

San Francisco Bay Conservation and Development Commission

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October 13, 2017

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Adrienne Klein, Chief of Permits (415/352-3609; adrienne.klein@bcdc.ca.gov)

SUBJECT: Staff Recommendation on BCDC Permit Application No. 1985.019.11B (Material Amendment No. Eleven); Installation of a New Public Pavilion Enclosure System at the Franklin Street Plaza by Scott's Jack London Seafood Inc., at Jack London Square, in the City of Oakland, Alameda County
(For Commission consideration on October 19, 2017)

Recommendation Summary

The staff recommends approval of BCDC Permit Application No. 1985.019.11B, to Scott's Jack London Seafood Inc., and the Port of Oakland, which, as conditioned, will result in the following:

1. Instead of using authorized removable hanging fabric canvas panels to enclose a public pavilion for private events, construction of permanent structures on the west and north sides of the pavilion (such as walls, a storage area, and a roof) and moveable wall panels that will be stored against the walls for 292 days per year and moved into "private use mode" around the south and east sides of the pavilion for no more than 73 days per year.
2. The public access proposal will re-use many existing site furnishings, but place them in a new layout that will improve pedestrian flow through the plaza when the pavilion is in public and private use modes. Lighting will be used to promote access through the plaza to the Bay shoreline at night. New and matching tables and chairs and other improvements will also be provided.
3. Removal of an unauthorized, constructed metal entry doorway.

The project will result a permanent loss of 418 square feet of dedicated public access, 259 square feet from Permit No. 1985.019.22A and 159 square feet from Permit No. 1985.019.11B. Project construction has already commenced and is required to be completed by December 15, 2017.

Note to Recommendation

Because the project is the subject of a material amendment to an existing Commission permit, the format of the recommendation is different from recommendations for new applications. This recommendation includes language of the existing permit and the changes specific to the subject material amendment. Any deleted existing permit language is ~~struck through~~; added or new language is underlined. Existing language neither struck through nor underlined remains unchanged with the adoption of Material Amendment No. Eleven.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

A. **Authorized Project.** Subject to the conditions stated below, the permittees are granted permission to do the following in an approximately 4,500-square-foot area, immediately east of Scott's Restaurant in Jack London Square, in the City of Oakland, Alameda County:

1. **Within the 100-foot shoreline band**, construct, ~~and~~ use and maintain the following:
 - ~~a.~~ ~~Use a dedicated public access plaza for the periodic, temporary installation and use of a 4,500-square-foot banquet tent as part of Scott's Restaurant through January 15, 1996, pursuant to Special Condition II-B-2 (Amendment No. Eight);~~
 - ~~ba.~~ ~~Construct, use and maintain a~~ A 4,400-square-foot, 19 to 40-foot-tall pavilion for shared public and private use, pursuant to Special Condition II-B-2 (Amendment No. Eight);
 - b. On the north side of the public pavilion, a 40-foot-long wall and 30 moveable wall panels, two of which contain doors, and one permanent bollard (partially after-the-fact) (Amendment No. Eleven);
 - c. On the west side of the public pavilion, a 60-foot-long series of structures comprised of a 13-foot-long wall with a door and 10 moveable wall panels, a 255-square-foot storage area, a 368-square-foot breezeway covered by a 920-square-foot roof that adjoins the main building to the pavilion and includes a 20-foot-long wall, and three moveable bollards (partially after-the-fact) (Amendment No. Eleven);
 - d. On the east side of the public pavilion, three moveable bollards to be used only when the pavilion is in private use, which can be no more than 73 days per year (Amendment No. Eleven);
 - e. Throughout the 20,000-square-foot Franklin Street Plaza, including the public pavilion, public access improvements consisting of three seating areas with a total of 32 tables, 69 chairs, 4 with umbrellas, 16 benches, 12 planters, 5

trash cans, three tree grates and trees, and night lighting consisting of six light standards decorated with gold sailboats and string lights in the plaza, pavilion and public pavilion lighting consisting of hanging lanterns and diffuse up lighting and private pavilion lighting consisting of programmable spot lighting to be used during events (Amendment No. Eleven);

- ef. ~~Install cafe seating, benches, lighting, two sets~~ Install one set of binoculars and other site furnishings within an existing 20,000-square-foot plaza (Amendment Nos. Eight and Eleven); and
- dg. ~~Install and maintain three permanent and two temporary public access-directional signs as part of the pavilion project~~ four public access signs (Amendment No. Eight and Eleven).;

2. **Within the shoreline band** on the east side of the public pavilion remove an unauthorized permanent metal entry doorway and wooden stage backdrop from the public pavilion and remove six bollards from the public access area at the juncture between the paved and wooden boardwalk surfaces south of the pavilion (Amendment No. Eleven).

B. **Application Dates.** This amended authority is generally pursuant to and limited by your application of March 30, 1995 for Material Amendment No. Eight - the Public Pavilion, and your application of April 4, 2017 for Material Amendment No. Eleven, including all accompanying and subsequent amendments, exhibits, and correspondence thereto, but subject to the modifications required by the conditions herein. The applications for Amendment Nos. One and Two were withdrawn. The amended authority for the other activities in Jack London Square within the Commission's jurisdiction is generally pursuant to and limited by ~~Corrected Amendment No. Nine to Permit No. 19-85(A) 1985.019.22A,~~ including all accompanying and subsequent amendments, exhibits, and correspondence thereto, but subject to the modifications required by the conditions therein. ~~The application for Amendment No. Nine is still pending at this time.~~

C. **Deadlines for Commencing and Completing Authorized Work.** The work authorized herein pursuant to ~~Corrected Amendment No. Ten (Scotts) to Permit No. 19-85(B) 1985.019.10B,~~ has been completed. Work authorized by Material Amendment No. Eleven commenced in advance of permit issuance and must be diligently pursued to completion within two months of the date of issuance or by December 15, 2017, whichever is earlier, unless an extension of time is granted by further amendment of this amended permit.

D. **Project Summary.** This project (Amendment No. Eight - the Public Pavilion) modifies the use of 4,400 square feet of this public access by allowing periodic, exclusive, private use of a 4,400-square-foot public access pavilion constructed pursuant to this amendment. Material Amendment No. Eleven authorizes the replacement of canvas tent panels with permanent walls and retractable wall panels to enclose the pavilion for the private use and also authorizes a storage area, breezeway, roof and changes to the public access area and improvements, including the loss of 418 square feet of public access.

E. **Relevant Permits.** BCDC Permit No. 1985.019.22A, issued to the Port of Oakland on October 22, 2014, pertains to the area immediately surrounding the area to which this permit pertains.

II. Special Conditions

The amended 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. **Final Plan Review.** No work whatsoever shall be commenced pursuant to this amended permit until final precise site, engineering, grading, riprapping, architectural, landscaping, 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 the staff.
 - a. **Site, Architectural, and Landscaping Plans.** Site, architectural, and landscaping plans shall include and clearly label the 6.2-foot contour line above Mean Sea Level (the line of highest tidal action), the line 100 feet inland of the line of highest tidal action, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, 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 proposed improvements.
 - b. **Engineering Plans.** Engineering plans shall include a complete set of contract drawings and specifications and design criteria for all portions of the project to be built on fill. Final plans shall be signed by the professionals of record and be accompanied by evidence that the design complies with all applicable codes.

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:

- a. Completeness and accuracy of the plans in showing the features required above, particularly the line of highest tidal action, property lines, and the line 100 feet inland of the line of highest tidal action, and any other criteria required by this amended permit;
- b. Consistency of the plans with the terms and conditions of this amended permit;

- c. 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 amended permit;
- d. Consistency with legal instruments reserving public access and open space areas;
- e. Assuring that any fill in the Bay does not exceed this amended permit; and
- f. Consistency of the plans with the recommendations of the Design Review Board.

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

2. **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 amended permit 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.
3. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this amended permit or legal instruments approved pursuant to this amended permit, the Special Condition or the legal instrument shall prevail. The permittees are is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this amended permit and any legal instruments submitted pursuant to this amended permit.
4. **Conformity with Plans submitted with Application for Amendment Nos. Eight and Eleven.**
 - a. **Pavilion (Permit No. 1985.019.08B).** The pavilion authorized in Material Amendment No. Eight shall generally conform to plans entitled "Public Pavilion," prepared by Arcus Architecture and Planning, dated June 19, 1995, as modified through July 3, 1995. No material changes shall be made thereafter to these plans without first obtaining written approval of the change(s) by or on behalf of the Commission.
 - b. **Pavilion Enclosure System (Permit No. 1985.019.11B).** The pavilion enclosure system, storage area, roof extension and breezeway authorized in Permit No. 1985.019.11B shall generally conform to the 11 sheets of plans entitled Public Pavilion, Material Amendment Request for Permanent Outdoor

Structure at Scott's Jack London Seafood Restaurant, prepared by Rubio Bowden Design, and originally dated November 20, 2013, as revised through May 17, 2017. No further plan review is required for the pavilion as authorized by Permit No. 1985.019.11B.

- c. **Public Access Improvements (Permit No. 1985.019.11B).** The public access improvements authorized in Permit No. 1985.019.11B shall generally conform to the seven sheets of plans entitled Scotts/Jack London Square, prepared by Camp & Camp Associates, originally dated May 15, 2017, and revised through June 18, 2017. Further plan review is required for the following public access improvements required by Permit No. 1985.019.11B: tables, chairs, umbrellas, and planting.
- d. **Four Bollards (Permit No. 1985.019.11B).** Further plan review is required for the one permanent and three moveable bollards authorized by Permit No. 1985.019.11B and shall be of a design and type that is consistent with other bollards in use in public spaces at Jack London Square.

B. Public Access

1. **Area.** The approximately ~~4,400~~ 4,241-square-foot area (previously 4,400-square-foot area until Permit No. 1985.019.11B) in the shoreline band as generally shown on Exhibit B shall be made available to the public for unrestricted public access for walking, sitting, viewing, picnicking, and related purposes as more specifically described in paragraphs II-B-2. If the permittees wishes to use the public access area for other than those purposes expressly delineated in paragraph II-B-2, the permittees must obtain prior written approval by or on behalf of the Commission.
2. **Temporary Banquet Tent Pavilion and Use**
 - a. ~~Temporary Banquet Tent Use.~~ Scott's Restaurant shall be allowed to use an approximately 4,500-square-foot portion of the approximately 23,000-square-foot dedicated public access plaza located between Scott's and Kincaid's Restaurants in Jack London Square between August 31, 1995 and January 15, 1996 for erecting a tent to house private banquets and other private events only as specified herein. Scott's Restaurant shall submit to and obtain approval by the Port of Oakland of a schedule of private banquets and other private events to be held. The approved event schedule shall be consistent with the parameters for scheduling specified in Exhibit A to this corrected amended permit. The tent shall be erected no sooner than 6 hours prior to an approved scheduled event and shall remain standing no longer than 12 hours following an approved scheduled event.
 - ba. **Public Pavilion Use and Storage of Public Furnishings (Permit Nos. 1985.019.08B and 1985.019.11B).** Scott's Restaurant shall be allowed to use the approximately 4,400-square-foot public pavilion located in the approximately ~~23,000~~ 20,000-square-foot, dedicated public access plaza lying between Scott's and Kincaid's Restaurants in Jack London Square for private

events only as specified herein. ~~Scott's Restaurant shall submit to and obtain approval by the Port of Oakland of a schedule of private events.~~ Operation of the ~~fabrie~~ moveable panels enclosing the private events beneath the pavilion shall be consistent with the provisions of this special condition, including the guidelines specified in Exhibit A to this amended permit. During private events, the pavilion must be fully enclosed whereas during public events the panels must be fully stored. The public plaza site furnishings, two thirds of which shall be stored in the storage area as specified in Special Condition II.B.6, shall be restored immediately following each approved event, or if an approved event terminates after 10:00 PM, the site furniture shall be replaced by 9:00 AM of the following day. In accordance with the lease between the Port of Oakland and Scott's of the real property that is the subject of this amended permit (lease originally dated April 8, 1987 and last amended November 7, 1995): (1) the Port shall have complete and exclusive discretion regarding any and all publicly-oriented events held at the pavilion, including but not limited to concerts, parades, fairs, festivals, farmer's markets, and any event charging paid admission; (2) Scott's shall have no right to schedule, allow, or operate any such publicly-oriented events; and (3) any scheduling conflicts between Scott's private events and publicly-oriented events shall be resolved at the sole discretion of the Port's Executive Director. California Canoe and Kayak shall be allowed to occasionally use a small portion of the dedicated public access plaza for kayak rentals and classes. The racks for kayak display shall be maintained at the north end of the plaza consistent with the conceptual arrangement shown in Exhibit B to this amended permit (Permit No. 1985.019.11B).

- b. **Web-accessible Calendar of Scheduled Pavilion Events (Permit No. 1985.019.11B).** No later than December 31, 2017, Scott's shall create a BCDC staff-approved web-accessible calendar of scheduled pavilion events, and on a permanent basis thereafter Scott's shall accurately maintain the approved web-accessible calendar of scheduled pavilion events and make it available to the Port of Oakland and BCDC at all times. The calendar must include all private events scheduled or held by Scott's and any publicly-oriented events scheduled or held by the Port of Oakland by month for the current calendar year. For scheduled events, the following information shall be provided about each event: date, name, scheduled start time, and estimated duration. After a private event has been held, the calendar shall be updated within 48 hours to add the following information for the event: the commencement time of conversion from public to private space, the event start and end times, and the time the pavilion reverted to 100% public space. The calendar must also show the total number of private events both scheduled and held for the calendar year.

- c. **Monthly Event Schedule Reporting (Permit Nos. 1985.019.08B and 1985.019.11B)**. Commencing in November, 2017, and on a monthly basis thereafter no later than the 15th of each month, Scott's Restaurant shall provide the Port of Oakland and BCDC with a report of all private events held at the pavilion during the prior month. For each private event, the report shall include the following information: date, name, start and end time, and duration, including both setup and breakdown times. The report shall also include: the number of days of private use of the pavilion for the month; the number of weekend days of private use of the pavilion for the month; and the cumulative number of days of private use of the pavilion for the year as of the last day of the month. The report shall also describe any differences between the information presented on the web-accessible calendar of events for the month and actual pavilion usage for the month. ~~its first quarterly schedule for private events to be held in the pavilion at least 60 days prior to the first event. The events schedule shall not be approved by the Port of Oakland, unless it is consistent with the parameters for scheduling specified in Exhibit A to this amended permit. Subsequently, Scott's Restaurant's quarterly schedules shall be submitted to the Port of Oakland by January 1, April 1, July 1 and October 1 of each year. By March 1 of 1996 and March 1 of every year thereafter the Port of Oakland shall provide the Commission with a summary of the events scheduled for the previous year. The tent covered event schedule shall be submitted to the Port of Oakland within 10 days of the issuance of corrected Amendment No. Eight to the BCDC Permit and shall be updated every three months until January 15, 1996.~~
- d. **Violation (Permit No. 1985.019.08B and 1985.019.11B)**. The holding of a banquet or other private event within the pavilion or public access plaza that is not listed in the web-accessible calendar of scheduled events, ~~or the approval of a schedule of events~~ or that is inconsistent with the guidelines set forth in Exhibit A to this ~~corrected~~ amended permit, shall be considered an activity undertaken without Commission authorization (Permit No. 1985.019.11B) and subject to the schedule of standardized civil penalties described in Commission Regulation Sections 11302(2) and 11386(a)(3).
3. **Permanent Guarantee.** Prior to the commencement of construction of each phase of the project, the permittees shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the public access areas within that phase to the extent the permittees ~~are~~ is legally able to do so. 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 amended permit and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of Alameda County and shall include a legal description of the property being restricted and a

map that clearly shows the line of highest tidal action, the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:

- a. Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this amended permit;
 - 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, lessees, licensees and users.
4. **Recordation of the Instrument.** Within 60 days after approval of the instrument, the permittees shall record the instrument and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
5. **Improvements Within the Franklin Street Plaza Public Access Area (Permit No. 1985.019.08B and .11B).** By no later than December 15, 2017, and in accordance with the License and Concession Agreement between the Port of Oakland and Scott's (dated June 1, 2017), the permittees shall install the following improvements:
- a. Neon Signs on the pavilion towers ~~shall be neon and shall that~~ read "Public Pavilion" ~~only~~;
 - b. ~~Two~~ One sets of permanent, pedestal style binoculars for public use free of charge; ~~and~~
 - c. ~~At least four additional~~ Four public access signs, two permanent and two temporary, to facilitate shoreline public access between Franklin Street and Broadway on the Bay side of Scott's Restaurant. The temporary signs shall be installed and removed when approved private events are held. One public access sign shall be installed at the entrance to the gangway leading to the kayak launch float that describes the rules and hours for public use of the kayak launch float;
 - d. In the Pavilion, At at least 15 tables and 35 chairs ~~which are designed to match the existing cafe seating at the Barnes and Noble bookstore,~~ to be in placed at all times, except when the pavilion is needed for ~~approved~~ private events or other ~~approved~~ public events; and

- e. In the Franklin Street Plaza, at least 17 tables, 34 chairs, 16 benches, 12 planters with new landscaping, 4 umbrellas, 5 trash cans, 3 tree grates and 3 trees, and night lighting, including six light standards decorated with gold sailboats and string lights in the plaza, public pavilion lighting consisting of hanging lanterns and diffuse up lighting and private pavilion lighting consisting of programmable spot lighting to be used only during events.

Such improvements shall be consistent with Exhibit C and the plans approved pursuant to Special Condition II-A of this amended permit.

6. **Pavilion Furniture Layout and Storage (Permit No. 1985.019.11B)**. During private events, 10 of the 15 public tables and 25 of the 35 public chairs shall be stored inside the storage area at the pavilion. The remaining 5 tables and 10 chairs shall be integrated into the plaza space during private events, for example, as shown on Sheet L.2.2 of the Camp & Camp plans referenced above in Special Condition II.A.4.c. Upon completion of each event, the pavilion furnishings shall be laid out in the pavilion as shown on Sheet L.2.1 of the Camp & Camp plans.
7. **Minimum Number of Pavilion Windows to Increase Over Time (Permit No. 1985.019.11B)**. At all times, the pavilion shall have at least six clear windows and two sets of doors with clear windows. Two of the six windows shall be located adjacent to the entry door panels on the east side of the pavilion and four of the six shall be located next to one another in the center of the south side of the pavilion. At such time that panel replacement is planned for any reason, Scott's must notify the BCDC staff of its intent to replace moveable panels and to discuss the feasibility of incorporating replacement panels with windows so that over time the number of windows may be increased from six to ten, including possibly increasing the number of windows on the east side of the pavilion from two to four and to increase the number of windows on the south side of the pavilion from four to six.
8. **Maintenance**. All areas and improvements required by Special Condition II-B-5, including ~~hardscape~~, planters and landscaping (including hanging planters and trees and their grates), seating, string and pavilion lighting, umbrellas, binoculars, trash cans, signs, and public paths shall be permanently maintained by, and at the expense of, the permittees, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, repairs to all path and hardscape surfaces, replacement of any plant material that dies or becomes unkempt, repairs or replacement as needed of benches, trash containers, signage and irrigation devices, restoration of any shoreline or other area that becomes eroded or damaged by wave action, storm, or other deterioration, and assuring that public access signs remain in place and visible. Within 90 days after notification by staff of the Commission, the permittees or any successor or assignee shall correct any maintenance deficiency noted by the staff.

79. Reasonable Rules on Use of Public Access Areas. The permittees may impose reasonable rules on the use of the areas required to be provided for public access provided such rules are first approved by or on behalf of the Commission and do not significantly affect the public nature of the area nor unreasonably burden public use.

C. Assignment. The permittees may make a full or partial assignment to the rights and/or duties under this amended permit provided that the assignee is acceptable to the Commission. The assignment shall be made in writing and clearly indicate which portions are assigned and which portions remain unassigned. Any assignee shall sign a written statement to the effect that he or she has read and understands the conditions of this amended permit and agrees to be bound by all terms and conditions hereof.

D. Permit Recording. The permittees shall record this amended permit or a notice referring to this amended permit with the County of Alameda within 60 days after execution of this amended permit and shall provide evidence of recording to the Commission.

E. Remove Unauthorized Metal Entry Doorway and Complete Construction of Pavilion Enclosure System (Permit No. 1985.019.11B). By no later than December 15, 2017, the permittee shall remove the unauthorized permanent metal entry doorway (east side) and six bollards south of the pavilion, and install two additional retractable wall panels with doors and one door each in the west and north walls. Immediately following completion of this work, the permittee shall notify the BCDC staff in writing, accompanied by photographic evidence, which shall serve as notice to staff to conduct a compliance review.

F. Remove Permanent Stage Backdrop and Use Temporary Backdrop as Needed (Permit No. 1985.019.11B). By no later than December 15, 2017, the permittee shall remove the unauthorized permanent wooden, painted stage backdrop mounted around the door of the storage area. The exposed surface shall be treated as necessary to be visually clean and consistent with the surrounding materials. Immediately following this work, the permittee shall notify the BCDC staff in writing, accompanied by photographic evidence, which shall serve as notice to staff to conduct a compliance review. The permittee may install a temporary stage backdrop as needed only for the duration of each calendared private event.

G. Authorization Terminates on August 31, 2041 (Permit No. 1985.019.11B). This authorization is based on the lease between the Port of Oakland and Scott's of the real property that is the subject of this amended permit (lease originally dated April 8, 1987 and last amended November 7, 1995) that will terminate on August 31, 2041. This authorization shall expire on August 31, 2041 upon termination of the permittee's leasehold interest in the subject property. In the event that the permittee and the Port of Oakland enter into a new lease for the subject property, or amended their current lease to extend the lease term, the permittee may apply for an amendment to this permit to extend the term of this authorization. If by May 31, 2041, the permittee fails to submit a complete application to amend the permit to extend the term of this authorization that includes a new or amended lease for the subject property (including the area where the pavilion and storage area are located), by August 31, 2041, Scott's must entirely remove all structures and improvements authorized herein and submit written evidence including photographs of having done so.

III. Findings and Declarations

A. **Use.** San Francisco Bay Plan Map No. 4 does not designate the project site for any priority uses but a note on the map states: "JACK LONDON SQUARE. Expand commercial recreation facilities as needed. Provide continuous public access along Estuary to Lake Merritt Channel." The use of the site for the public pavilion authorized in corrected Amendment No. Eight is considered commercial recreation development which will provide for continuous shoreline access is therefore consistent with the Bay Plan. Please see the discussion under "public access" below for more detail.

B. **Fill.** No fill is authorized in the project for the public pavilion authorized in corrected Amendment No. ~~Nine Ten~~ (Scotts) to Permit No. ~~19-85(B)~~ 1985.019.00B.

C. **Public Access For Permit No. 1985.019.09B (as modified by Permit No. 1985.019.11B).** Section 66602 of the McAteer-Petris Act states 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...."

The Bay Plan policies on public access state, in part, that public access should be provided in and through every new development, including ports, except in cases where the public access would be inconsistent because of public safety considerations. Further, the Bay Plan states a small amount of fill may be allowed if the fill is the minimum necessary to develop a project in accordance with the requirements to provide public access.

The project authorized in ~~corrected Amendment No. Nine (Scotts)~~ to Permit No. ~~19-85(B)~~ 1985.019.09B, issued on October 7, 1997, modifies the design and use of the existing, dedicated public access plaza lying between Kincaid's and Scott's Restaurants in Jack London Square. This amendment authorizes the construction of a 4,400-square-foot pavilion in the plaza to be used for public access purposes eighty percent of each year (292 days) and for private events hosted by Scott's Restaurant twenty percent of each year (73 days). The periodic, private use of the public access space for private events will eliminate the public's access to a significant portion of the plaza for approximately 20 percent of each year. In addition, the covering of the public access space could reduce the public character of the plaza, thereby discouraging the public's use of the plaza.

The site for the public access pavilion is part of a large (32,300-square-foot), L-shaped, public space which in 1997 when the pavilion was originally authorized received s relatively little public use, in part because its primary function was is as a service vehicle access to the two restaurants and retail shops despite the fact that the Franklin Street Plaza was a public access area as required by Permit No. 1985.019.00, issued on March 13, 1986. The lack of activities fronting on the plaza combined with the service vehicle activity was then considered to have significantly diminished the value of the plaza as a public space. The California Canoe and Kayak rental and sales business had s significantly enlivened this plaza with its colorful kayaks and the activity generated by frequent classes and canoe and kayak rentals. However, the backs of buildings were then believed to generate little life in plazas. Approximately 290 feet of the 330 feet of walls framing this plaza are the rear or service entry of the buildings, while only 40 feet are fronts.

The introduction of the pavilion it was found could generate activities in the plaza which did not occur there now because of the existing building and use configuration and levels of business/tourism at Jack London Square. The private banquet events it was found may bring people to Jack London Square who would not otherwise visit the shoreline and it may serve as a catalyst for future visits to the Square and could will likely generate additional sales for other businesses in the Square. The pavilion was will also be used by other, more public events which would require or benefit from cover or protection from inclement weather, including the Farmers' Market, art shows, product displays and boat show displays.

~~Corrected Amendment No. Nine (Scotts) to Permit No. 19-85(B) 1985.019.09B~~
 authorized s the private use of the public pavilion for twenty percent of the time or up to seventy-three calendar days per year. Special Condition II-B-2 requires that this private use be scheduled consistent with the guidelines specified in Exhibit A to this amended permit. The scheduling guidelines define two types of use periods: (1) May through October will be the higher public use period; and (2) November through April will be the lower public use period. There are approximately one-hundred-and-six weekend days each year or approximately nine weekend days per month. During the higher public use period (May through October), the private events are limited to a maximum of three weekend days per month on-average, with six weekend days required for public use. There is a minimum requirement of three weekend days per month free of private events. This allows the permittees to exceed the three events per month limit, but requires that it meet the overall requirement by having fewer events in subsequent months during the higher use period. During the lower public use period (November through April), the permittees are is allowed to schedule up to four private events per month on weekend days, on average, and will be required to reserve at least five weekend days on average for public use. The permittees are is required to provide a minimum of three public-use weekend days per month, and must average the private use must to conform with the four-day-per-month average allotment. The total event allotment for one year is seventy-three. The Commission finds that the private event use will not adversely impact the public's use and enjoyment of the plaza, provided that Scott's the schedule of events approved by the ~~Per~~ adheres to the guidelines specified in Exhibit A to this amended permit.

The Commission's public access design guidelines state, in part, that: "public access should generally be open to the sky...be designed to be usable by the greatest number and diversity of people, including the physically handicapped." The project will provide a covered, open outdoor area for all users of the wharf. The towers will be visible above the adjacent buildings to attract passersby from a distance and signal users to explore the waterfront. The open-truss structural system allows for longer spans with less intermediate supports, thus preserving views of the Bay. The structure does not significantly impede existing shoreline access nor will it unduly interfere with the existing access to the wharf edge. The proposed pavilion will have a minimal impact on existing view corridors and sight lines of the Oakland Estuary. The feeling of openness achieved through the use of slender structural columns and the open truss system will minimize sight line obstructions. The project will modify the existing

paving pattern to coordinate with the outline of the proposed structure. The Design Review Board noted that the existing paving pattern directs one's eye along the existing view corridor to the ships on the opposite shore. The revised paving pattern will preserve this feature to the greatest extent feasible.

The pavilion will be supported by columns similar in color and shape to pedestrian scale lighting in the square, will be outfitted with neon signs atop the towers naming the structure "Public Pavilion" and the paving pattern in the plaza will be modified to reflect the overhead pavilion while utilizing paving materials consistent with the existing paving. However, the covering of the public access space could reduce the public character of the plaza, thereby discouraging the public's use of the plaza. The periodic, private use of the public access space for private events will eliminate the public's access to a significant portion of the plaza for approximately twenty percent of each year. The proposed pavilion will be situated to provide an unobstructed, 34-foot-wide view corridor from Water Street to the estuary approximately 80 percent of the time when the facility is open for public use. The existing view corridor width through this plaza is approximately 57 feet wide. The authorized pavilion design will maintain an 18-foot-wide view corridor through the plaza to the shoreline during private events. Special Condition II-B-5 as modified by Permit No. 1985.019.11B requires the installation of a single set of binoculars for public use, benches, flags, lighting, and cafe seating to furnish the pavilion, enhancing its utility to the public for daily use.

The Commission finds that the public access improvements sufficiently offset the potential for the pavilion to privatize the existing plaza and that these enhancements will improve overall the public's use and enjoyment of the existing plaza so that the net effect of the project, given the periodic unavailability of the plaza, will result in an overall enhancement of the public access. The Commission finds that the design of the proposed pavilion will be sufficiently congruous with and complement s the existing development in the area and will enhance the public's use of the existing dedicated public access areas. The Commission also finds the proposed view corridor adequately preserves views of the Estuary and Alameda shoreline. The Commission also finds that the private use is incidental to the public access use, is in keeping with the character of the area and will not unduly obstruct public access to and enjoyment of the Bay. The Commission finds therefore, that the authorized pavilion construction and private use of the public access area will contribute to the public's use and enjoyment of a public access area, which at the time of authorization was found to be is- currently underutilized. Finally, the Commission finds that the public access required in this amended permit will provide the maximum feasible public access, consistent with the original Jack London Square project as modified through corrected Amendment No. Eight to this permit.

~~Corrected Amendment No. Nine (Scotts) to Permit No. 19-85(B) authorizes, on a temporary basis, tent covered banquet use of the dedicated public access plaza until January 15, 1996. At the time that the Port first proposed the tent use to the staff in April of 1993, the staff had concerns that approving the tent use on a permanent basis would be inconsistent with the requirements of amended BCDC Permit No. 19-85 and with the Commission's Bay Plan policies on public access. Moreover, after viewing the plaza with the tent in it, the staff determined that the tent effectively blocked the existing view corridor from Water Street out to~~

the estuary and the Alameda shoreline. However, the Commission finds that authorizing the temporary continuation of the temporary, periodic tent use will not unreasonably detract from the public's current, limited use and enjoyment of the area, because the tent use is only temporary in nature and under the existing conditions, the public's use of the area is limited.

At the request of the original permittee, the Port of Oakland, and its tenant Scott's Jack London Seafood, Inc., the Commission issued a revised corrected Amendment No. Nine Ten (Scotts) to Permit No. 19-85(B) has to incorporated Scott's Jack London Seafood, Inc., as a co-permittee for that portion of the project that was at that time is included within its leasehold. The rights, duties, and obligations of Scott's Jack London Seafood, Inc., with regard to this amended permit are limited to the area leased by Scott's Jack London Seafood, Inc., from the Port of Oakland. As a co-permittee, the Port of Oakland will also be jointly and severably liable for full compliance with all terms and conditions of the permit that apply to the leasehold area. Beyond the leasehold area, only the Port will be liable for full compliance with all terms and conditions of the permit.

Corrected Amendment No. Nine to Permit 19-85(B) simply adds Special Condition II.B.5.d to this permit (Scott's). This special condition was included in the original authorization of the Public Pavilion (Amendment No. Eight), but was inadvertently omitted when the permit was separated into 19-85(A) and 19-85(B).

D. Material Amendment No. Eleven. The staff believes that the application raises one primary issue regarding the project's consistency with McAteer-Petris Act and the San Francisco Bay Plan (Bay Plan): whether the proposed project provides maximum feasible public access, consistent with the project, including physical access to and along the shoreline, views to the Bay from other nearby public spaces, and the existing and proposed additional public amenities within the public access areas.

1. **Public Access.** In assessing whether the proposed project would provide maximum feasible public access consistent with the proposed activities, the Commission relies on the McAteer-Petris Act, the Bay Plan policies, and public access requirements of similar previously-permitted projects.

Section 66602 of the McAteer-Petris Act states, in part: "...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Section 66632.4 of the **McAteer-Petris Act** states, "within any portion or portions of the shoreline band that are located outside the boundaries of water-oriented priority land uses...the Commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline."

Bay Plan Recreation Policy 3.h states "[w]ater-oriented commercial recreational establishments, such as restaurants, specialty shops, private boatels, recreational equipment concessions, and amusements, should be encouraged in urban areas adjacent to the Bay."

Bay Plan **Public Access** Policy 1 states, in part, “a proposed fill project should increase public access to the Bay to the maximum extent feasible....” Policy 2 states, in part, “...maximum feasible public access to and along the waterfront...should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided.” Policy 7 states, in part, “public access improvements...should be designed and built to encourage...movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” Policy 9 states, “access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available....” Policy 12 states, “the Public Access Design Guidelines should be used as a guide to siting and designing public access consistent with a proposed project. The Design Review Board should advise the Commission regarding the adequacy of the public access proposed.”

The Bay Plan **Appearance, Design, and Scenic Views** Policy 2 states, in part, “all bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. 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.” Policy 4 states, in part, “structures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline. In particular, parking areas should be located away from the shoreline.” Policy 8 states, in part, “shoreline developments should be built in clusters, leaving areas open around them to permit more frequent views of the Bay. Developments along the shores of tributary waterways should be Bay-related and should be designed to preserve and enhance views along the waterway, so as to provide maximum visual contact with the Bay.”

2. **Maximum Feasible Public Access**

- a. **Existing Public Access.** Permit No. 1985.019.22A, the Port’s permit, authorizes between Franklin and Webster Streets, public access enhancements such as paving guardrails, lighting and one fountain within the Central Basin promenade. The Port’s permit requires the dedication of a 32,300-square-foot public plaza between Scott’s and Kincaid’s and around Kincaid’s to the existing pedestrian mall on Water Street. The staff-approved plans, dating from July, 1987, require public access improvements consisting of different types of lighting, a UN flagpole and plaque, 6 benches, 8 trees and grates, 17 planters, and 8 trash cans throughout the plaza including the area now occupied by the pavilion. However, since 1987, the location and quantity of these furnishings has changed.

Permit No. 1985.019.09B, the Scott's permit, requires public access improvements including a 4,400-square-foot, L-shaped pavilion. The original authorization for the open air pavilion required a number of public amenities, including, in part, light fixtures 15 feet above the existing plaza, a revised paving pattern using pavers which match existing pavers and reflect the shape of the pavilion, Tivoli lighting, grade-level up lighting, fabric panels with transparent window panels located at the perimeter of the pavilion roof and colorful flags and banners which do not include the names of any business or product. Signs on the pavilion towers are required to be neon and read "Public Pavilion". The original authorization also required at least 15 tables and 35 tables (to match those in a nearby plaza on the north side of Water Street that has since been redesigned) and four public shore signs (two fixed and two moveable), to be in place at all times, except when the pavilion is needed for approved private events or other approved public events, and two sets of permanent, pedestal style binoculars for public use, free of charge.

- b. Proposed Changes to the Pavilion and Dedicated Public Access.** The proposed project involves changes to the existing requirements of two BCDC permits – the Port's permit and the Scott's permit, described above. Within and adjacent to existing required public access areas, the applicants propose to replace the fabric panels used to enclose the pavilion for private events by constructing: (1) a 40-foot-long wall and 30 moveable wall panels (north side of the pavilion) (within a public access area required by the Scott's permit); (2) a 60-foot-long series of structures consisting of a 13-foot-long wall and 10 moveable wall panels, a 255-square-foot storage room and stage backdrop (within public access areas required by the Scott's and Port permits), a 20-foot-long wall and 920-square-foot roof connecting the public pavilion with the adjacent Scott's Restaurant, thereby creating a 368-square-foot breezeway (west side of the pavilion); and (3) four bollards to protect the moveable wall panels (within a public access area required by the Scott's permit). Additionally, the application includes a proposal to expand the area covered by the permit, pursuant to a License and Concession Agreement entered into between the Port of Oakland and Scott's, to include the majority of the Franklin Street Plaza and, therein, reconfigure the existing public access improvements and install new public access improvements.

The applicants state that since 1996, when private events commenced in the pavilion, they have brought up to 23,000 new visitors to Jack London Square, which was a stated goal of the project when it was originally approved. They state that the original enclosure system was a plastic/vinyl tent wall system that required replacement at considerable cost every five years due to wear and tear. It was drafty, energy inefficient, did not provide efficient emergency exit systems, and was visually unattractive. It also required four staff members up to four hours to unpack and install the system each time there was a private event and an additional four hours remove and store it. The application states that the replacement wall system is an innovative design-build system using a manufac-

tured product that Kalwall, the manufacturer, states is the most highly insulating, diffuse light-transmitting, structural composite technology in the world. Each of the 40 moveable panels is approximately 5 feet wide by 15 feet high. They are suspended on specially designed trolley hangers that roll in a tubular-track system that is welded in place and surrounds the underside of the interior roof perimeter and, therefore, is not visible from outside the pavilion. Each wall panel is rolled into place to enclose the pavilion to provide an insulated and secure system during private events. The panels are rolled back into a stackable wall location when the pavilion is in public use. It takes 30 to 45 minutes to roll the moveable panels into private use. The same time is needed to reverse the process. The applicants state that this saves up to a total of seven hours of set up and break down time from the old system, resulting in a gain of seven hours of public access on each event day.

The applicants state that the panels are stored outside any view corridors and adjacent to existing structures that already obscure views. They state that the concept of the public access proposal is to enhance the public's enjoyment of the Franklin Street Plaza and attract more pedestrians by uncluttering an area that appears to have become a backwater of disjointed activity, including unplanned clusters of furnishings, planters and dying trees. Instead, they state that the new plaza design will create a visible pathway to the waterfront while also protecting light poles and trees from vehicular damage.

- c. **Remove Metal Entry Doorway.** On the east side of the pavilion, the applicants have proposed to remove a constructed permanent door structure from a dedicated public access area and to replace it with moveable wall panels that contain free-swinging doors. Since 2012, the BCDC staff has consistently stated that it could not recommend approval of the metal entry doorway, as it would have daily adverse impacts on existing required public access and view corridors.

At its February 10, 2014, meeting the DRB advised the staff and the applicants that permanent door structure should be removed because it makes the public space feel private and creates a physical and visual obstruction. At the April 6, 2015 DRB meeting, Scott's presented a revised proposal to remove the metal entry doorway and replace it with moveable wall panels that contained free-swinging panel doors. The DRB expressed its satisfaction with this proposal, stating that this was an improvement to the project.

One Board member asked whether one of the required exits for the restaurant is the door that opens into the pavilion and, if so, how this is addressed under code requirements when the pavilion is in private use mode. On December 5, 2016, the City of Oakland issued a discretionary approval for this project and determined that local life safety requirements for egress during an emergency would be met by the existing door from the restaurant into the pavilion and by the proposed free-swinging panel doors from the pavilion into the Franklin Street Plaza.

- d. **North Pavilion Wall.** The applicants propose to install a 40-foot-long wall, stack 30 moveable wall panels next to it, and add one bollard on the north side of the pavilion in a public access area required by the Scott's permit. It is staff's understanding that the purpose of the wall is to support the moveable wall panels. The purpose of the panels is to enclose the pavilion for private events and the purpose of the bollard is to protect the wall from being damaged by delivery vehicles using the corridor north of the restaurant.

Since 2012, the staff has consistently communicated to the applicants that unless the 40-foot wall is shortened, it could have potential adverse impacts on the public pavilion. The wall, constructed along the pavilion boundary, would likely privatize the public space, create an enclosed rather than open-air feeling in the northwest section of the space, and adversely impact Bay views from the Water Street side of the Franklin Street Plaza. The staff advised that these issues could be minimized by shortening the wall from 40 to 30 feet, which the staff suggested because, at that length, it would line up with the wall of the adjacent retail space, located north of the pavilion.

At its February 10, 2014 meeting, the DRB advised the staff and the applicants that open views be maintained through the pavilion towards the Bay. A variety of opinions regarding ways to accomplish this were expressed. Some Board members stated that all permanent structures along the north wall should be removed. Others stated that the proposed wall and stacked panels on the north side of the pavilion should be shortened so that they do not extend beyond the corner of the adjacent retail building where it angles north. One Board member stated that a wall on the north side might provide some benefit by screening the service functions that occur north of it; another recommended that alternate means of enclosing the pavilion, such as an accordion wall or roll-up approach, be investigated to reduce physical and visual obstructions from the enclosure while in both public and private use mode. Based on some of the DRB's comments, Scott's temporarily revised its proposal to reduce the length of the north wall from 40 to 30 feet. At the April 6, 2015 DRB meeting, the DRB expressed its satisfaction with the shortening of the north wall to 30 feet, stating that this was, in conjunction with removal of the permanent metal entry doorway, a great improvement to the project. However, since April 6, 2015, the applicants have withdrawn their proposal to construct a 30-foot-long wall on the north side of the pavilion.

The DRB did not review the bollard proposal, which would be located on the east boundary of the pavilion area and which the Commission finds would have minimal if any adverse impacts on public access.

- e. **West Pavilion Walls and Storage Area.** On the west side of the pavilion adjacent to the back of Scott's Restaurant building, the applicants propose to construct a 60-foot-long series of structures comprised of a 13-foot-long wall with an exit door and 10 moveable wall panels, a 255-square-foot storage area and stage backdrop, and a 368-square-foot "breezeway" that includes a 20-foot-long wall covered by a 920-square-foot roof that connects the restaurant to the pavilion.

The 13-foot-long wall, moveable panels, storage area and stage backdrop are all within dedicated public access areas. The proposed roof, 20-foot-long wall and breezeway that connect the pavilion to the restaurant are located in the Commission's 100-foot-shoreline band jurisdiction but are not located in a required public access area.

Any structure along the pavilion boundary would likely privatize the public pavilion and create an enclosed rather than open-air feeling in the northwest section of the space. In addition, the new structures create an approximately 256-square-foot remnant public access area west of the pavilion that, while not physically occupied by the new wall, wall panels or storage area, becomes a less useable public space (and has in the past been used by Scott's as a storage area). The wooden stage backdrop, which is painted as stage curtains, does not match the pavilion materials or the waterfront setting and, as a result, is an anomaly that has a privatizing effect on the public pavilion. Beyond directing the applicants to remove the stage backdrop, the staff did not provide any direction on how these issues could be minimized.

On February 10, 2014, the DRB advised that the storage area and wall extensions on the west side of the pavilion block public access in this required public access area and instead represent an extension of Scott's Restaurant. The Board stated that the west side improvements that occupy presently required public access areas would permanently remove them from public access purposes and divide a single area into two areas, likely rendering the remnant public access area between the east wall of the building and the west wall of the pavilion less valuable than it was as part of a single larger public access area. The DRB members also agreed that the privatizing character of this stage backdrop is at odds with the public character of the pavilion.

The applicants have not modified the proposal to respond to the DRB's comments.

- f. **Transparency of the Pavilion Wall Panels.** The fabric panels that are currently authorized by the amended permit had two transparent windows on the Bayside of the pavilion. The proposed project has six tempered-glass windows, four on the south (bay) and two on the east (entrance) sides of the pavilion, respectively. The free swinging entrance doors and west side exit door also contain glass panels. On February 10, 2014, the DRB advised that the pavilion walls should be more transparent to allow for greater visibility into the pavilion when it is in private use mode. The applicants did not respond to the DRB's direction.

- g. **Franklin Street Plaza Public Access Proposal (including the pavilion).** There are several eras of public access improvements at Jack London Square. Some plazas have been entirely redesigned and showcase palm trees and geometrically arranged concrete seatwalls. The older ones, such as in the Franklin Street Plaza, have been in place for at least 30 years. The Franklin Street Plaza contains a UN flagpole and commemorative plaque, 10 decorative light poles, hanging planters, 3 tree grates and one tree, 14 wooden benches, 14 concrete planters with hand-watered landscaping, and 5 concrete trashcans. The public access improvements are located east of the pavilion in the center of the plaza and south of the pavilion next to the shoreline. No seating faces the pavilion. Within the pavilion, existing lightweight metal tables and chairs are useable but do not match the public seating in other areas of the Franklin Street Plaza.

To offset the permanent impacts associated with the proposed addition of permanent walls, moveable wall panels and other proposed structures on the north and west sides of the pavilion, and the resulting reduction of public access area, the applicants have proposed a new design of the Franklin Street Plaza, which is intended to draw more people to and through both the plaza and pavilion. Existing and new public access improvements would be reconfigured in a manner that creates two seating areas and a central procession from Water Street through the Franklin Street Plaza to the Bay and of a design that would compliment the Plaza and pavilion spaces, communicating the public nature of the entire area. Access to the Bay through and around the pavilion would be maximized by the layout of the public furnishings consisting of a line of landscaped planters and string lights placed at an angle in the plaza, and the placement of a series of matching and lightweight chairs and tables throughout the plaza that can be moved around by the public. Two thirds of the tables and chairs located in the pavilion would be stored in the storage area when the pavilion is in private use and one third would be temporarily placed in the Plaza. Exhibit C shows the public access plan.

The public access proposal consists of re-using many existing site furnishings but placing them in an improved layout. Specifically, the improvements consist of a total of three seating areas with 32 tables, 69 chairs, 4 with umbrellas (15 tables and 35 chairs are existing but will be replaced), 16 benches (14 are existing and two matching ones will be added), 12 existing planters to be re-used, 5 existing trash cans to be re-used, 3 tree grates and 3 trees, one telescope, the removal of six bollards south of the pavilion next to the wooden boardwalk, and night lighting.

In the Plaza, the night lighting consists of six light standards decorated with gold sailboats (all existing) and string lights (new). In the pavilion in public configuration, the permittee will install diffuse up lighting and hanging lantern lighting, which may be used in private mode. In the pavilion in private

configuration, the permittee will install a series of programmable spotlights to light the interior during private events, which may not be used prior to or following conclusion of a nighttime event.

By placing six planters in a diagonal line through the plaza that runs from Water Street to the shoreline, the planters would encourage the public to walk to the water (and past the pavilion, which is especially important when it is in a closed, private use mode). String lights along the planters would make the procession “visible” at night. Some benches would be relocated closer to the shoreline for increased Bay viewing and others would face the pavilion for an increased connection between the pavilion and the plaza. In addition to re-using the existing site furnishings and adding matching moveable tables and chairs, the applicants would provide umbrellas and two additional trees for added color and shade in the plaza.

The removal of six bollards along the water south of the pavilion will improve the transition from boardwalk to paving - and visa versa - at a corner where the plaza becomes a boardwalk walkway.

This public access proposal addresses some but not all of the DRB’s comments. Following the DRB’s February 10, 2014 review of the project that lacked a public access proposal, Scott’s submitted a public access plan consisting of many vertical elements such as trees and kinetic sculptures in the Franklin Street Plaza and along the shoreline. In response, on April 6, 2015, the DRB advised that greater efforts should be made with the placement of site furniture, signage and possibly food carts to attract people to use the pavilion when it is available for public use, such as by providing similar site furnishings both within and outside of the pavilion to decrease its private appearance and draw the public into it. The DRB members also stated that the design of the public access in the Franklin Street plaza and along the shoreline edge should be open and simple in design. They advised Scott’s to emphasize the view corridor to the Bay by minimizing vertical elements and only using them if they would help “frame” the view and create a “procession” towards the water. They advised that the proposed trees and sculptures block the view to the water. Many Board members discouraged using any trees since they would block views to the water, stating that there should be simplicity in all design choices. For example, the DRB suggested that simple concrete seatwalls could be used rather than benches and that paving enhancements may not help unless tied to an overall design framework. The DRB advised that the maritime character of the setting should be emphasized in all design treatments and that a single element, such as a boat or sail, could enhance and not distract from the view and even strongly attract people to the Franklin Street Plaza.

The current public access proposal captures the two most important design principles that were recommended by the DRB: (1) to place site furnishings in a manner that integrates the pavilion into the plaza; and (2) use the site furnishings to create a procession to the shoreline. The new layout, including the public seating arrangement, would result in a better connection between the pavilion and the plaza at-large, and the linear nature of the layout would encourage movement through the plaza from Water Street to the shoreline and visa versa.

The re-use of the majority of the existing furnishings assures that the Plaza and pavilion would continue to maintain a design aesthetic consistent with the rest of the furnishings at Jack London Square. During the summer of 2017, the Port's property management company sought the staff's input on an initial design proposal to replace the existing furnishings along the Water Street corridor at Jack London Square at a future date.

The view corridor required by the existing BCDC permit is not affected by this development proposal. The proposed public shore signage duplicates existing public access signage and is adequate.

- h. **Pavilion Protecting Bollards.** When it is in private use mode, the applicants propose to install three bollards in the public access area along the east pavilion edge to protect it from damage by vehicles. The bollards are expected to have no impact on existing required public access if installed only when the pavilion is in private use mode in a manner that is consistent with the provisions of the permit. The DRB has not reviewed this project element.
- i. **Similar Permitted Projects.** In evaluating whether the proposed public access is the maximum feasible consistent with the project, the Commission looks, in part, to its past actions on comparable projects. In rare instances, the Commission has allowed permittees to convert originally required public access to other uses and to offset the lost public access by, in two cases, improving the remaining existing required public access and, in a third case, requiring in lieu nearby access, as summarized in Table 1 below.

Summary of BCDC-Approved Projects and the Proposed Project (shown in bold)

<u>BCDC Permit/BCDC Permit Application</u>	<u>Authorized/Proposed Project</u>	<u>Required/Proposed Public Access</u>
<p><u>Fox Television Stations, Inc.</u> <u>Permit No. 1978.036.04</u></p>	<p><u>At 2 Jack London Square at the foot of Madison Street in the City of Oakland, construct a 3,425-square-foot area containing portions of two dish-shaped satellite transmitters, and a mechanical equipment facility (after-the-fact), and improve the adjacent public access by providing an all-weather pathway with a minimum width of 14 feet within a landscaped public access area ranging from 61 to 110 feet wide and covering approximately 25,280-square-feet of area, partly in the 100-foot shoreline band.</u></p>	<p><u>1,425 square feet of area was converted from public access to an equipment facility. This represents a five percent loss of the total public access area, which was offset by the reconstruction of the public access area with a new layout including a more linear and wider shoreline trail, better and more seating consisting of backed benches and picnic tables, trash containers, lighting and signage and an entirely new plant palette and landscape design.</u></p>
<p><u>City of Alameda</u> <u>Permit No. 1979.039.14F</u></p>	<p><u>At the Marina Village Boardwalk Overlook located at 1030 Marina Village Parkway, Alameda, reduce the size of an existing dilapidated overlook from 920 square feet to a new 133-square-foot overlook and improve the adjacent shoreline park by repaving an approximately 15,650-square-foot section of the San Francisco Bay Trail, re-grading an approximately 17,100-square-foot landscaped area, re-landscaping with native vegetation an approximately 85,280-square-foot landscaped area, and installing an approximately two-foot-wide decomposed granite trail on both sides of the existing approximately 8-foot-wide public access pathway, partly in the 100-foot shoreline band.</u></p>	<p><u>A 920-square-foot public overlook collapsed in the Bay and was removed to ensure safe conditions for the general public. It was replaced with a smaller overlook, and the reduced public benefit was offset by trail repair and expansion, landscaping and surface improvements, seating amenities, exercise areas, trash receptacles, signage, which were found to result in an overall public benefit including reduced Bay fill.</u></p>
<p><u>Port of Oakland</u> <u>Permit No. 1985.019.09</u></p>	<p><u>In the Broadway Street Plaza at Jack London Square, install an 842-square-foot outdoor dining area in the Broadway Street corridor on the west side of Scott's Jack London Seafood Restaurant, partly in the 100-foot shoreline band.</u></p>	<p><u>402 square feet of the new outdoor dining area was located in a required public access area, which was offset by the requirement to provide 3,300 square feet of new public access in the mall between Franklin and Webster Streets and the removal of a light pole near the outdoor dining area that impeded the pedestrian flow of traffic.</u></p>
<p><u>Scott's Jack London Seafood Inc. and the Port of Oakland</u> <u>Permit Application</u> <u>No. 1985.019.11B</u></p>	<p><u>Installation of permanent private improvements in a dedicated public access area, resulting in a reduction of 418 square feet of public access in a 4,400-square-foot area, entirely within the shoreline band.</u></p>	<p><u>This represents a 9.5 percent loss of the pavilion public access area, offset by reconfiguring existing, and adding new, public access improvements placed in a manner that creates two seating areas and a central procession from Water Street through the Franklin Street Plaza to the Bay and of a design that will match communicating the public nature of the entire plaza, especially the pavilion.</u></p>

Two of the similar projects resulted in a decrease in the physical area of public access, which was offset by improving the remaining public access area and improvements by widening the shoreline trails and installing new landscaping, furnishings and amenities. In the third similar project, the overall area of required public access increased because the mitigation for decreasing public access close to the Bay was to provide new and a larger area of public access farther away from the Bay, preserving access to the Bay. This latter approach is much more typical than the former. However, sometimes it may be infeasible to establish a new public access area. For the proposed project, the offset should be measured by the overall qualitative result of the new public access rather than simply quantitatively. As shown, the precedent exists to find that a smaller area can be qualitatively improved.

The following special conditions will ensure that maximum feasible public access is achieved despite the installation of permanent improvements in a public access area resulting in the loss of 159 square feet of public access (259 square feet of the Port's dedicated public access area is being lost for a total loss of 418 square feet of public access between two permits).

Unless otherwise specified, the permittee must construct the pavilion enclosure system in a manner consistent with the plans cited in Special Condition II.A.4.b, Pavilion Enclosure System, and must install the public access improvements in a manner consistent with the plans cited in Special Condition II.A.4.c, Public Access Improvements. No further plan review for this project is required except as specified by Special Conditions II.A.4.c, Public Access Improvements, and II.A.4.d, Bollards, which require the permittee to submit and obtain written approval of plans in advance of installing the public chairs and tables, umbrellas, night lighting and bollards.

Special Condition II.B.5, Improvements Within the Franklin Street Public Access Area, and Special Condition II.B.6, Pavilion Furniture Layout and Storage, require the permittee, by December 15, 2017, to have completed installation of the public access proposal in the Franklin Street Plaza, as shown in the plans cited in Special Condition II.A.4.c, Public Access Improvements. The improvements that are not yet in place as required consist of one binocular, 32 tables and 69 chairs, which must match and be lightweight, 12 planters with new landscaping, and 5 trash cans, which must be repainted, four umbrellas, two trees for a total of three, and string and pavilion lighting (public and private) and reorganization of the layout of the existing and new furnishings.

Despite being directed by staff and advised by the Commission's Design Review Board to remove an unauthorized stage backdrop within the public pavilion, the permittee retained it as a component of the project proposal. The stage backdrop is designed for private events and is a physical element that is clearly unrelated to the public space. It has a privatizing effect on the public space. In keeping with the Design Review Board's direction, the stage backdrop is not included in the permit authorization and is required to be removed to ensure that the pavilion feels public

and inviting to everyone. Special Condition II.E, Remove Metal Entry Doorway, and Special Condition II.F, Remove Stage Backdrop, require the permittee, by December 15, 2017, to remove the metal entry doorway, six bollards south of the pavilion, and stage backdrop and submit written notice, such as a Notice of Completion, accompanied by photographic evidence of having done so. If desired, the permittee may install a temporary removable stage backdrop for the duration of each authorized private event.

Additionally, the Design Review Board advised the permittee to increase the transparency of the proposed panel enclosure system. In keeping with this direction, Special Condition II.B.7, Minimum Number of Pavilion Windows to Increase Over Time, requires the permittee to maintain a minimum of six windows in the pavilion, four on the south side and two on the east side and windows in the main doors on the east and west sides of the pavilion. The condition also requires the permittee, subject to BCDC staff review and approval, to increase the total number of pavilion windows at such time that the permittee replaces the moveable wall panels due to damage, wear and tear, or any other reason. Over time, the windows on the south may increase from four to six and on east side from two to four, for a total of 10 window panels. The windows in the doors on the east and west sides must be maintained at all times.

The property on which the pavilion is located is owned by the Port of Oakland and leased to Scott's. The term of the lease ends on August 31, 2041. A lease must be in place for this authorization to be valid. Therefore, Special Condition II.G, Authorization Terminates on August 31, 2014, provides that this authorization shall expire on August 31, 2041. In the event that the permittee and the Port of Oakland enter into a new lease for the subject property, or amended their current lease to extend the lease term, the permittee may apply for an amendment to this permit to extend the term of this authorization. If by May 31, 2041, Scott's fails to submit a complete application to amend the permit to extend the term of this authorization that includes a new or amended lease for the subject property (including the area where the pavilion and storage area are located), by August 31, 2041, Scott's must entirely remove all structures and improvements authorized herein and submit written evidence including photographs of having done so.

The permit has also been amended as follows. References in former Authorization Section I.A.1.a and former Special Condition II.B.2.a to a temporary banquet tent that was for a short time erected in the pavilion before the fabric panels were in use have been eliminated as they are no longer relevant.

With the elimination of the Port of Oakland from the permit, Special Condition II.B.2, Pavilion and Use, and Exhibit A have been changed to remove the requirements for: (1) Scott's to submit a quarterly calendar of scheduled events to the Port four times per year; (2) the Port to pre-approve each of these quarterly calendars of events; and (3) the Port to provide BCDC with an annual report of events that occurred in the prior year. The requirement for Scott's to secure event pre-approval was never

successful, in part, due to the nature of event scheduling, some of which are planned in advance and others of which are scheduled relatively close to the event date. This resulted in the submittal of reports by Scott's that were out of date and therefore under-represented the number of events that were occurring. As a result, neither the Port nor BCDC were aware of the number of events being held in the pavilion until some months following the end of the year. This made it impossible for either agency to have knowledge of public access violations until well after they had occurred.

The event pre-approval requirement has been replaced with a new requirement for Scott's, by December 31, 2017, to create and thereafter accurately maintain an online calendar of scheduled events, to be reviewed and approved by BCDC staff in advance of being used. The calendar must include all private events scheduled or held by Scott's and any publicly-oriented events scheduled or held by the Port of Oakland by month for the current calendar year. For scheduled events, the following information shall be provided about each event: date, name, scheduled start time, and estimated duration. After a private event has been held, the calendar shall be updated within 48 hours to add the following information for the event: the commencement time of conversion from public to private space, the event start and end times, and the time the pavilion reverted to 100% public space. The calendar must also show the total number of private events both scheduled and held for the calendar year. This requirement reflects the development of what are now very common calendaring tools that did not exist in 1997 when the authorization was granted.

Even though BCDC and the Port will have ongoing access to Scott's online calendar of events, Scott's is required, on a monthly basis, rather than on a quarterly basis, to submit a report of the past month's pavilion usage. For each private event, the report shall include the following information: date, name, start and end time, and duration, including both setup and breakdown times. The report shall also include: the number of days of private use of the pavilion for the month; the number of weekend days of private use of the pavilion for the month; and the cumulative number of days of private use of the pavilion for the year as of the last day of the month. The report shall also describe any differences between the information presented on the web-accessible calendar of events for the month and actual pavilion usage for the month. (Special Condition II.B.2.d).

The requirements of Exhibit A, Guidelines for Private Use of Public Pavilion, have been modified to define the term "day". Scott's is allowed to make private use of the pavilion up to but not exceeding 73 days per year, which are also referred to as events. A definition of "day" was absent from the permit and is now provided. "Day" shall mean any 24-hour period commencing at 12:00 a.m. and ending 24 hours later at 12:00 a.m. Any portion of any day in which the pavilion wall panels are closed or

partially closed (including for event setup or breakdown), or any event related equipment is located in the pavilion, shall be considered a day of private use of the pavilion. Scott's may hold more than one event per day, which shall be considered one day of the total 73 days.

A private use day shall be considered to have been used if Scott's takes any pavilion privatizing actions, such as by removing some or all of the required public tables, chairs and signs from the pavilion in preparation of an upcoming event, putting event related equipment in place, or partially or fully closing the wall panels.

Exhibit A, as modified, requires that private events be held only for the minimum amount of time necessary to hold the scheduled event/s, and in no case may commence set-up more than two hours prior to the event, regardless of the duration of the event. Scott's shall restore the pavilion to its public conditions (15 tables, 35 chairs, 2 signs and, at night, hanging lanterns and up lighting) as soon as possible following the termination of an event, and in no case more than two hours following its completion.

To ensure that the pavilion is available year round, Exhibit A requires the permittee to always provide a minimum of three public weekend days and nights in each month. "Weekend days" are defined as Saturday and Sunday and "weekend nights are defined as Friday and Saturday. With the inclusion of a definition for the term "day," the definition of "weekend days and "weekend nights" becomes moot. Hence, the term "weekend nights" has been removed from the Exhibit A and the definition of "weekend day" has been modified to include Friday in addition to Saturday and Sunday, without changing the use private use provisions.

Finally, pursuant to the requirements of Exhibit A, Scott's may not use the pavilion more than two consecutive days in a row.

Exhibit C, has been included to show the new public access plan in the Franklin Street Plaza in public and private modes (Sheets L.2.0 and L2.2 of the plans referred to Special Condition II.A.4, Public Access Improvements).

Despite the fact that 159 square feet of the 4,400-square-feet of originally required public access is now occupied by walls and wall panels, the permittee is not herein required to prepare a revised legal instrument. Pursuant to the requirement of Special Conditions II.B.3, Permanent Guarantee, and II.B.4, Recordation of the Instrument, on June 9, 2017, the legal instrument dedicating the 4,400-square-foot area occupied by the pavilion and executed by the Port of Oakland and BCDC's Executive Director was recorded with the Alameda County Recorder's Office as Instrument No. 2017-126136.

The references to the size of the Franklin Street Plaza have been changed from 23,000 square feet to 20,000 square feet to match the information shown on the project plans submitted with the application.

As conditioned, the Commission finds that the project is consistent with the Bay Plan policies on public access and views to the Bay and is consistent with the provisions of the McAteer-Petris Act on public access.

E. Water Quality. The construction, use and maintenance of the public pavilion authorized in corrected Amendment No. Ten (Scotts) to Permit No. 19-85(B) to this permit will not contribute to or affect water quality at the site above or beyond the existing public access uses which exist on and adjacent to the site.

EF. Public Trust. The project area was granted to the City of Oakland by the State to be used for public trust purposes. Therefore, the lands have to be administered in accordance with the trust grant. The tidal area within the Commission's jurisdiction will be used for a marina, a water-oriented use, or for improving shoreline appearance and public access. Therefore, the Commission finds that the proposed project is consistent with public trust needs.

FG. Environmental Review. On March 22, 1995, the Port of Oakland determined that the project authorized in corrected Amendment No. Eight to this permit was exempt from the requirement to prepare an environmental report on the project, citing Sections 15303 (e) and 15304 (e) of the California Environmental Quality Act (CEQA), Classes 3 and 4. On December 5, 2016, the City of Oakland Bureau of Planning Zoning Division adopted a Notice of Exemption, having made the determination that the project qualifies for review as a "small structures" categorical exemption pursuant to CEQA Section 15303, Section 21084, Article 19.

GH. Conclusion. For all of the above reasons, the benefits of the project clearly exceed the detriment of the loss of water areas and the project will provide maximum feasible public access to the Bay and its shoreline. Therefore, the project is consistent with the San Francisco Bay Plan, the McAteer-Petris Act, the Commission's Regulations, and the coastal management program for San Francisco Bay.

IV. Standard Conditions

~~A.—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 and/or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.~~

~~B.—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.—Work must be performed in the precise manner and at the precise locations indicated in your application and amendment requests, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.~~

~~D.—Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittees will be subject to the regulations of the Regional Water Quality Control Board in that region.~~

~~E.—The rights, duties, and obligations contained in this amended permit are assignable. When the permittees transfer any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittees/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 assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.~~

~~F.—Unless otherwise provided in this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer.~~

~~G.—Unless otherwise provided in this amended permit, the terms and conditions of this amended permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.~~

~~H.—Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If this amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittees or their assignee upon receiving written notification by or on behalf of the Commission to remove the fill.~~

~~I.—Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittees or their assignee if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittees or their assignee if the amended permit has been assigned.~~

~~J.—This amended permit shall not take effect unless the permittees execute the original of this amended permit and return it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.~~

~~K.—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 amended permit.~~

~~L. 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 amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.~~

~~M. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittees or their assignee if the amended 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.~~

A. **Permit Execution.** This amended permit shall not take effect unless the permittee(s) execute the original of this amended permit and return it to the Commission within ten days after the date of the issuance of the amended 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 amended permit are assignable. When the permittee(s) 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 amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

D. **Permit Runs With the Land.** Unless otherwise provided in this amended permit, the terms and conditions of this amended 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 amended permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.

F. **Built Project Must Be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.

G. Life of Authorization. Except as otherwise provided in Special Condition II.G, Authorization Terminates on August 31, 2014, this amended permit, all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended 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 amended 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 amended 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 amended 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 amended permit reflects the location of the shoreline of San Francisco Bay when the amended 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 amended 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 amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee(s) or their assignees if the amended permit has been assigned.

K. Should Permit Conditions Be Found to be Illegal or Unenforceable. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the amended permittee(s) or their assignees if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

L. Permission to Conduct Site Visit. The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

M. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee(s), its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

N. **Best Management Practices**

1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee(s), its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee(s) shall immediately retrieve and remove such material at its expense.

O. **In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.