

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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July 11, 2014

**TO:** Commissioners and Alternates

**FROM:** Lawrence J. Goldzband, Executive Director (415/352-3653 lgoldzband@bcdc.ca.gov)  
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**SUBJECT:** **Staff Recommendation on BCDC Permit Application No. 2013.008.00;  
Fremont Boulevard Bridge, City of Fremont, Alameda County**  
(For Commission consideration on July 17, 2014)

## Recommendation Summary

The staff recommends approval of BCDC Permit Application No. 2013.008.00, OMP/I&G Creekside Investors LLC's application for the Fremont Boulevard Bridge, to be located in the City of Fremont, Alameda County, which, as conditioned, would result in the following:

1. Construction of an approximately 89-foot-wide and 79.5-foot-long vehicle and pedestrian bridge (totaling approximately 4,906 square feet of cantilevered fill over a certain waterway) to extend Fremont Boulevard south to a proposed undeveloped parcel outside the Commission's jurisdiction; and
2. Providing two, approximately five-foot-wide Class II bicycle lanes on the bridge (both immediately adjacent to the vehicle travel lanes), an approximately nine-and-a-half-foot-wide sidewalk on the west side of the bridge, and an approximately five-and-a-half-foot-wide sidewalk on the east side of the bridge.

The abutments for the bridge will be constructed upland of the inland edge of marsh vegetation that once existed in the channel, and therefore outside the Commission's jurisdiction. No pile-driving or in-water work would be required to construct the bridge.



### Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

#### I. Authorization

- A. Subject to the conditions stated below, the permittee, OMP/I&G Creekside Investors LLC, is granted permission to construct a bridge connecting Fremont Boulevard over Alameda County Flood Control District Flood Channel B in the City of Fremont, Alameda County. Authorized work includes the following:

**Description: In a Certain Waterway:**

1. Construct, use, and maintain an approximately 4,906-square-foot cantilevered vehicle and pedestrian bridge over Flood Channel B, including two, approximately five-foot wide bicycle lanes, and two sidewalks, 5.5 feet wide and 9.5 feet wide respectively.
- B. This authority is generally pursuant to and limited by the application dated April 24, 2013, 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 August 1, 2017, 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 August 1, 2020, whichever is earlier, unless an extension of time is granted by amendment of the permit.
- D. Upon completion, the project will result in 4,906 square feet of new cantilevered fill over a certain waterway. The abutments for the bridge will be constructed upland of the inland edge of marsh vegetation that once existed in the channel, and therefore will be constructed outside the Commission's jurisdiction. No pile-driving or in-water work will be required to construct the bridge.

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

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

**Table 2. Approximate Public Access Areas**

Type of Public Access	Square Feet	Length (feet)	Width (feet)
Bike trail and pedestrian sidewalk on the bridge	1,987	79.5	25 (total, separated by vehicle travel lanes)

## 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 of 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 or the inland edge of marsh vegetation), property lines, 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, drainage, 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, adaptation or resilience to projected sea level rise 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;
    - (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 or inland edge of marsh vegetation), property lines, 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 across the bridge 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) Assuring that appropriate provisions have been incorporated for safety in case of seismic event;
- (7) 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;
- (8) Assuring that appropriate elevations have been met to prevent overtopping, flooding, and 100-year storm events in all public access areas; and
- (9) 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, land scaping, 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 1,987 square feet, shall consist of an approximately nine-and-a-half-foot-wide Bay Trail sidewalk on the west side of the bridge, an approximately five-and-a-half-foot-wide sidewalk on the east side of the bridge, and two, approximately five-foot-wide Class II bicycle lanes (immediately adjacent to the vehicle travel lanes) spanning the length of the bridge and seamlessly connecting to public access trails and paths on either side of the bridge. These public access sidewalks and paths shall be made available exclusively to the public for unrestricted public access for walking, bicycling, viewing, and related purposes, as generally shown on Exhibit A. All public access improvements including, but not limited to, lighting, signage, and

railings 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.** The sidewalks and bicycle lanes shall be open for public use simultaneously with opening the bridge for vehicular traffic and shall include the following improvements, as generally shown on attached Exhibit A:
  - (a) An approximately nine-and-a-half-foot-wide Bay Trail sidewalk on the west side of the bridge and an approximately five-and-a-half-foot-wide sidewalk on the east side of the bridge, spanning the length of the bridge and separated from the roadway; and
  - (b) Two, approximately five-foot-wide Class II bicycle lanes (immediately adjacent to the vehicle travel lanes with no separation).

Such improvements shall be consistent with the plans approved pursuant to Special Condition II-A of this authorization and substantially conform to the plans entitled "The Crossings @ 880 – Fremont Boulevard," dated May 30, 2014, and prepared by Cardno.

3. **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 sidewalks and bicycle lanes authorized by this permit and required by Special Conditions II-B-1 and II-B-2. The instrument(s) shall create rights in favor of the public, which shall commence no later than the opening of the bridge to vehicular traffic. 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 the line corresponding to the inland edge of marsh vegetation), 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.
4. **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.

5. **Certificate of Use.** Prior to 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 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 use the improvements authorized herein.
  6. **Maintenance.** The areas and improvements within the 1,987-square-foot public access area described above shall be permanently maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to: repairs to all path surfaces; repairs or replacement as needed of any public access amenities such as signs, railings, and lights; periodic cleanup of litter and other materials deposited within the bike lanes or sidewalks; removal of graffiti, removal of any encroachments into the access areas; 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.
  7. **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.** To offset the adverse impacts of the bridge on Bay natural resources, the permittee shall manage and maintain in perpetuity a seven-acre tidal marsh pond that was constructed in 2002 specifically to offset the impacts of this bridge. The tidal marsh pond was authorized in BCDC Permit No. M2000.034.00, is connected to Channel B through a tide gate, and in 2006, had met its restoration performance standards. The tidal marsh pond shall be managed to assure adequate tidal circulation and drainage to maintain 4.3 acres of tidal marsh habitat, including habitat for alkali bulrush and pickleweed and 1.6 acres of open water.
- D. **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.

- E. **Seismic Instrumentation Plan.** Prior to the commencement of work authorized herein, the permittee shall develop and submit a seismic instrumentation plan for review and final approval by BCDC's Staff Engineer. The plan shall include, at a minimum, the number, type, and location of sensors to be placed at the project site, information on the transmission and recording of signals from the sensors, and a plan that provides for the long-term maintenance of the seismic instrumentation and includes the party or parties responsible for maintaining the instrumentation and gathering and interpreting the data collected into the future.
- F. **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.
- G. **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.
- H. **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 and improvements required herein.

### 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 it meets the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that: (a) fill “should be limited to water-oriented uses (such as water-oriented recreation or public assembly)” or “minor fill for improving shoreline appearance and public access”; (b) fill in the Bay should be approved only when “no alternative upland location” is available; (c) fill should be “the minimum amount necessary to achieve the purpose of the fill”; (d) “the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment...”; and (e) “fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.”
1. **Use.** The project involves the construction of a vehicle and pedestrian bridge. Bridges are explicitly defined as a water-oriented use within Section 66605(a) of the McAteer-Petris Act.
  2. **Alternative Upland Location.** There is no reasonable upland alternative to directly connecting the current existing terminus of Fremont Boulevard to the parcels planned for the development to the south without constructing a bridge across Flood Channel B. Therefore, there is no alternative upland location for this project.
  3. **Minimum Amount Necessary.** The project will result in a total of 4,906 square feet of new, cantilevered Bay fill. No solid or floating fill is proposed. The bridge will provide four 15-foot-wide vehicle travel lanes, two five-foot wide bicycle lanes, and two sidewalks, one nine and half-feet-wide and one five and half-foot-wide. These are standard dimensions to provide safe travel for vehicles, pedestrians, and bicycles. Thus, the amount of fill is the minimum necessary to provide a safe and useable bridge for both vehicles and pedestrians across Channel B.
  4. **Effects on Bay Resources.** The bridge would not significantly affect environmental and Bay resources. The proposed bridge would involve approximately 0.16 acres of fill. Because the bridge will be cantilevered over the channel, it will not effect water surface elevations, sediment transport or tidal hydrodynamics in the channel. On August 19, 2013, the California Department of Fish & Game (now California Department of Fish and Wildlife) informed the permittee that no streambed alteration agreement was necessary for the proposed bridge. On August 28, 1999, the U.S. Army Corps of Engineers issued a permit for the development, including the bridge, which expires in 2019. The Regional Water Quality Control Board issued a waiver of water quality discharge requirements. However, the bridge will be low over the channel and will permanently shade a section of it. Plants will not likely grow in the shaded areas. To offset this likely impact, the permittee created a seven-acre tidal marsh pond in 2002. The mitigation is described in more detail below.
  5. **Valid Title.** The bridge will be constructed over property owned by the Alameda County Public Works Department Flood Control District (District). The District has approved an easement to the permittee for construction and maintenance of the bridge. After the bridge is built, the bridge will be deeded to the City of Fremont. When the City of Fremont takes ownership of the bridge, the permittee and the District will assign the easement to the City. Therefore, the permittee, OMP/I&G Creekside Investors LLC, has valid title to construct the bridge.
  6. **Safety of Fills.** The McAteer-Petris act requires “[t]hat public safety, and welfare require that fill be constructed in accordance with sound safety standards.” In addition, Bay Plan Safety of Fills Policy 3 states: “[t]o provide vitally needed information on all kinds of soils, installation of strong-motion seismographs should be required

on all future major land fills.” The bridge will be constructed to meet current seismic safety standards on soil with little risk of liquefaction. Special Condition II-E has been included to ensure that the permittee collaborates with the California Geological Survey to prepare a seismic instrumentation plan to install strong-motion seismographic instruments on the substructure of the bridge and will participate in the California Strong Motion Instrumentation Program. As conditioned, the project is consistent with the Commission’s laws and policies governing safety of fills.

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

The permittee provided sea level rise projections to the end-of-century relative to the bridge and its associated public access features. Using a projection of slightly over one-foot of sea level rise by mid-century and over five feet of sea-level rise at the end-of-century (these estimates are within the sea level rise projections currently recommended by the National Research Council), the permittee states that the soffit of the bridge would remain above the projected water levels for mean high water and mean higher high water levels through the end of the century. However, in the event of a storm surge and a 100-year flood event with a five-foot sea level rise at the end of the century, floodwaters could rise above the soffit of the bridge and wash the solid sidewall of the bridge railing.

The proposed bridge constitutes a transportation facility that is also critical infrastructure necessary to connect the terminus of Fremont Boulevard to the planned multi-use development to the south of Flood Channel B. In addition, the bridge provides the regional benefit of a public access connection over Flood Channel B. The as-yet unbuilt shopping center on the parcel south of Channel B is required to provide public access along the Fremont Boulevard extension pursuant to BCDC Permit No. M2000.034.00 which authorized the construction of concrete culverts and tidal gates associated with the mitigation for the proposed development. Because the development is along a “certain waterway”, no other portion of the proposed development would be within the Commission’s jurisdiction. The permittee also proposes to extend the bike lane along existing Fremont Boulevard north of Channel B. Therefore, the regional goals and benefits would outweigh the risk from flooding in a 100-year flood event at the end-of-century.

8. **Mitigation.** The Bay Plan Mitigation Policy 1 states, in part: “[p]rojects should be designed to avoid adverse environmental impacts to Bay natural resources such as to water surface area, volume, or circulation and to plants, fish, other aquatic organisms and wildlife habitat, subtidal areas, or tidal marshes or tidal flats. Whenever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable. Finally, measures to compensate for unavoidable adverse impacts to the natural resources of the Bay should be required.” Mitigation for the adverse

impacts of the bridge has already been completed as part of phase one of the project and was approved by BCDC Permit No. M2000.034.00. This mitigation consisted of creating a seven-acre tidal marsh pond, connected to Channel B through a tide gate. To offset impacts to seasonal wetlands outside the Commission's jurisdiction, the applicants also restored approximately 77-acres of seasonal managed wetlands to the southwest of the project site. These managed wetlands are connected to the Bay (Coyote Creek) through gated culverts which control tidal flows. The tidal marsh area was restored in 2002. It was designed to meet specified performance standards by 2006. The site is now well vegetated with pickleweed and hydrophytes and provides valuable habitat for several animal species, including the salt marsh harvest mouse. The City of Fremont required a 50-year management plan for the wetland as part of its project approval. In the event the applicant transfers ownership of the wetland mitigation site, the City would either enter an agreement with the new owner or establish its own long-term management plan for the area. At this time, the United States Fish and Wildlife Service has expressed interest in obtaining the wetland mitigation site. Special Condition II-C has been included to require that the management of the mitigation site for tidal wetland habitat continues in perpetuity. The mitigation site is also subject to BCDC Permit No. M2000.034.00.

The seven acres of mitigation provided by this project to offset the impacts of the 4,906-acre bridge far exceeds the typical mitigation requirements for this amount of cantilevered fill. The permittee proposed this amount, and the Commission has required it, because the permittee did not want to create a fully tidal restoration site which would have required the construction of significant flood control levees, and because of the difficulty of managing a smaller managed tidal marsh to assure that it provided the target habitats.

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."

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

The bridge will provide an important connection for users coming from the south on Dixon Landing Road to access the public access amenities located to the north of Flood Channel B. BCDC Permit No. 1981.007.03 authorized development and associated public access in the 591-acre area north of Flood Channel B. That permit requires an approximately two-mile path along Flood Control Channel B, Coyote Creek, and Mud Slough and two staging areas adjacent to Fremont Boulevard to provide access to these required trails. These staging areas are required to be at least 10,000 square feet in area and to serve as trailheads, rest areas, and vista points. Pursuant to the requirements of its permit, the permittee for BCDC Permit No. 1981.007.03, King & Lyons, constructed a 13,000-square-foot park at the north end of the site near the intersection of Fremont Boulevard and Warren Avenue ("North Park") and a 15,800-square-foot park at the south end of the property near the proposed location of the bridge across Channel B ("South Park"). OMP/I&G Creekside Investors LLC (the applicants for the bridge) have stated their intention to work with King & Lyons (the developer of the area north of Channel B) to provide enhanced signage to the parks (including new public access signs), provide new landscaping at the two parks, and to construct two bicycle lanes along the existing 1.7-mile stretch of Fremont Boulevard north of Channel B. The public access signs would include Bay Trail signs identifying the proposed bridge bicycle and pedestrian pathways as part of the Bay Trail. However, while these additional amenities would be highly desirable, they are not on property owned by the permittee of this authorization, are not part of the bridge project authorized by this permit, and are not a requirement of this authorization.

The public access area and character required for this project is similar to access required as part of the authorization for similar projects. A pending application to replace Bon Air Bridge over Corte Madera Creek, a certain waterway, (a material amendment to BCDC Permit Application No. M1994.015.02), proposes two seven-foot wide Class II bicycle lanes and two ten-foot sidewalks. In addition, BCDC Permit No. 2007.002.03 to the City of Oakland authorized the construction of a 27,588-square-foot bridge over Lake Merritt Channel along the Embarcadero. Public access required for this project included two six-foot bicycle lanes, a five-foot bicycle lane on the north side of the bridge, and a twelve-foot Bay Trail along the south side of the bridge including two belvederes to serve as vista points. By comparison, the bridge authorized by this permit is smaller both in area and in scale to these two larger bridges, with less fill and fewer associated impacts to 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 over time to the public access features of the bridge. The bridge's elevation would assure that it would remain above projected rising sea levels at mid-century and end-of-century. The solid sidewall of the bridge railing may be threatened by storm surge combined with a 100-year flood event at the end-of-century if sea level has risen by five feet (the projection used by the permittee). Although flooding may occur in such a 100-year flood event at the end of the century, it is likely the public sidewalk and bike lane would remain viable because wave forces on the bridge would be relatively weak and the bridge is designed for deck drainage.

3. **Appearance, Design, and Scenic Views.** The Bay Plan policies on Appearance, Design, and Scenic Views (Policy 2) state, in part: “[a]ll Bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.” The pedestrian and cycling pathways on the bridge will provide an elevated platform for viewing Coyote Creek, Channel B and adjacent restored wetlands.

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

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

#### D. Review Boards

1. **Engineering Criteria Review Board.** The Commission’s Engineering Criteria Review Board (ECRB) did not review the proposed project.
  2. **Design Review Board.** As a result of the straightforward scope of the proposed public access associated with the project (bike lanes, sidewalks, and a new segment of Bay Trail) and the Commission’s limited jurisdiction, the Design Review Board did not review the proposed project.
- E. **Environmental Review.** On December 10, 2009, the City of Fremont Planning Commission certified the Environmental Impact Report in accordance with the California Environmental Quality Act (CEQA).
  - 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 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.