

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

September 13, 2013

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653 lgoldzband@bcdc.ca.gov)
Erik Buehmann, Coastal Program Analyst (415/352-3645, erikb@bcdc.ca.gov)

SUBJECT: **Staff Recommendation on BCDC Permit Application No. 2013.002.00;**
Phoenix Commons, Oakland
(For Commission consideration on September 19, 2013)

Recommendation Summary

The staff recommends approval of BCDC Permit Application No. 2013.002.00, Chris Zimmerman's application for Phoenix Commons, which, as conditioned, will authorize the following activities:

1. Constructing a four-story, 41-unit senior co-housing facility, with approximately 8,263 square feet of the 18,933-square-foot proposed building within the 100-foot shoreline band, including a private patio;
2. Constructing an approximately an 87-foot-long, 27- to 32-foot-wide public access promenade (a total of 2,351 square feet), paralleling the Oakland Estuary and including 463 square feet of public access landscaping;
3. Installing public access improvements to the 1,348-square-foot terminus of 29th Avenue, a City-owned street; and
4. Renovating a portion of a 2,522-square-foot pier (1,963 square feet in the Bay, 559 square feet within the shoreline band) to provide additional public access area, and constructing a 650-square-foot floating dock for private use by the residents of the co-housing facility.

The proposed project would replace approximately 1,963 square feet of existing, pile-supported Bay fill that has been damaged by fire to create a new public access pier. As part of the renovation, the pier would be slightly reduced in size by removing approximately 194 square feet of decking from the edges of the pier. The applicant states the existing pilings are in good condition and will likely not need replacement. Therefore, no pile-driving or in-water work will be required to rehabilitate the pier. An existing 1,065-square-foot floating boat dock would be removed and replaced with a 650-square-foot floating boat dock.



Making San Francisco Bay Better

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. Subject to the conditions stated below, the permittee, Chris Zimmerman, is granted permission to construct Phoenix Commons, a 41-unit building providing senior co-housing at 340 29th Avenue, in the City of Oakland, Alameda County. Authorized work includes the following:

Description: In the Bay:

1. Renovate, use, and maintain an approximately 1,963-square-foot portion of a 2,522-square-foot pile-supported pier for public access by replacing and repairing the decking and some support structures and removing approximately 194 square feet of existing dilapidated decking; and
2. Remove an approximately 1,065-square-foot floating boat dock and install, use and maintain a new 650-square-foot private floating boat dock.

Within the 100-foot shoreline band:

1. Construct, use, and maintain an approximately 3,210-square-foot portion of a four-story residential structure with an 18,933-square-foot footprint;
 2. Construct, use, and maintain an approximately 1,649-square-foot private terrace adjacent to the public access promenade;
 3. Construct, use, and maintain an approximately 87-foot-long 27- to 32-foot-wide public promenade (totaling approximately 2,351 square feet) along the shoreline;
 4. Install, use, and maintain approximately 463 square feet of landscaping as part of the public access area;
 5. Renovate, use, and maintain an approximately 559-square-foot portion of the 2,522-square-foot pile-supported pier for public use;
 6. Construct, use and maintain a 108-foot-long, pile-supported retaining wall (extending to the Bay end of 29th Avenue) to support the public promenade; and
 7. Improve, use, and maintain an approximately 1,348-square-foot area at the shoreline edge of 29th Avenue, a City-owned street, as an extension of the promenade, with new paving and sidewalks, bollards and landscaping.
- B. This authority is generally pursuant to and limited by the application dated November 28, 2012, including all accompanying and subsequently submitted correspondence and exhibits, subject to the modifications required by conditions hereto.
- C. Work authorized by this permit must commence prior to December 1, 2015, or this permit will lapse and become null and void. All work must be diligently pursued to completion and must be completed within three years of commencement or by December 1, 2018, whichever is earlier, unless an extension of time is granted by amendment of the permit.

- D. Upon completion, the project will result in the replacement and rehabilitation of approximately 1,963 square feet of pile-supported Bay fill to renovate a pier for public access. The deck will be 194 square feet smaller than the existing deck by trimming decking from the edges of the pier. An existing 1,065-square-foot floating boat dock will be removed and replaced with a 650-square-foot floating boat dock. Because the new deck and boat dock will be smaller than the existing deck and dock, the project will result in a net increase of 609 square feet of Bay surface area. The repairs to the deck will result in approximately 1,963 square feet of replacement fill, all for public access.

Table 1. Fill Areas for the Project (in square feet)

Phoenix Commons Fill Totals			
	Removed	New	Total Replacement Fill
Pile-Supported Pier (sf)	194	1,963	1,769
Floating Boat Dock (sf)	1,065	650	-415
Sub Total (sf)	1,259	2,613	1,354

Table 2. Approximate Public Access Areas

Type of Public Access	Square Feet
Public Access Promenade	2,351
Public Access Landscaping	463
Pile-supported Public Pier	2,522
Public Access at 29 th Ave	1,348
TOTAL PUBLIC ACCESS	6,684

II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

A. Specific Plans and Plan Review

1. **Construction.** The final plans submitted pursuant to this condition shall generally conform to Exhibit A 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.
2. **Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, demolition, construction staging, engineering, architectural, grading, landscaping, and best management practices plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of

the Commission. The specific drawings and information required will be determined by Commission staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.

- a. **Site, Architectural, and Public Access Plans.** Site, demolition, architectural, and public access plans shall include and clearly label the shoreline (Mean High Water Line), the line 100 feet inland of the shoreline, property lines, including areas leased from the U.S. Army Corps of Engineers, the boundaries of all areas to be reserved for public access purposes including all areas owned in fee, leased, or subject to an encroachment permit, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other improvements.
- b. **Engineering Plans.** Engineering plans shall include a complete set of construction drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:
 - (1) Evidence that the design complies with all applicable codes; and
 - (2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.
- c. **Preliminary and Final Plans.** Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:
 - (1) Completeness and accuracy of the plans in showing the features required above, particularly the shoreline (Mean High Water), the deck edge, property lines, and the line 100-feet inland of the shoreline, and any other criteria required by this authorization;
 - (2) Consistency of the plans with the terms and conditions of this authorization;
 - (3) The provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization;
 - (4) Consistency with legal instruments reserving public access areas;
 - (5) Assuring that any fill in the Bay does not exceed this authorization;
 - (6) Consistency of the plans with the recommendations of the Design Review Board;
 - (7) Assuring that appropriate provisions have been incorporated for safety in case of seismic event;
 - (8) Assuring that the placement of fill in the Bay will avoid or minimize impacts to the Bay and includes best management practices to minimize impacts to the Bay;
 - (9) Assuring that appropriate elevations have been met to prevent overtopping, flooding, and 100-year storm events in all public access areas; and

- (10) Assuring that any existing public access, including public access on neighboring properties, will not be impeded during construction to the maximum extent feasible.

Plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the plans to be reviewed.

3. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.
4. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.
5. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the permittee or any other interested party to the Design Review Board or, if necessary, subsequently to the Commission. Such appeals must be submitted to the Executive Director within 30 days of the plan review action and must include the specific reasons for appeal. The Design Review Board shall hold a public hearing and act on the appeal within 60 days of the receipt of the appeal. If subsequently appealed to the Commission, the Commission shall hold a public hearing and act on the appeal within 90 days of the receipt of the subsequent appeal.

B. Public Access

1. **Total Area.** The public access area provided by this project shall total approximately 6,684 square feet and shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, and related purposes, as generally shown on Exhibit A, except that the public access area provided on the pier may be closed at night as provided in Special Condition II-B-3 below. All public access improvements including, but not limited to, benches, lighting, signage, railings, trash containers, and interpretive exhibits shall be subject to final plan review approval pursuant to Special Condition II-A of this permit. On limited and rare occasions, if the permittee wishes to use the required public access areas for other than the uses described above, the permittee must obtain written approval by or on behalf of the Commission at least 30 days prior to such use of the public access area.
2. **Improvements Within the Total Public Access Area.** Prior to the use of any structure authorized herein, the permittee shall install the following improvements, as generally shown on attached Exhibit A:
 - (a) An 87-foot-long, 27- to 32-foot-wide promenade paralleling the Oakland Estuary, totaling approximately 2,351 square feet;

- (b) A 2,522-square-foot pile-supported pier largely over the Bay, including at least one public access seating element;
- (c) A 430-square-foot landscaped area between the private patio and co-housing building and the public access promenade;
- (d) An approximately 1,348-square-foot area along 21 feet of shoreline at the Bay edge of 29th Avenue owned by the City of Oakland, including an extension of the promenade, new paving and sidewalks, bollards and landscaping; and
- (e) No fewer than two public access, and when appropriate, Bay Trail signs one at the terminus of 29th Avenue and one at the public access pier.

Such improvements shall be consistent with the plans approved pursuant to Condition II-A of this authorization and substantially conform to the plans entitled "Phoenix Commons BCDC Application", dated July 16, 2013, prepared by Zimmerman + Associates.

3. **Public Access Pier.** The public access pier authorized by this permit and required by Special Condition II-B-2(b) shall be maintained by and at the expense of the permittee or its assignees for as long as the permittee or its assignees holds a valid property interest in the property. If at any time the property interest on which the pier is located, including any lease (the pier location is currently leased from the United States Army Corps of Engineers, the fee owner of the underlying property), expires or terminates, and the new land owner or lessee of the property declines to keep the access on the pier available to the public, all improvements authorized herein must be removed within 60 days or such other reasonable time as the Commission may direct. The public access pier may be separated from the public access promenade by a railing no more than 42-inches high. The railing may not obstruct views to the Bay and must contain at least three openings each at least 30-feet in length. The three openings may include gates. The gates may not extend higher than 42-inches from the deck of the pier. The permittee may restrict access to the public access pier at night by closing the gates from dusk until dawn or from 6:30 p.m. to 6:30 a.m., whichever is shorter.
4. **Future Public Access Connection to Neighboring Parcel.** The permittee shall coordinate with the City of Oakland and work with the City to allow construction of the proposed bicycle and pedestrian crossing beneath the north end of the Park Street Bridge to connect public access trails west and east of the Park Street Bridge along the north side of the Oakland Estuary. Within one year of commencement of construction of any shoreline public access improvements that could connect the public access at the end of 29th Street with access west of the Park Street Bridge, the permittee shall install public access improvements and landscaping to integrate and provide a seamless transition between the public access areas and facilities required herein with the new public access beneath the Park Street Bridge. The exact manner in which the connection is made shall be reviewed, and if consistent with this authorization, approved by or on behalf of the Commission pursuant to Special Condition II-A.
5. **Permanent Guarantee of Public Access.** At least three months prior to opening any part of the project for public use, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the new public access promenade and landscaping authorized by this permit and required by Special Conditions II-B-2(a) and II-B-2(c). Since the public access pier required by Special Condition II-B-2(b) is located on land owned by the Army Corps of Engineers and is

subject to a lease held by the permittee, and the improvements to 29th Avenue required by Special Condition II-B-2(c) are located on land owned by the City of Oakland and required to be maintained by the permittee by City of Oakland's conditional approval of the project, no permanent guarantee is required for these two areas. The instrument(s) shall create rights in favor of the public, which shall commence no later than after completion of construction of any public access improvements required by this authorization and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of the County of Alameda and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line or edge of seawall), the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank, any significant elevation changes, and the location of other adjacent and nearby public streets and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:

- (a) Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this authorization;
 - (b) Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and
 - (c) Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.
6. **Recordation of the Public Access Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument on all parcels affected by this permit and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission. The instrument shall create rights in favor of the public, which shall commence no later than the date of occupancy and shall continue so long as any use or improvements authorized herein remain. Such improvements shall be fully consistent with the plans approved pursuant to Special Condition II-A of this authorization and substantially conform to Exhibit A.
 7. **Certificate of Occupancy or Use.** Prior to occupancy or use of any of the improvements authorized herein, the permittee shall submit the Notice of Completion and Compliance required herein and request in writing an inspection of the project site by the Commission staff. Within 30 days of receipt of the written request for an inspection, the Commission's staff will: (1) review all permit conditions; (2) inspect the project site; and (3) provide the permittee with written notification of all outstanding permit compliance problems, if any. The permittee shall not occupy or make use of any improvements authorized herein until the staff has confirmed that the identified permittee compliance problems have been satisfactorily resolved and has provided the permittee with a Certificate of Occupancy or Use. Failure by the staff to perform such review and inspection and notify the permittee of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the permit, but the permittee may occupy and use the improvements authorized herein.

8. **Maintenance.** The areas and improvements within the 6,684-square-foot public access area described above, including the promenade, associated landscaping, public access pier, improvements to 29th Avenue, signs and public access furniture and associated improvements (such as benches, trash containers, signs, railing, etc., shall be permanently maintained by and at the expense of the permittee or its assignees, except as otherwise provided in Special Condition II-B-3 (e.g., if the permittee is unable to obtain lease extensions or ownership of the parcel on which the public access pier sits). Such maintenance shall include, but is not limited to: repairs to all path surfaces; replacement of any plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, railings, benches, trash containers, and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of graffiti, removal of any encroachments into the access areas; assurance that the public access signs remain in place and visible; and repairs to any public access areas or improvements that are damaged by future subsidence or uneven settlement, or flooding, or inundation caused by sea level rise, including raising land elevations or redesigning public access features to protect and ensure the usability of the public access areas and improvements at all times. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site. The permittee shall obtain approval by or on behalf of the Commission of any maintenance that involves more than in-kind repair and replacement.
 9. **Reasonable Rules and Restrictions.** The permittee 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 will not significantly affect the public nature of the area, will not unduly interfere with reasonable public use of the public access areas, and will tend to correct a specific problem that the permittee has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
- C. **Mitigation Measures and Best Management Practices.** In order to minimize impacts to natural resources, the permittee shall implement the mitigation measures, best management practices and other conditions required in its approved Conditional Water Quality Certification (WQC), issued by the Regional Water Quality Control Board (RWQCB). In addition, the following conditions apply:
1. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay within the Commission's jurisdiction as part of the project authorized herein.
- D. **Recording.** The permittee shall record this permit or a notice specifically referring to this permit on all parcels affected by this permit with the County of Alameda within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide a copy of the recorded permit to the Commission.
- E. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.

F. Notice of Assignment

1. **Notice to Buyers.** Prior to entering into any agreement to transfer any interest in any property subject to this permit, the permittee, or any assignee(s) of this permit or any part of it, shall provide the third party with a copy of this permit and shall call his or her attention to any provisions regarding public access or open space or the need to obtain approval of construction plans prior to the commencement of any construction.
2. **Assignment of Permit.** No more than ten days after transferring any interest in any property subject to this permit to another party, the transferor(s) shall (a) notify the Commission of the nature of the transfer, the name, address, and telephone number of the transferee, and the effective date of the transfer, and (b) shall also submit an assignment of this permit for the area transferred that has been executed by the transferor(s) and the transferee and that indicates that the transferor has transferred the permit as it applies to the property that was transferred and that the transferee has read, understood, and has agreed to be bound by the terms and conditions of this permit.
3. **Assignment of Public Access Maintenance Responsibility.** Prior to assigning any portion of this permit, the permittee shall submit for approval by or on behalf of the Commission a legal instrument that establishes a single entity responsible for maintaining all public access areas, improvements, and landscaping. The Executive Director shall approve the instrument only if it demonstrates to the Executive Director's satisfaction that the entity can and will meet the responsibilities for maintaining all of the public access areas, improvements, and landscaping required herein.

If the permittee proposes to establish an entity that has a membership, such as a homeowners' association, the instrument shall also: (1) establish the authority of the entity to impose charges on its members to assure that the entity has sufficient financial resources to maintain all of the public access improvements and landscaping; (2) provide that the entity has the legal authority to take any and all actions necessary to maintain all of the public access improvements and landscaping; (3) provide that each and every member is jointly and severally responsible with each and every other member to maintain all of the public access improvements and landscaping pursuant to this permit; (4) provide that the Commission may serve all notices, including notices on any members, on the entity only; and (5) provide that the entity has the authority to accept a partial assignment of the amended permit for the purposes described above.

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 coastal zone management program for San Francisco Bay for the following reasons:

- A. **Bay Fill.** The Commission may allow fill only when the authorized fill meets the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that: (a) fill "should be limited to water-oriented uses (such as water-oriented recreation or public assembly) or "minor fill for improving shoreline appearance and public access"; (b) fill in the Bay should be approved only when "no alternative upland location" is available; (c) fill should be "the minimum amount necessary to achieve the purpose of the fill"; (d) "the nature, location, and extent of any fill should be such that it will mini-

mize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment..."; and (e) "fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved."

The pile-supported pier was built prior to the establishment of the Commission, and appears in photographs as early as 1959. In 1969 a permit was issued for replacing most of the pilings supporting the pier and for constructing a restaurant on the refurbished pier (BCDC Permit No. M1969.005.00). The replacement of or repairs to the majority of the pilings supporting the restaurant would have substantially extended the life of the structure, thus making the area occupied by the restaurant (most recently "Tiki Tom's") part of San Francisco Bay. In 2010, a fire burned the entire restaurant structure and damaged the decking of the pier. Since the fire, the pier and floating boat dock have remained unused and in a degraded condition. The work authorized by this permit includes replacing most of the decking and some support structures on the pier, again substantially extending the life of the structure. As a result, the work authorized by this permit constitutes new bay fill within the Commission's Bay jurisdiction even though the pier was originally built prior to the establishment of the Commission.

1. **Use.** The project will involve the replacement of most of the decking and some support structures of an existing pile-supported pier in the Bay. The pile-supported pier will be used for public access and will improve shoreline appearance by replacing a fire-charred deck with an attractive new pier. The project will also include the installation of a new 650-square-foot floating boat dock for private use. This boat dock constitutes fill for water-oriented recreation, a water-oriented use under the McAteer-Petris Act.
2. **Alternative Upland Location.** The pier will provide unique views of the Oakland-Alameda Estuary, creating an opportunity rare along this stretch of the Oakland waterfront for the public to walk out over the water and experience the Bay. The pier will increase access to and appreciation of the Bay for the public. The floating boat dock must be constructed over the Bay to serve its function for water-oriented recreation. Therefore, there is no alternative upland location for the fill associated with the project.
3. **Minimum Amount Necessary.** The project will result in a net increase of 609 square feet of water surface area, though a total of 1,354 square feet of existing pile-supported Bay fill will be reconstructed and constitute replacement Bay fill. The permittee does not anticipate replacing any pilings supporting the existing pier. New fill will be limited to replacing most of the deck, strengthening the deck substructure where needed, and installing floating fill for a boat dock. The permittee states this is the minimum amount of fill necessary to provide attractive and desired public access to the Bay and to provide for a useable private boat dock at the site. The project will also result in a net increase in the Bay's surface area because the new deck would be 194 square feet smaller and an existing 1,064-square-foot floating dock would be replaced with a 650-square-foot dock.
4. **Effects on Bay Resources.** Because the replacement deck and dock will cover 609 square feet less Bay surface area than the existing deck and dock, the project will result in a slight increase in the Bay's surface area and volume. In addition, on March 1, 2013, the San Francisco Bay Regional Water Quality Control Board issued a Water Quality Certification in which it determined that the project would not have any significant impacts on San Francisco Bay water quality.

5. **Valid Title.** The permittee holds legal title for the project site within the 100-foot shoreline band. The work at the terminus of 29th Avenue, owned by the City of Oakland, will be conducted pursuant to an encroachment permit issued by the City on July 2, 2013. The work in the Oakland-Alameda Estuary will take place on property owned by the U.S. Army Corps of Engineers (Corps). The permittee has a lease with the Corps for five years, renewable four times for a total of 25 years to rehabilitate and maintain the pier and floating boat dock.
6. **Safety of Fills / Sea Level Rise.** The McAteer-Petris act requires “[t]hat public safety, and welfare require that fill be constructed in accordance with sound safety standards.” The permittee provided a “Preliminary Structural Assessment” of the existing pier prepared by Renee A. Bravo, P.E., of Central Coast Engineers, Inc., dated March 28, 2012. The assessment recommended that the decking and lateral bracing be replaced, but that the joists, beams, and piles appeared to be “adequate to support pedestrian traffic.” The permittee states that the main supports for the decking meet current codes and regulations. The extent of the substructure work will not be verifiable until the decking is completely removed prior to replacement. With the replacement of the decking and some substructure repair, the reconstructed pier will meet public safety standards.

The Bay Plan policies on Safety of Fill state, in part, that “[a]dequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project.... New projects on fill or near the shoreline should...be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project.” The expected life of the pier and floating dock may be limited by the Corps lease, which provides that the permittee may operate the pier and floating boat dock on Corps property for five years, with four possible five-year extensions to a maximum of 25 years, though the lease may be further extended in the future. Although the portion of the project on fill has a limited expected life, the permittee has provided sea level rise projections to 2100 relative to the pier, floating dock and public access areas. In the event that the lease is extended or the permittee acquires title to the property beneath the pier and floating dock, the pier deck will stand above a mid-century estimate of 16-inches of rising sea level. At the end-of-century projection of 55-inches of sea level rise, it is likely the pier will be flooded. However, it is unlikely given the condition of the pier and its pilings that the pier will exist that far into the future.

For all the reasons listed above, the Commission finds that the project is consistent with the Commission’s law and related policies on the placement of fill.

B. Public Access

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

Special Condition II-B requires all of the provided public access to be used solely for public access. Currently, there is no public access to the Bay through or across the site. The site is fenced off and in dilapidated condition. The project will create an 87-foot-long, 27- to 32-foot-wide (2,351-square-foot) public access promenade paralleling the Oakland Estuary. It will run along the entire shoreline of the project site between the private residential patio and the pier. The promenade will be extended an additional 21 feet along the shoreline at the end of 29th Avenue (an undeveloped City Street). The street end will be repaved and enhanced with bollards, landscaping, and sidewalks. An existing 2,522-square-foot pier will be reconstructed and guaranteed for public access. The new public promenade and enhancements to 29th Avenue will complete the Bay Trail connection between the public access required by BCDC permits for the neighboring developments along the Oakland-Alameda Estuary and 29th Avenue and the Park Street Bridge. The public promenade will be surfaced with concrete and will be accessible for people with disabilities and suitable for pedestrians and bicycles. The private patio will be separated from the public promenade by seating and 430 square feet of public access landscaping. These elements were added in response to Design Review Board's recommendations at its November 5, 2012 review of the project. The Design Review Board members encouraged the permittee to clearly delineate the public and private areas of the site.

The public access area and character of this project corresponds with access provided with nearby projects. BCDC Permit No. M1999.004.01 for Waterpark Lofts, a three-building residential development totaling 27 units, located directly southeast of the Phoenix Commons site at 2875 Glascock Street in the City of Oakland, requires a 32-foot-wide public access area. BCDC Permit No. 2003.003.01, authorizing the nearby Signature Properties residential development at 2901 and 2909 Glascock Street in the City of Oakland, consists of seven buildings totaling 100 units and requires a public access area that averages 45 feet wide. BCDC Permit No. 2003.004.00, authorizing the University of California Crew facility located at Glascock and Derby Avenue in the City of Oakland, requires a 45-foot-wide public access area. While the Phoenix Commons project provides less square-footage in permanent public access than these adjacent sites, the public access proposal is enhanced by the unique public access experience provided by the pier, which is planned to exist and be available to the public for a long period of time, and the connections and improvements provided at the Bay end of 29th Avenue and to the Park Street Bridge.

All of the public access improvements, including the final location of benches, signs, lighting, trash containers and fencing, shall be subject to final plan review approval by BCDC staff, pursuant to Special Condition II-A of the permit. This condition shall ensure that the final design is consistent with Commission policy, the recommendations of the Commission's Design Review Board, and this permit. Special Condition II-B-5 requires a permanent guarantee of the public access promenade and landscaping. The permittee is unable to provide a permanent guarantee for the pier because of the limitations presented by its lease term with the Army Corps of Engineers. The pier is located over the Oakland-Alameda Estuary on property owned by the United States Army Corps of Engineers (Corps). The Corps has issued a lease to the permittee for renovation of the pier and floating boat dock. The lease is for a five-year term, renewable four times for a total of 25 years. Under the conditions of the Corps lease, the permittee may provide the pier for public access but must retain the floating dock for private use. Therefore, no permanent guarantee is required for the public access pier and the floating dock will not be required for public access.

The currently deteriorated and unsafe pier would be reconstructed exclusively for public use, enhancing the public access over the Bay for this area of the Oakland waterfront. The 2,522-square-foot public access pier will include a 42-inch-high railing and three gates. The gates will be open during the day to provide three 30-foot openings and will be closed at night for security. No exclusive private uses will take place on the pier.

The pier will be required public access for as long as the permittee holds a lease over the pier, or obtains title to the underlying land. Special Condition II-B-3 provides that the permittee must maintain the pier for the life of its property interest and in the event its property interest terminates and the permittee is therefore unable to provide the pier for public access, the permittee must remove the pier from the Bay. This condition is necessary to satisfy the requirements of Government Code Section 66605(g), which provides that an applicant must have valid title in order for the Commission to authorize fill. The condition that the permittee maintain the pier for the entire length of its property interest ensures that the maximum feasible public access will be provided for as long as the permittee is feasibly able to provide access on the pier under a lease or title. Although the work authorized by this permit will substantially extend the life of the structure, no substantial substructure work is proposed. If the pier were to become structurally unsound, but the permittee still holds a property interest in the land underlying the pier, the permittee is required to repair the pier in order to provide maximum feasible public access.

Similarly, the permittee shall provide public access at the Bay end of 29th Street to complete the Bay Trail at this location, including new paving, sidewalks, bollards, and landscaping. The permittee is required to permanently maintain the terminus of 29th Avenue by the conditions of approval issued by the City of Oakland dated September 19, 2012 and pursuant to an encroachment permit issued by the City on July 2, 2013. Because this development takes place on land owned by the City of Oakland no permanent guarantee is required for the public access at the terminus of 29th Avenue under Special Condition II-B-5.

In addition, Special Condition II-B-4 requires that the permittee coordinate with the City of Oakland to allow construction of a potential future bicycle pathway planned by the City of Oakland that would cross beneath the adjacent Park Street Bridge. The permittee has agreed to facilitate this connection to its property, which is still in the planning stages. The connection would complete an important Bay Trail connection and enhance the access to and along the Bay.

2. **Sea Level Rise.** The Bay Plan policies on Public Access include policies related to sea level rise. Public Access Policy 7 states, in part: “[a]ny public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby.” The permittee has provided sea level rise projections that show the impact of sea level rise over time on the public promenade. The public promenade’s elevation will assure that it will remain above flood elevations with a projected 16-inch sea level rise at mid-century. Using an end-of-century projection of 55-inches, however, the public promenade will be inundated by approximately one foot during high tide flood events.
3. **Appearance, Design, and Scenic Views.** The Bay Plan Appearance, Design, and Scenic Views Policy 2 states, in part: “[a]ll Bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.”

The area of the structure within the shoreline band will measure approximately 8,263 square feet. The residential structure will be four-stories high and its shoreline face will be between 46-52 feet high. Although there are currently views from Glascock Street to the Oakland-Alameda Estuary, these views are blocked by a fence and diminished by the dilapidated condition of the site. Furthermore, since the site is currently closed to pedestrians there is no opportunity for views near the water. The public promenade required by this authorization enhances opportunities to view the Bay at the shoreline. In addition, the pier provides unique views of the Oakland-Alameda Estuary that are not currently available from nearby sites along the waterfront, and, therefore, would enhance the public's appreciation and use of the Bay.

For these reasons, the Commission finds that the project's public access improvements, as conditioned, are the maximum feasible consistent with the project.

C. Review Boards

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board (ECRB) will not review the proposed project.
2. **Design Review Board.** The Design Review Board (DRB) reviewed the proposed project on November 5, 2012. The DRB expressed support for the proposed project. The Board recommended that the permittee provide a clearer separation between the private patio and the public promenade. The DRB stated they could accept the proposed railing between the promenade and the pier and indicated that obvious public access amenities should be considered for the pier area. The Board stated the permittee should agree to receive and plan for a future Bay Trail connection passing underneath the Park Street Bridge should this occur.

In response to the Board's comments, the permittee has worked and will continue to work with Commission staff to develop a final design with improvements that provide the most attractive, accessible, and usable public space. Final and preliminary designs, shall be subject to plan review approval, pursuant to Special Condition II-A.

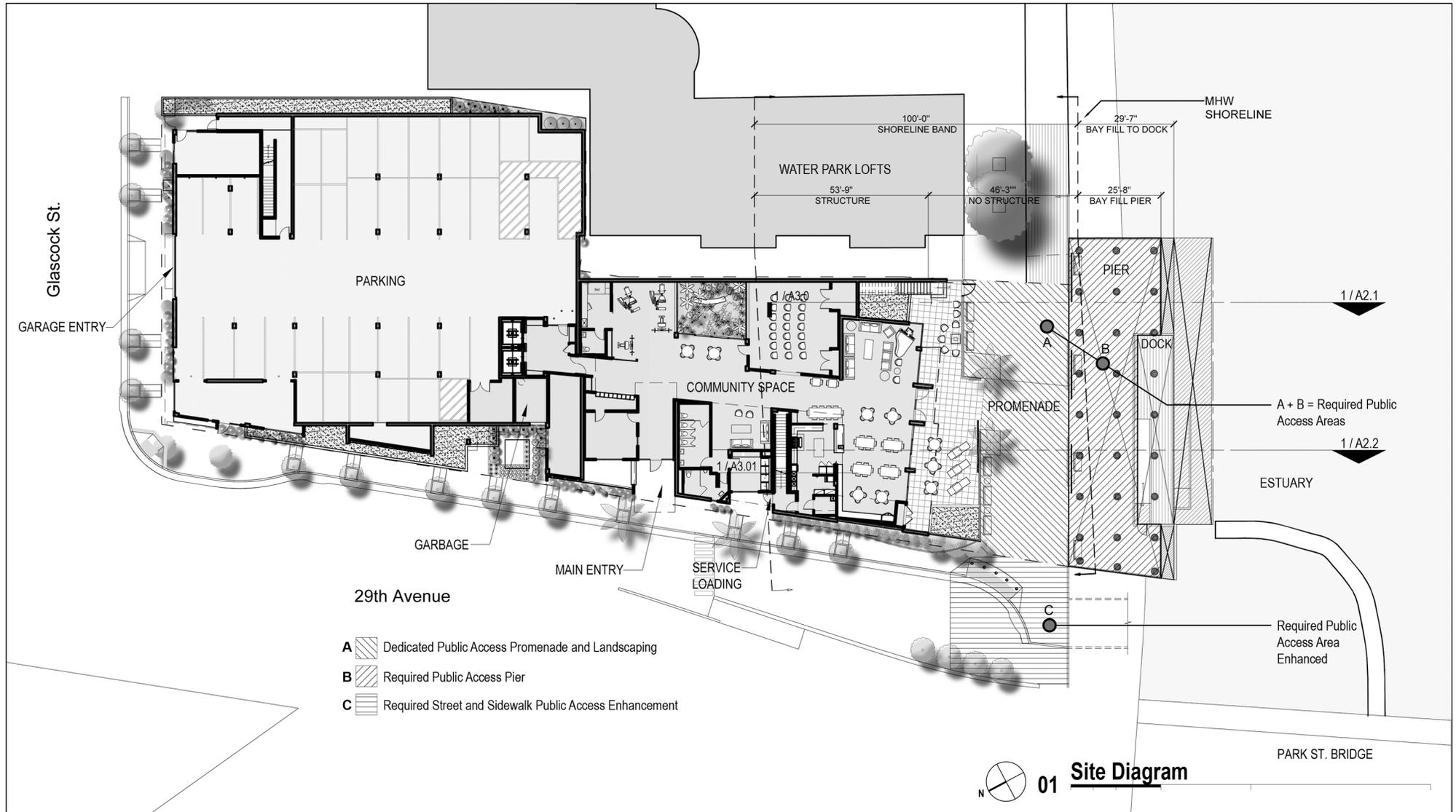
- D. **Environmental Review.** On September 19, 2012, the City of Oakland, lead agency for this project, certified that the project was categorically exempt from the requirement to prepare environmental documentation under the California Environmental Quality Act (CEQA) in part because the proposed project constitutes an "Infill Development Project" under Section 15332 of the CEQA Guidelines.
- E. **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 executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **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 permittee 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/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the 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 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 or its 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 or its 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 or its 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 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, its assignees or successors in interest, or by the owners 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 assignees, or successor in interest, or the owners 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 shall contact Commission staff to confirm current restricted periods for construction.



PHOENIXCOMMONS BCDC APPLICATION

Senior Co-Housing Proposal
 340 29th Avenue Oakland, CA

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

September 13, 2013

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653 lgoldzband@bcdc.ca.gov)
Erik Buehmann, Coastal Program Analyst (415/352-3645, erikb@bcdc.ca.gov)

SUBJECT: **Correspondence regarding BCDC Application by Chris Zimmerman at 340 29th Avenue, in the City of Oakland, Alameda County; BCDC Permit Application No. 2013.002.00**
(For Commission consideration on September 19, 2013)

Summary and Recommendations

Attached is a written letter of support for the application for the Phoenix Commons Development (BCDC Permit Application No. 2013.002.00). Thirty-Two identical letters were sent from various community members.



Making San Francisco Bay Better

Dear Commissioner,

I am writing to you to express my support for the Phoenix Commons project in Oakland, a senior housing project, at Glasscock and 29th St., at the foot of the Park Street bridge.

The Phoenix Common project is designed to allow seniors 60 and older to age in place in a community of like-minded individuals who are dedicated to assisting each other. By choosing to live in an intentional community where all members are dedicated to helping each other live better more fulfilled lives at an affordable cost, seniors can remain self sufficient for much of their later years.

The Project is co-housing-inspired and will provide 41 market-rate units for seniors to live together in a self-managed community. By forming a community that fosters close relationships, and building a structure that enhances community and meets the needs of advanced age, the Phoenix Commons Project will help seniors avoid institutionalization and expensive government sponsored services. They need purposefully designed housing, which fosters both independence and interconnectedness, within a safe and secure environment.

The key component to achieving this is the large community areas, which will allow communal meals, laundry, entertainment, socialization, fitness, shared office and workrooms. The outdoor patio and waterfront deck are further extensions for the need to provide safe and secure spaces for community gatherings for the seniors who will live there. The intention is to also invite local community groups to use the community spaces for meetings and activities, further enhancing community spirit and participation and building links to the surrounding neighborhood and residents.

The Phoenix Commons project will improve the area in so many ways. Currently, the site is an empty parking lot and burnt pier and dock, the result of a fire in 20-- at the former restaurant Tiki-Tom's. There are homeless people living under the site, using drugs and stealing whatever they can from the site. And it is a visual blight in the neighborhood.

The Project will not only remedy these conditions; it will enliven the neighborhood. With the improvement of the pier and dock – paid entirely by the Project sponsor-the residents will now have access to enjoy the water, an important feature of the Project. While the pier will be locked during the evening



for reasons of safety and liability, just like many other public facilities on the Bay, it will be open during the day for the public to use and enjoy. It is appropriate and welcomed that the pier will be locked at night to protect public safety and deter public nuisances. The renovated pier as designed will be a most welcomed addition to the neighborhood.

I ask that you support the Project as currently planned. The Project is supplying ample public access and we're appreciative of what will be provided. I look forward to the project's completion and enhancement to the neighborhood.

Thank you for your consideration of this matter. The Project has received unanimous approval from the Oakland Planning Commission, including thanking the Project sponsor for developing the Project. BCDC approval is the last stumbling block. Your support is greatly appreciated.

Sincerely,

Ellen B. Poplawski 12/5/12
Signature/Date

