilities, such as fishing piers, beaches, and marinas, should include signage that informs the public of consumption advisories for the species of Bay fish that have been identified as having potentially unsafe levels of contaminants”; “[and c]omplete segments of the Bay...Trails where appropriate.”

Further, Recreation Policy 3 provides, regarding non-motorized boats that “[w]here practicable, access facilities for non-motorized small boats should be incorporated into waterfront parks” and that “access point should be located, improved and managed to avoid significant adverse effects on wildlife and their habitats.” To

enhance this use, such areas should include "...launching facilities, restrooms, rigging areas, equipment storage.... [and] be accessible...to ensure that boaters can easily launch their watercraft." And, moreover, the policies provide in part that "[s]andy beaches should be preserved, enhanced, or restored for recreational use, such as swimming, consistent with wildlife protection."

Additionally, the Recreation policies state that waterfront parks "should emphasize hiking, bicycling, riding trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities" and that "[p]ublic parking should be provided in a manner that does not diminish the park-like character of the site." Also, on water oriented commercial-recreation, the policies state partly that "[w]ater-oriented commercial recreational establishments, such as restaurants... recreational equipment concessions...should be encouraged in urban areas adjacent to the Bay. Public docks, floats or moorages for visiting boaters should be encouraged at these establishments where adequate shoreline facilities can be provided."

The Bay Plan Recreation policies pertaining specifically to designated waterfront park areas state, in part: "To assure optimum use of the Bay for recreation, the following facilities should be encouraged in waterfront parks..." The policies pertaining to waterfront park areas include the following: "(2) To capitalize on the attractiveness of their bayfront location, parks should emphasize hiking, bicycling, riding trails, picnic facilities, swimming, environmental, historical and cultural education and interpretation, viewpoints, beaches, and fishing facilities. Recreational facilities that do not need a waterfront location, e.g., golf courses and playing fields, should generally be placed inland, but may be permitted in shoreline areas if they are part of a park complex that is primarily devoted to water-oriented uses, or are designed to provide for passive use and enjoyment of the Bay when not being used for sports... (4) Public launching facilities for a variety of boats and other water-oriented recreational craft, such as kayaks, canoes and sailboards, should be provided in waterfront parks where feasible. (5) Except as may be approved pursuant to recreation policy 4-b, limited commercial recreation facilities, such as small restaurants, should be permitted within waterfront parks provided they are clearly incidental to the park use, are in keeping with the basic character of the park, and do not obstruct public access to and enjoyment of the Bay. Limited commercial development may be appropriate (at the option of the park agency responsible) in all parks shown on the Plan maps except where there is a specific note to the contrary. (6) Trails that can be used as components of the San Francisco Bay Trail...or links between them should be developed in waterfront parks. San Francisco Bay Trail segments should be located near the shoreline unless that alignment would have significant adverse effects on Bay resources; in this case, an alignment as near to the shore as possible, consistent with Bay resource protection, should be provided... (7) Bus stops, kiosks and other facilities to accommodate public transit should be provided in waterfront parks to the maximum extent feasible. Public parking should be provided in a manner that does not diminish the park-like character of the site.

Traffic demand management strategies and alternative transportation systems should be developed where appropriate to minimize the need for large parking lots and to ensure parking for recreation uses is sufficient. (8) Interpretive information describing natural, historical and cultural resources should be provided in waterfront parks where feasible... (10) The Commission may permit the placement of public utilities and services, such as underground sewer lines and power cables, in recreational facilities provided they would be unobtrusive, would not permanently disrupt use of the site for recreation, and would not detract from the visual character of the site.

The Bay Plan **Transportation** Policy 4 states, in part, that “[t]ransportation projects on the Bay Shoreline... should include pedestrian and bicycle pathways... Transportation projects should be designed to maintain and enhance visual and physical access to the Bay and along the Bay shoreline.”

The Bay Plan policies on **Appearance, Design, and Scenic Views** state, in part, that “all Bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay” and that “[m]aximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas...” Furthermore, “[s]tructures and facilities that do not take advantage or complement the Bay should be located and designed so as not to impact visually on the shoreline. In particular, parking areas should be located away from the shoreline.”

2. **Maximum Feasible Public Access.** Approximately 9.97 acres of public park area existed at the site prior to the authorized project. BCDC Permit 1977.001.17 for the Oyster Point Marina requires a trail around the perimeter of the peninsula and the entire area at the peninsula to be open to the public. Where public access areas are more specifically described in this permit, the required public access areas in BCDC Permit No. 1977.001.17 shall be superseded by this permit. The permit also authorized the construction of a fishing pier and a public boat launch at the eastern end of the peninsula (outside of the authorized project area). BCDC Permit No. 2008.001.00 authorized a WETA ferry terminal and requires public access along a portion of the ferry pier, a viewing platform, and an approximately 565-foot-long north-south pathway. BCDC Permit No. M1990.037.01 authorized a UPS maintenance facility south of the project site and requires a sidewalk along Gull Drive and an overlook at the western end of the slough. City of South San Francisco staff estimates that approximately 300 people use the public access areas at the peninsula on a daily basis under the pre-project conditions, to access the Bay Trail, marina, ferry terminal, beach and other amenities.

The project will result in approximately 9.99 acres of enhanced public access. Approximately 6.81-acres of the public access will be located outside of the Commission’s jurisdiction. Approximately 3.18-acres of public access will be located within the Commission’s 100-foot shoreline band. The access consists of an approximately 6.48-acre shoreline park as part of Phase IC known as the Marina Waterfront/Beach area; a 3.51-acre Parcel 5 Park area that will be programmed at a later date but

which could include some commercial recreation and restaurant uses on up to 0.5 acres of the 3.51 acre parcel; and an approximately 450-square-foot overlook at the western edge of the slough south of the project site as part of Phase ID. Special Condition II.B requires these areas for public access and requires the permittees to maintain these areas.

The Phase ID building will support approximately 950 employees. The future hotel site, located outside of the Commission's jurisdiction, will have approximately 350 rooms and additional employees to support the hotel. The anticipated number of daily users of the waterfront park area following project construction is 795 people, including use by people who work at the site and hotel guests. Additionally, Phases IID-IVD are anticipated to be office/R&D complexes and will support 3,180 employees. Special Condition II.B.4 requires the Parcel 5 Park Area, outside of the Commission's jurisdiction, to be available for public access to accommodate the increased number of visitors to the shoreline.

Approximately 2,200 linear feet of Bay Trail will be widened from 14 feet to 18 feet and would extend along the Marina Waterfront area, connecting to the existing path at the northern peninsula and to the adjacent public access areas associated with the Ferry Terminal development. The Bay Trail will be paved and will include foot level lighting. The permittees shall maintain the trail and ensure that it appropriately connects to adjacent Bay Trail segments, as described in Special Condition II.B.

The Marina Waterfront/Beach area will include approximately 2.36 acres in planting, including bioretention areas, that will not be used for active public use. These plantings are necessary for filtration of storm runoff. Due to grading and planting, only approximately 4.12 acres of the park area will be usable by the public. A network of 10-foot-wide trails will connect the Marina Waterfront area to Oyster Point Boulevard and Marina Boulevard.

Special Condition II.B. requires the approximately 13,000-square-foot beach within the Marina Waterfront Area to be replenished, and the permittees will construct a six-foot-wide accessible path and beach mats, for universal access to the water, extending from the Bay Trail to the beach. This will facilitate access to the water, as required in the Recreation policies discussing waterfront parks. An eight-foot-wide, 1,350-square-foot wooden deck with seating will sit adjacent to the Bay Trail and overlook the beach and the marina. A 200-square-foot restroom with a changing station and a shower will be constructed west of the Bay Trail. A drop-off area will be provided on Oyster Point Boulevard for beach users, such as picnickers and kayakers, to unload items at a location closer than the public parking. An approximately 1,500-square-foot pump station will be located between the Bay Trail and Oyster Point Boulevard and would be screened by a fence and landscaping.

The Marina Waterfront Park area, as required in Special Condition II.B, will include an 8,000-square-foot lawn area; a 4,000-square-foot picnic area with six picnic tables and three barbeque pits; a 5,750-square-foot multi-use gravel area; and a 1.09-acre parking lot for approximately 137 vehicles. The park will include three

seating areas with benches, lounge chairs, and picnic tables. The parking lot will be open for public use and would serve both the public access areas and the marina. The Phase ID office/R&D complex will have its own private parking. The multi-use gravel area will include seating and is proposed for special events, such as farmers markets and food trucks. Special Condition II.B.8 requires the permittees to submit a plan review request for any special event a minimum of 30 days prior to the event to ensure that these irregular uses of the site do not inhibit the public nature and use of the required public access areas. An approximately 1,500-square-foot restroom with a portion available to the public and a portion that will be for private use for the marina will be constructed on the western portion of the Marina Waterfront Park. An additional approximately 750-square-foot private restroom will be installed at the eastern end of the park. The private restrooms will serve the marina and would replace the existing private restrooms at the site. Approximately 20 bicycle racks will be installed between the beach area and the Marina Waterfront.

The approximately 3.51-acre Parcel 5 Park area will be located south of Marina Boulevard, between the Phase ID building and a parcel proposed for a future hotel development (Parcel 6 Hotel Site), and outside of the Commission's jurisdiction. The hotel development will not be located within the Commission's jurisdiction and will not be subject to a future Commission permit application. Special Condition II.B requires the Parcel 5 Park Area for public access even though it is outside of the Commission's jurisdiction to ensure the project provides maximum feasible public access consistent with the project. The site already has required public access under existing BCDC permits, described above. Additionally, the enhanced shoreline park (Marina Waterfront Park) includes approximately 2.36 acres of landscaped areas that are not designed for public use, limiting the useable amount of space for the public within the 6.48-acre park. The project will result in a large increase in visitors to the shoreline associated with the office/R&D and hotel developments. As a result, additional useable public access areas are necessary to provide maximum feasible public access. The enhanced public access areas along the shoreline, along with the Parcel 5 Park Area are designed to accommodate the increased activity along the shoreline. The Parcel 5 Park Area and the Marina Waterfront park will greatly enhance the public access experience at the Oyster Point peninsula, providing maximum feasible public access consistent with the project.

A crosswalk will be installed on Marina Boulevard to provide for access from the public parking lot to the Parcel 5 Park Area. As provided in Special Condition II.B.4.a, the park will not be programmed until five years after the issuance of this permit for the Phase IC and ID developments to allow the design of the park to compliment the adjacent hotel and for the City to complete a public review process. In the interim, as required by Special Condition II.B.4.a, the park area will be graded, hydro-seeded, and maintained, including irrigation, as useable public open space. The park will include an approximately 11,900-square-foot temporary parking lot, which will be re-assessed and potentially removed when the park is designed.

Special Condition II.B.4.b allows for an approximately 0.5-acre portion of the Parcel 5 Park area to be used for limited commercial use, including the construction of commercial structures. These uses are anticipated to include the installation of facilities for farmers markets, a restaurant space of up to 7,500 square feet, and recreational equipment concession facilities. The 0.5-acre area has yet to be designed, and commercial recreational areas could be located in more than one location, so long as the total area of commercial recreation is consistent with this permit. These commercial recreational uses activate the Parcel 5 Park Area and will enhance the experience of the public. The exact type and location of these uses and structures will require further review and approval by or on behalf of the Commission, as required in Special Condition II.B.4.b. The Commission staff may reasonably consider an enlargement of the 0.5-acre commercial recreation use area through an amendment to this permit to accommodate planning of the commercial recreation area and the Parcel 5 Park area, taking into consideration the context of the design of Parcel 5 Park and public use of the area.

The City of South San Francisco will host special events in the Parcel 5 Park Area and the multi-use gravel area within the Marina Waterfront Park. These events could impact the public's use of the shoreline within the 100-foot shoreline band by excluding the public from the special events areas and crowding the public access areas adjacent to the special events, thereby inhibiting circulation to and along the shoreline. Special Condition II.B.8 limits these events to non-ticketed and no-fee public events to allow this use to be consistent with the park like nature of these sites. To ensure that the majority of the public access remains useable during these special events, Special Condition II.B.8.a requires plan review and approval of each event before they may commence. The permittees must ensure that all pathways within the public access areas remain open to ensure that the public can move throughout the site. Special Condition II.B.8.b puts a five-year time limit for special events to be held. This time period can be extended in the future. If the permittees request for this time period to be extended by or on behalf of the Commission, Commission staff will analyze the plan review requests for each event, required in Special Condition II.B.8.a and how the public access areas have functioned under these events. If more than 15 events are held each year, Special Condition II.B.8 may be amended to require the submittal of annual reports providing a schedule for the upcoming years events and describing the prior year's special events, including details on each event, the number of participants, and any complaints received from the public.

Special Condition II.B.3 requires a North-South connector path to be constructed through the site of the proposed hotel outside of the Commission's jurisdiction (Parcel 6 Hotel Site) connecting Marina Boulevard to the pedestrian bridge that crosses the slough along the southern shoreline. A temporary 12-foot-wide path will be installed within 6 months of the completion of grading. The temporary path is necessary to allow access across the site, connecting the various public access areas. Without it, the public would not be able to easily move from the Marina Waterfront

Park area to the pedestrian bridge and Bay Trail. A permanent 12-foot-wide paved path will be installed within three (3) years after issuance of the Commission's approval if the construction of the proposed hotel has not commenced. If a building permit for the construction of the hotel will be issued by the City of South San Francisco soon after the 6 month mark, following the substantial completion of site grading, the permittees may seek a time extension for the requirement to provide the north-south connector path. In this case, no temporary path would be needed. If the construction of the proposed hotel has begun, the permanent trail will be incorporated into the design of the hotel. Special Condition II.B.3. requires the permittees to submit plans for the design and alignment of the permanent path for approval by or on behalf of the Commission.

Special Condition II.B.2 requires the installation of an approximately 450-square-foot overlook south of the Phase ID building along Gull Drive at the terminus of the slough located to the south of the project site. The requirement of this overlook will replace, and supercede the permit requirement for, an approximately 100-square-foot slough overlook that is required under BCDC Permit No. M1990.037.01. The overlook will include a bench and a trash receptacle. Special Condition II.C requires the dedication of an approximately 68,450-square-foot area extending from the Phase ID service road, across the slough to the edge of the applicant's property as open space.

Approximately 400 linear feet of the new alignment of Marina Boulevard will be located within the Commission's jurisdiction. The road will be elevated to preserve views north toward the marina. At the apex of the road, it will be possible to view the Bay eastward. Crosswalks will be added across Marina Boulevard to allow people to move between the public access areas. Special Condition II.A has been included to ensure that the road is constructed in a manner that is consistent with the approved plans. Special Condition II.D requires a view corridor along a portion of Oyster Point Boulevard Gateway, through the intersection with Marina Boulevard and Oyster Point Boulevard to preserve views through this portion of the Marina Waterfront/Beach park to the Bay. As conditioned, the project is consistent with the Bay Plan policies on transportation and views.

The design of the project was adapted following initial communication with the Commission staff in November, 2016. Originally, more of the Marina Waterfront park area was proposed as parking, consistent with the pre-construction conditions. The project will provide more active uses of the site and is designed to provide more connectivity by improving pathways between areas.

- 3. Sea Level Rise and Flooding.** According to the Federal Emergency Management Agency (FEMA), the current (2015) 100-year flood elevation for the project site is 11 feet (NAVD88). Portions of the site flood during "King Tide Events" and storms under pre-project conditions. The Phase ID office/R&D building complex has a design life of approximately 80-100 years.

The Marina Waterfront area will be generally located at an elevation of 14.8 feet (NAVD88). This area has a design life of approximately 50-years and will be resilient through 2050 with 24 inches of sea level rise. This area is anticipated to be flooded by a 25-year storm event, which has a 4% chance of occurring, at the end of the century with 66-inches of sea level rise. The shoreline bayward of the Bay Trail along this area will be planted with a “coastal meadow” plant mix that will provide a transitional zone for the salt marsh to migrate upward as sea levels rise. Special Condition II.B.6 requires the permittees to submit an adaptation plan for the required public access areas once the mean higher high water level is 10.63 feet (NAVD88), which is when the areas are predicted to be flooded during a 100-year storm event with 46.8 inches of sea level rise, which would occur before the end of the century. The adaptation plan will include adaptation strategies that are appropriate for the site in the future. This allows time for a preferred adaptation design to be selected and be implemented before the public access areas are regularly flooded. Special Condition II.B.6 also requires the permittees to provide a notice of flooding whenever flooding results in the closure of any public access area. These notices will provide an understanding of how frequently the public access is inaccessible due to flooding and will provide insight on which areas need to be adapted and how soon. Special Condition II.B.5 requires the permittees to repair any damages to the public access areas caused by flooding.

The replenished beach area will be approximately 52 feet wide and would have an elevation between 6.2 to 13 feet (NAVD88). The beach has a design life of approximately 50 years and will be flooded by mid-century during a 100-year flood event with 24 inches of sea level rise. On a regular basis, the lower portions of the beach will be frequently flooded by 2050, and unavailable for public use. The beach will be fully inundated by the end of the century with 66 inches of sea level rise. Because the beach is designed to provide a smooth connection to the water, it will be difficult for the beach to be resilient. The upland area is a steep slope, so adaptation of the beach area is limited. While staff has encouraged the permittees to adapt the beach area by further replenishing it, it is not required under Special Condition II.B.6.

The Parcel 5 Park area, North-South connector path, and the Phase ID slough overlook will all be elevated to be resilient to a 100-year flood event at the end of century with a projection of 66-inches of sea level rise.

As conditioned, the public access required by this permit is viable to impacts from flooding due to sea level rise or storms.

- 4. Design Review Board.** The project was reviewed by the Commission’s Design Review Board (DRB) on July 10, 2017. At this meeting, the DRB raised questions about the type of landscaping and safety at the site. The DRB commented on the need to better connect the public spaces across Marina Boulevard, from the southern shoreline to the Marina Waterfront. Additionally, the DRB discussed the desire for an east-west connection along the slough from the Parcel 5 Park area to Gull Drive. Lastly, the DRB expressed concerns about whether the appropriate soils brought to the site would support the proposed landscaping.

In response to these concerns, the permittees added a crosswalk from the public parking lot to the Parcel 5 Park area. While the Phase ID service road along the slough has been widened, the permittees are not providing access along the slough from the Parcel 5 Park area to Gull Drive. They state that the steep slopes along the slough require retaining walls, making it too difficult to achieve an accessible grade and seismic stability due to the landfill materials.

5. **Comparable Projects.** The Commission considers its previous actions on comparable projects to help inform a decision about whether the proposed public access improvements represent the maximum feasible scope and type consistent with the mixed-use project.

The project will provide approximately 9.99 acres of public access, with approximately 3.18 acres located within the Commission's jurisdiction. Public access areas will occupy approximately 28% of the total project site and approximately 42% of the project area within the 100-foot shoreline band.

The Commission has, in the past, considered comparable projects that dedicated similar portions of the total project site to public access (Table 1). The Sierra Point five-building office complex in the City of Brisbane, San Mateo County (BCDC Permit No. M2008.019.00) provided approximately 3.7 acres of public access on the undeveloped 22.3-acre project site. The public access is located entirely within the Commission's 100-foot shoreline band and is approximately 16% of the project site. The Burlingame Office Park project in the City of Burlingame, in San Mateo County (BCDC Permit No. 2013.001.01), originally issued on November 24, 2014, and amended through October 18, 2017 was for a six-building office complex and provided approximately 3.7-acres of public access on an approximately 20-acre site, which is 19% of the project site. A public access path previously existed on the site before the project was constructed. The Bay Park Plaza, a two-building office complex, in the City of Burlingame, in San Mateo County (BCDC Permit No. 1982.020.08), originally issued on January 21, 1983, and amended through October 22, 2007, provided approximately 2.93-acres of public access on an approximately 12.7-acre project site. Public access is approximately 23% of the project site and the vast majority is located within the Commission's 100-foot shoreline band. The Wind River five building office complex project in the City and County of Alameda (BCDC Permit No. 1997.009.01), originally issued on November 20, 1997, and amended through November 12, 1998 provided approximately 4.35 acres of public access on an approximately 13-acre site, which is approximately 34% of the project site. There was no public access at the site of the Wind River project prior to the construction of the project. The single-building office complex project at 501 Airport Boulevard in the City of Burlingame in San Mateo County (BCDC Permit No. 1980.003.00), issued on April 28, 1980, provided approximately 0.18-acres of public access on the approximately 0.5-acre site, equaling approximately 36% of the total project site.

Table 1: Public Access Provided in Comparable BCDC Approved Office Complex Projects

Permit	Total Project Size (On Land; Acres)	Size of Public Access (Acres)	Public Access as a Percentage of Total Project	Type of Use
M2008.019.02	22.8	3.7	16%	Five Building Office Complex
2013.001.01	20	3.7	19%	Six Building Office Complex
1982.020.08	12.7	2.93	23%	Two Building Office Complex
1997.009.01	13	4.35	34%	Five Building Office Complex
1980.003.00	0.5	0.18	36%	Single Building Office Complex
Application No. 2017.007.00	35.3	9.99	28%	Three Building Office Complex

The project differs from other previously-approved office park developments, as it includes a potential future hotel development. In addition, the public access improvements include improving existing BCDC-required public access. However, compared to other similar developments, the project provides a comparable portion of the site for public access. In addition to the quantity of access provided, the qualitative improvements to existing public access were considered in assessing whether the project provides maximum feasible public access.

As conditioned, the project authorized herein is consistent with the McAteer-Petris sections and relevant San Francisco Bay Plan policies regarding Public Access, Recreation, Transportation, and Appearance, Design, and Scenic Views.

D. Commission Advisory Boards

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board did not review the project because Commission staff determined that the fill proposed does not raise seismic safety issues.
2. **Design Review Board.** The project was reviewed by the Commission's Design Review Board on July 10, 2017.

- E. **Environmental Review.** On March 23, 2011, the City of South San Francisco, acting as lead agency, certified the final Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) for the Oyster Point Specific Plan. This document reviewed Phases IC and ID on a project level and Phases IIC, IID, IIID, and IVD on a programmatic level. The review of these subsequent phases will be the subject of a future permit application for the Commission's approval.

On December 11, 2017, the City of South San Francisco circulated a subsequent EIR to analyze changes to the design of Phases IID, IIID, and IVD. These are future phases that are not part of the proposed project but will connect to the proposed project. The three

phases were planned to provide approximately 1,750,000 square feet of office/R&D space. The updated proposal is for Phase IID to include approximately 1,070,000 square feet of office/R&D space. Phases IIID and IVD would change the zoning in these locations from office/R&D to residential and retail/amenity. These phases would include approximately 1,191 residential units and 22,000 square feet of flexible use retain and/or amenity space.

The review of these phases will be the subject of a future permit application for the Commission's approval. However, the request for the re-entitlement of these phases has been put on hold at the request of OPD.

- F. **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 McAteer-Petris Act, the San Francisco Bay Plan, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

IV. Standard Conditions

- A. **Permit Execution.** This permit shall not take effect unless the permittee(s) execute the original of this permit and return it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. **Permit Assignment.** The rights, duties, and obligations contained in this permit are assignable. When the permittees transfer any interest in any property either on which the activity is authorized to occur, or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the permit and agree to be bound by the terms and conditions of the permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.
- D. **Permit Runs with the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.

- F. **Built Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.
- I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.
- J. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee(s) 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 permittee(s) 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 permittee(s) 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 permittee(s) 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. **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 permittee(s), its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.
- N. **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 permittee, its 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 permittee shall immediately retrieve and remove such material at its expense.
- O. **In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.