

April 26, 2019

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Staff Recommendation for East Bay Regional Park District's BCDC Permit Application No. M2007.002.01 (Material Amendment) for the Encinal Beach Project
(For Commission consideration on May 2, 2019)

Recommendation Summary

The staff recommends approval of BCDC Permit Application No. M2007.002.01, to the East Bay Regional Park District (EBRPD). As conditioned, Material Amendment No. One will authorize the following activities within the Commission's Bay and 100-foot shoreline band jurisdictions:

- (1) **Beach.** Importation, placement, and excavation of sand on an existing beach to raise the elevation of the beach berm;
- (2) **Dunes.** Removal of vegetation and importation and placement of sand on an existing dune area, reshape dune topography, seed vegetation, and install sand and perimeter fences;
- (3) **Bank Stabilization and Debris Removal.** Removal of a deteriorated barge and miscellaneous debris, construction of an engineered rock riprap revetment and a cobble revetment; and
- (4) **Trail and Landscaping Improvements.** Repaving a trail section, replacing interpretive panels and a bench, landscaping, construction of pathways, and installation of a removable Americans with Disability Act (ADA) beach access pathway (mobi-mat).

Note on Recommendation

Because the project involves a material amendment to an existing permit, the format of the recommendation is different from recommendations for new permits. This recommendation includes language from the permit, as well as the changes included in the subject amendment. Language to be deleted from the permit has been struck through and language to be added to the amended permit has been underlined. Language that has been neither struck through nor underlined is language of the existing permit that will remain unchanged with the adoption of Material Amendment No. One.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. **Authorized Project.** Subject to the conditions stated below, the permittee, the East Bay Regional Park District, is hereby authorized to do the following at Alameda Point between Ferry Point and Alameda Park, parallel to West Hornet and Normandy Street, in the City of Alameda, Alameda County:

Location: ~~Alameda Point between Ferry Point and Alameda Park, parallel to West Hornet and Normandy Street, in the City of Alameda, Alameda County.~~

Description:

1. In the Bay:

- a. Place and grade 620 cubic yards of imported sand within an approximately 17,810-square-foot (0.41-acre) area for beach nourishment (Material Amendment No. One);
- b. Excavate approximately 300 cubic yards of existing sand over an approximately 9,300-square-foot (0.21-acre) area of the beach, and redistribute as part of the beach nourishment (Material Amendment No. One);
- c. Remove an approximately 246-square-foot portion of an approximately 896-square-foot dilapidated steel barge (Material Amendment No. One);
- d. Construct an approximately 1,900-square-foot portion of an approximately 4,450-square-foot, 200-foot-long engineered rock riprap revetment, resulting in approximately 175 cubic yards of fill in the Bay (Material Amendment No. One);
- e. Construct an approximately 815-square-foot portion of an approximately 2,350-square-foot cobble revetment, resulting in approximately 60 cubic yards of fill in the Bay (Material Amendment No. One); and

f. Remove debris (e.g., wooden logs, creosote piles, concrete, bricks, rock) within an approximately 12,325-square-foot (0.28-acre) area and dispose outside the Commission's jurisdiction (Material Amendment No. One).

2. Within the 100-foot shoreline band:

a. Place and grade approximately 1,250 cubic yards of imported sand within an approximately 9,045-square-foot (0.21-acre) area for beach nourishment (Material Amendment No. One);

b. Remove invasive ice plant, place approximately 2,000 cubic yards of imported sand over an approximately 21,000-square-foot (0.48-acre) area of dunes, reshape dune topography, and seed with native dune plants (Material Amendment No. One);

c. Install five approximately 35-foot-long, up to 3-foot-high sand fences, and seven approximately 20-foot-long, up to 3-foot-high sand fences within the dune area (Material Amendment No. One);

d. Install an approximately 791-foot-long bollard and cable fence around the perimeter of the dune area, and an approximately 491-foot-long bollard and cable fence around the native plant area (Material Amendment No. One);

e. Remove an approximately 650-square-foot portion of an approximately 896-square-foot dilapidated steel barge (Material Amendment No. One);

f. Construct an approximately 2,550-square-foot portion of an approximately 4,450-square-foot, 200-foot-long engineered rock riprap revetment, resulting in approximately 200 cubic yards of fill within the 100-foot shoreline band (Material Amendment No. One);

g. Construct an approximately 1,535-square-foot portion of an approximately 2,350-square-foot cobble revetment, resulting in approximately 90 cubic yards of fill within the 100-foot shoreline band (Material Amendment No. One);

h. Remove debris (e.g., chain link fencing, wooden logs, creosote piles, concrete, bricks, rock) within a 15,680-square-foot (0.36-acre) area and dispose outside the Commission's jurisdiction (Material Amendment No. One); and

i. Improve an approximately 2,600-foot-long section of shoreline by:
(1) installing an approximately 10-foot-wide, 2,600-foot-long path with a minimum one-foot-wide shoulder on both sides of the trail, and repaving an approximately 220-foot-long segment of the path; (2) installing replacing public shore improvements, including benches, shore signs, and trash receptacles; (3) installing bollards and wood fences at both the east and west trail access points; (4) removing eleven metal bollards, three concrete barriers, an approximately 250-foot-long section of existing concrete

sidewalk, and an approximately 635-foot-long, chain link fence; (5) removing and planting trees, seeding native vegetation, and installing irrigation; (6) constructing two decomposed granite pathways; and (7) installing a removable, accessible beach pathway (mobi-mat) (Material Amendment No. One). ~~and (5) conducting on-going, in-kind repair and maintenance of these improvements as long as this permit remains in effect.~~

3. In the Bay and Within the 100-foot Shoreline Band:

- a. Conduct ongoing, in-kind repair and maintenance of the authorized improvements as long as this permit remains in effect (Material Amendment No. One).
- B. **Authorization Basis.** This amended authority is generally pursuant to and limited by your original application dated January 25, 2007, and your request for Material Amendment No. One dated October 17, 2017, including its all accompanying and subsequently submitted correspondence and exhibits and all conditions of this amended permit.
- C. **Deadlines for Commencing and Completing Authorized Work.** Work authorized in the original permit herein must was to commence prior to July 1, 2009, or this the original permit will was to lapse and become null and void. Such work must was also to be diligently pursued to completion and must be completed within three years of commencement, or by July 1, 2012, whichever is was earlier, unless an extension of time is was granted by further amendment of the permit.
- The project authorized in Material Amendment No. One must commence prior to December 31, 2020, or this amended permit will lapse and become null and void. Such work must be diligently pursued to completion within two years of commencement, or no later than December 31, 2022, unless an extension of time is granted by a further amendment of this amended permit.
- D. **Project Summary.** The original permit authorized the installation of a shoreline path, benches, signage, trash receptacles, bollards, and fences at the subject site. As part of the original permit, an approximately 31,200-square-foot area along 2,600 feet of shoreline was required as public access.
1. **Material Amendment No. One.** Material Amendment No. One involves the importation, placement, and excavation of sand for beach nourishment and dune sand replenishment; removal of a derelict barge and miscellaneous debris; installation of riprap and cobble for bank stabilization; and public access improvements.
 - a. **Bay Fill.** Material Amendment No. One results in the placement of approximately 855 cubic yards and 20,525 square feet of new Bay fill and the removal of approximately 350 cubic yards of Bay fill scattered over an approximately 12,325-square-foot area. This fill is associated with the placement of beach sand and bank stabilization (cobble and riprap) and with the removal of a deteriorated barge whose removal will destabilize the bank and

other miscellaneous debris. The project also involves the removal of approximately 300 cubic yards and 9,300 square feet of sand and its redistribution on the beach berm. In total, the project will result in a net increase in Bay fill of approximately 505 cubic yards and, at minimum, 8,200 square feet. The net square footage of fill placed may be higher than 8,200 square feet as the debris removal will be scattered.

- b. **Public Access.** Material Amendment No. One results in improvements to portions of the 31,200 square feet of public access at the site under the original permit but will not increase the total area of public access. The project will import, excavate, and place beach sand to improve existing public access at the beach. The existing dune area will be converted from unrestricted public access to an educational demonstration dune habitat with interpretive signage. The project will also include trail and landscaping improvements for public access, including repaving a section of the Alameda Point Trail, replacing interpretive panels and a bench, removing and planting trees, seeding native vegetation adjacent to the trail, installing irrigation, and constructing two decomposed granite pathways leading to the boat launch site and public access improvements on the adjacent City of Alameda property.

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. **Construction Documents.** The project authorized herein shall be built generally in conformance with the following documents:
 - a. **Original Project.** The final plans submitted pursuant to this condition shall generally conform with the plan entitled "Alameda Point- SF Bay Trial Section;" prepared by East Bay Regional Park District, as revised through April 20, 2007. Final plans for the shoreline protection improvements shall be prepared and submitted for BCDC review as described below. No changes to the design of the project shall be made without the prior written approval of the BCDC staff.
 - b. **Material Amendment No. One**
 - (1) The plan set titled "Encinal Dune Restoration and Shoreline Stabilization Project Landscape Plans," prepared by WRA Environmental Consultants and dated March 5, 2019;
 - (2) The plan titled "Shoreline Demolition Plan," prepared by Moffatt & Nichol and dated March 5, 2019;

- (3) The plan titled "Beach Restoration Layout & Section," prepared by Moffatt & Nichol and dated March 5, 2019; and
- (4) The schematic plan titled "Encinal Dune Restoration and Shoreline Stabilization Project: Part 3, Figure 2, Schematic Plan & BCDC Jurisdiction," prepared by WRA Environmental Consultants and dated January 9, 2019.

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

2. **Plan Review.** No work whatsoever shall be commenced pursuant to this the original permit authorization until final precise site, grading, architectural, and landscaping plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by the staff. All documents are reviewed within 45 days of receipt. To save time, preliminary drawings should be submitted and approved prior to final drawings. If final construction document review is not completed by or on behalf of the Commission within the 45-day period, the permittee may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A. of this amended permit (Material Amendment No. One).

The documents referenced in Special Conditions II.A.1.b.(1), II.A.1.b.(2), and II.A.1.b.(3), for work associated with Material Amendment No. One were submitted as signed and stamped final plans, and do not require plan review subject to this Special Condition prior to construction. Should the design of the authorized work change for these items, new plans shall be submitted and shall be subject to plan review pursuant to this Special Condition and, if changes are significant from the work authorized herein, may require an amendment to this amended permit. Within three months following completion of construction for the work associated with Material Amendment No. One, the permittee shall submit as-built plans for review and approval (Material Amendment No. One).

- a. **Site, Architectural, Grading and Landscaping Plans.** All construction documents shall be labeled with: the Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); the corresponding 100-foot shoreline band; property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas

and view corridor(s) required herein. Documents for shoreline protection projects must be dated and include the preparer's certification of project safety and contact information. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment (Material Amendment No. One).

~~Site, architectural, grading, and landscaping plans shall include and clearly label the shoreline (Mean High Water Line or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if tidal marsh is present), the line 100 feet inland of the line of the shoreline, 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. In addition to the information listed above, provide the following information:~~

- ~~(1) The site plan shall provide a dimension line which marks the minimum distance between a proposed structure authorized by this permit and the Mean High Water Line (or, if marsh is present, the line 5 feet above mean sea level NGVD (National Geodetic Vertical Datum)). Additional dimension lines shall be provided, as necessary, to locate where this minimum dimension occurs in relation to either the property line, the top of bank, or some other fixed point upon the site.~~
3. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.
4. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.

5. **Reconsideration of Plan Review.** The permittee may request reconsideration of a plan review action within 30 days of a completed plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the amended permit and/or consultation with the Commission Design Review Board (Material Amendment No. One).

B. Public Access

1. **Area.** The approximately 31,200-square-foot area, along approximately 2,600 feet of shoreline as generally shown on Exhibit "A" shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes, except as defined below in Special Condition II.B.5. If the permittee wishes to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission. The overall ~~proposal for~~ public access for this project includes: ~~New public access in the shoreline band:~~ 31,200 square feet of new public access in the shoreline band.

2. **Improvements Within the Total Public Access Area**

- a. **Original Permit.** ~~Prior to the use of any structure authorized herein, t~~The permittee shall install the following improvements, as generally shown on attached Exhibit A:

- (a1) A 10-foot-wide path along the entire 2,600-foot shoreline, which would connect to an existing parking lot at the ~~East~~ east end of the site;
- (b2) Seating located along the shoreline with approximately ten benches; and;
- (c3) No fewer than two public access signs and, when appropriate, Bay Trail signs, one at the beginning of each path on the site.

Such improvements shall be consistent with the plans approved pursuant to Condition II-A of this authorization (and substantially conform to the plans entitled "Alameda Point- SF Bay Trail Section", dated April 20, 2007, prepared by East Bay Regional Park District).

- b. **Material Amendment No. One.** Prior to project completion, the permittee shall install the following improvements:

- (1) Two decomposed granite pathways connecting the project site with the adjacent City of Alameda site;
- (2) A removable, accessible beach pathway ("mobi-mat"); and

- (3) Public shore and interpretive signage - replacing existing signage and installing additional signage as appropriate (Material Amendment No. One).
3. **Signage Plan.** Prior to commencement of construction, the permittee shall submit for review and approval by or on behalf of the Commission a public access signage plan, which shall include a description of type, size, language, and location to be included on any public signage required in Special Conditions II.B.2.b and II.B.5. The signage plan shall be reviewed through the plan review process established in Special Condition II.A above. All signs shall be placed at the project site upon completion of the project authorized herein (Material Amendment No. One).
4. **Temporary Access Closure.** The permittee may temporarily close a public beach, a portion of a public trail, and up to 50 spaces of a public parking area during construction activities authorized by this amended permit. The duration of closure for construction activities shall be minimized and shall not exceed 90 days total, unless an extension of time is granted by or on behalf of the Commission. Signs shall be posted at least two weeks prior to the closure indicating the length of the closure and project contact information for public questions (Material Amendment No. One).
5. **Demonstration Dune Area.** The approximately 21,000-square-foot (0.48-acre) dune area may be surrounded by a low bollard and cable fence that limits physical public access onto the dunes during dune vegetation establishment and for as long as the dunes are maintained, vegetated, and adequately function as a demonstration dune habitat. If the dunes cease to be maintained, dune vegetation does not establish within a period of five years, or the dune area otherwise ceases to adequately function as a demonstration dune habitat, the permittee shall remove the bollard and cable fence and allow for unrestricted public access within the dune area. While the demonstration dune habitat is in place, visual access to the dune area shall be maintained, and the permittee shall install and maintain appropriate interpretive signage to educate the public (e.g., on dune ecosystems and wildlife) (Material Amendment No. One).
36. **Maintenance.** The areas and improvements within the total 31,200-square-foot area shall be permanently maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assuring that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site.

4. ~~**Assignment.** The permittee shall transfer maintenance responsibility to a public agency or another party acceptable to the Commission at such time as the property transfers to a new party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.~~
- €7. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittee has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
- Đ8. **Future Public Access Connection to Neighboring Parcel** The permittee shall enable the construction of a future public access connection between its property and the neighboring parcel(s) to the east and west to facilitate the completion of the Bay Trail/shoreline path. Within one year of commencement of construction of any shoreline public access area on the neighboring parcel(s), the permittee shall install improvements to create a physical connection to the new public access areas from the public access areas required herein. At such time, the permittee shall reasonably coordinate the design, construction, and maintenance with the permittee of the adjacent parcel(s) to create a continuous and seamless transition between the public access areas, including landscaping. The exact manner in which the connection is made shall be reviewed, and if adequate, approved by or on behalf of the Commission pursuant to Special Condition II-A.
- C. **Protection of Bay Resources.** The permittee shall reduce impacts to water quality, fish, wildlife, and habitat at the site by implementing the following measures. Minor modifications to the below requirements may be approved by the Executive Director upon a finding that they are no less protective of Bay resources (Material Amendment No. One).
1. **Work Window.** In-water work shall only occur between June 1 and October 31 of each year. Beach sand placement and excavation shall occur as late in this work window as feasible to minimize impacts to existing invertebrate communities (Material Amendment No. One).
 2. **Water Quality Protection.** The permittee shall implement Best Management Practices and measures to protect water quality during construction of the authorized project, including the following measures, and shall conduct work consistent with the RWQCB Water Quality Certification issued on February 28, 2019 (Material Amendment No. One).

- a. Creosote-contaminated debris and sediment shall be watered prior to removal, carefully handled to prevent air-borne debris, covered and contained in trucks prior to disposal at a landfill licensed to handle possible creosote-contaminated waste;
- b. In-water work shall be conducted at low tide;
- c. No fueling, cleaning, maintenance, or storage of vehicles or equipment shall take place within or immediately adjacent to the Bay, or within areas where accidental discharge of pollutants to the Bay may occur; and
- d. Erosion control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw) shall be installed prior to likely rain events and in areas where bare, fine-grained soil is exposed during the rainy season.

3. **Barge and Debris Removal.** Prior to completion of the authorized project, the permittee shall remove the approximately 896-square-foot dilapidated steel barge substructure to the greatest extent feasible and shall fully remove the scattered debris (Material Amendment No. One).

D. **Bank Stabilization.** Riprap material used for bank stabilization shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U.S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited. Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical) unless slope is keyed at the toe. The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site (Material Amendment No. One).

Cobble material used for bank stabilization shall be quarry rock or river stone free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U.S. Army Corps of Engineers. The material shall be generally spheroid-shaped. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as cobble is prohibited. Cobble material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than three (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer or bedding material protected by cobble material of sufficient size to withstand wind and wave generated forces at the site (Material Amendment No. One).

The bank stabilization improvements (riprap and cobble) authorized herein shall be regularly maintained by and, at the expense of, the permittee, lessee, assignee or other successor in interest to the project. Maintenance shall include the collection of riprap or cobble material that becomes dislodged, the in-kind replacement of damaged or missing riprap or cobble material and associated filter fabric or other material, and the removal of debris on riprap or cobble. Within 30 days of notification by or on behalf of the Commission, the permittee or any successor in interest shall correct any identified maintenance deficiency (Material Amendment No. One).

- E. **Cobble and Sand Interface.** The permittee shall monitor the condition of the sand placement at the cobble interface as it relates to downslope movement of sand and maintenance requirements. No earlier than two years following completion of the project authorized under Material Amendment No. One, the permittee may submit a report and request for modification of the slope summarizing the sand monitoring results, any maintenance actions that have been taken or that are needed, and proposed modification to this area (Material Amendment No. One).

Upon determination and approval by the Commission's Executive Director that there has been substantial downslope movement of sand that necessitates a change in design, the permittee shall request plan review of the revised design consistent with Special Condition II.A. Once plans have been reviewed and approved on behalf of the Commission, the permittee shall undertake and complete the approved remedy (Material Amendment No. One).

- F. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.
- ~~G. **Debris Removal.** All construction debris shall be removed to a location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.~~
- HG. **Recording.** The permittee shall record this document or a notice specifically referring to this document on all parcels affected by this document with Alameda County within 30 days after execution of the amended permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.
- ~~I. **Site Access.** The permittee grants 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/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.~~

H. **Notice to Contractor.** The permittee(s) shall provide a copy of this permit to any contractor or person working in concert with the permittee(s) to carry out the activities authorized herein and shall point out the special conditions contained herein (Material Amendment No. One).

III. Findings and Declarations

On behalf of the Commission, I find and declare that:

A. **Authorized Improvements**

1. **Original Project.** The project authorized by this the original permit involves the improvement of a 31,200-square-foot area, along a 2,600-foot-long section of shoreline, for a pedestrian walkway, the removal of debris, a sidewalk, and chain link fencing characterized as the placement of small amounts of inorganic fill, the extraction of small amounts of materials, and maintenance and repair of the public access area authorized herein that will not adversely affect public access or the environment, conflict with a priority use designation, or substantially change use of the site, thereby qualifying as a “minor repair or improvement” under Regulation Sections 10601(b)(1) and 10601(b)(5), for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).
2. **Material Amendment No. One.** The project authorized by Material Amendment No. One involves beach and sand dune nourishment, derelict barge removal and bank stabilization, and public access improvements.
 - a. **Bay Fill.** The Commission may allow fill only when it meets the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that: (a) fill “should be authorized only when public benefits from fill clearly exceed public detriment from the loss of water areas” and fill “should be limited to water-oriented uses (such as water-oriented recreation or public assembly)” or “minor fill for improving shoreline appearance and public access;” (b) fill in the Bay should be approved only when “no alternative upland location” is available; (c) fill should be “the minimum amount necessary to achieve the purpose of the fill;” (d) “the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment;” and (e) “fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.”
 - (1) **Authorized Fill.** The project involves new Bay fill through the placement of beach sand and materials for shoreline stabilization (cobble and riprap) and the removal of fill through the removal of a deteriorated barge and debris. In total, the project will result in a net increase in Bay fill of

approximately 500 cubic yards and, at minimum, over a 8,200-square-foot area. The net square footage of fill placed may be higher than 8,200 square feet as the volume and acreage of debris removal is estimated due to its scattered nature and therefore may be less than anticipated.

(a) **Beach Sand Placement and Excavation.** The project will involve the placement of approximately 620 cubic yards of medium-grain (approximately 0.8 mm) sand over a 17,810-square-foot area of the beach foreshore in the Bay and approximately 1,250 cubic yards of sand over a 9,045-square-foot area of the beach in the 100-foot shoreline band, on the existing beach. The sand layer will be approximately 12 inches thick and be placed over the beach at a steeper slope on the water's edge (7H:1V) than currently exists to create a wider beach during high-tide conditions, and to provide increased protection from storms for the adjacent dune area. The beach will be wider during high tides at the north end, near the shoreline trail, and will narrow towards the south end of the beach. The sand depth and slope are designed to allow for stability of the new slope, to both support and maintain the wider beach berm.

Additionally, to create the new beach slope, approximately 9,300 square feet (300 cubic yards) of existing sand will be excavated along the subtidal edge of the beach creating a trench. The trench creates an area to "key in" the toe of the new slope, much like that of levee construction. During placement of the coarser imported sand, the trench will be filled in, creating a more stable base to the newly created steeper beach slope. The excavated existing sand will be redistributed on the upper portion of the slope, below the 12-inch-thick layer of new sand.

(b) **Fill Removal and Bank Stabilization.** The project will involve the removal of a 896-square-foot dilapidated barge that is embedded in the bank adjacent to the beach, including a 246-square-foot section in the Bay and a 650-square-foot section within the 100-foot shoreline band, and the removal of scattered debris and rocks over an approximately 12,325-square-foot area. The barge and debris are part of the stable shoreline. Their removal will destabilize the shoreline in this location and therefore, the permittee has included measures to stabilize it as they are removed. The barge is currently a public safety hazard due to its rusty and decaying state.

In stabilizing the bank and connecting it to the new beach slope, the proposed project will involve the placement of approximately 175 cubic yards of riprap over a 1,900-square-foot area of intertidal and subtidal Bay, and 200 cubic yards of riprap over a 2,550-square-foot area within the 100-foot shoreline band. The transition between the

riprap and the beach sand will involve the placement of approximately 60 cubic yards of cobble over a 815-square-foot area in the Bay, and 90 cubic yards of cobble within a 1,535-square-foot area of the 100-foot shoreline band.

- (2) **Public Benefit v. Detriment and Water-Oriented Use.** The imported sand for placement on the beach and the redistribution of excavated sand will provide for enhanced water-oriented recreational use at the site through the creation and maintenance of a larger area of dry sand for the public use during high tide and future near term sea level conditions, and by providing additional protection for the public access area on the adjacent dunes that is required in the original permit. The proposed riprap and cobble will stabilize the shoreline after the removal of the barge and debris, which will also provide erosion protection for the existing public trail. As the purpose of the riprap and cobble is to provide bank stabilization for an existing shoreline reach, the fill will be for a water-oriented use.

Therefore, the Commission finds that the public benefit of the project exceeds the public detriment from the fill placed for beach nourishment and shoreline stabilization, and that the fill authorized is for a water-oriented use.

- (3) **Alternative Upland Location.** The Bay fill from the placement and excavation of sand will steepen and widen an existing sandy beach. As beaches by their nature are located intertidally, and the purpose of the sand placement is to improve water-oriented recreational use of the beach, no upland alternative is possible nor available. The purpose of the Bay fill from the placement of riprap and cobble will be to provide bank stabilization for an existing shoreline reach, and thus no alternative upland location is possible nor available.

Therefore, the Commission finds that there is no alternative upland location for the project that would avoid the need to fill the Bay while achieving the purpose of the fill.

- (4) **Minimum Amount Necessary.** The project will result in the placement of approximately 855 cubic yards of new Bay fill over a 20,525-square-foot area, associated with the placement of beach sand and materials for bank stabilization (cobble and riprap). The project will also involve the removal and replacement of approximately 300 cubic yards of Bay fill over a 9,300-square-foot area, through sand excavation and redistribution associated with beach sand placement.

The fill associated with the beach is intended to increase the width of the beach to provide recreational opportunities under high tide conditions. The area of new sand placement is determined by the desired area of the

expanded beach, and the purpose of providing a wider beach berm along the entirety of the beach. The volume of sand is designed to cover the existing beach with a layer of sand that is both thick enough and at a steep enough slope to maintain the wider beach. The permittee indicates that the 12-inch-thick layer of sand is necessary for slope stability.

The fill associated with the placement of cobble and riprap is intended for bank stabilization. The riprap would be placed in the steepest reach of shoreline, where the wave energy would be greater and shoreline stabilization would be needed to prevent potential erosion. The permittee notes that this is “consistent with existing riprap treatments located along the shoreline west of the Project site.” The riprap will then transition to cobble at a shallower slope as it approaches the beach.

Staff explored with the permittee in depth whether the fill for the riprap and cobble represented the minimum amount necessary for the purpose of shoreline stabilization and whether non-structural alternatives might be more in keeping with the nature of a beach, as the project site is relatively protected from wave energy due to the jetty. The permittee indicated that the riprap will be placed in an area close to an existing public trail, and is appropriate for that location both due to site steepness and space constraints, as it would not be feasible to relocate the public trail. Other alternatives to riprap in this location would require substantially more Bay fill than the proposed riprap. The Commission staff indicated that a more natural shoreline would be preferred, understanding that additional fill would be needed. The permittee declined to refine the shoreline design to provide a more natural transition from the shore to the water in this area. They were, however, willing to include cobble to provide for a softer transition between the riprap and the beach sand in an area that allows for a slightly shallower slope while adequately stabilizing the shoreline. Special Condition II.D includes requirements for the design of the riprap and cobble, to ensure that the bank stabilization is constructed consistent with the application and is the minimum fill necessary for this work.

Therefore, the Commission finds that the authorized fill is the minimum necessary to achieve the purpose of the fill.

(5) Effects on Bay Resources. In addition to Section 66605(d) of the McAteer-Petris Act regarding the impacts of fill on Bay resources, the Bay Plan contains related policies, cited below.

(a) Fish and Wildlife. The Bay Plan Fish, Other Aquatic Organisms and Wildlife Policy No. 4 states, in part, that “[t]he Commission should consult with the California Department of Fish and [Wildlife] and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service

whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species...and give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat.” The Bay Plan Fish, Other Aquatic Organisms and Wildlife policies also state, in part, that “[t]o assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay’s tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased.”

- i. **National Marine Fisheries Service.** On December 13, 2017, the National Marine Fisheries Service (NMFS) issued a concurrence letter that determined that the project is not likely to adversely affect listed salmon or green sturgeon. The project includes measures to minimize impacts to Bay resources, including conducting work between June 15 to October 31 to avoid impacts to listed salmonid species in San Francisco Bay and limiting in-water work to low tide. NMFS also determined that the project “would adversely affect EFH [Essential Fish Habitat] designated under the [Magnuson Stevens Fishery Conservation and Management Act, Pacific Groundfish Management Plan]; however, adverse effects are minimal in nature and, once the project is complete, EFH will benefit from restoration of the sand beach and rocky shore. Therefore, NMFS has no practical EFH [c]onservation [r]ecommendations to provide to avoid or reduce the magnitude of these effects.” During sand and riprap placement, the project may affect water quality and may bury benthic organisms, but these effects are anticipated to be temporary.
- ii. **Biological Impacts of Sand Placement and Excavation.** The placement and excavation of sand will have impacts to invertebrate communities within the existing beach and intertidal area through burying, crushing, or smothering invertebrates with sand or by using construction equipment. The application indicated that, as the sand to be placed on the beach is relatively shallow, some invertebrates are expected to “survive and burrow through the new sand, especially along the leading edge of beach fill where [sand] depths are shallow.” The permittee further states that “[r]eported recovery rates for invertebrates range from weeks to less than a year, with recovery beginning almost immediately after cessation of construction activities. The duration for complete recovery may vary depending on sediment characteristics and seasonal considerations. Recovery rates are generally

fastest for benthic invertebrates and slowest for vegetated habitats. Most monitoring studies have demonstrated sandy beach invertebrate recovery rates on the order of months after beach nourishment.” The application also noted that the project incorporates measures to minimize impacts to invertebrates by conducting construction activities in late summer and fall, which corresponds to a seasonal decrease in invertebrate abundance. The application stated that “[i]nvertebrate abundance on a beach varies seasonally, with increasing development from spring to summer and decreasing from late summer through winter.”

Staff found in discussions with U.S. Geological Survey Ecological Field Station personnel that the benthic maximum for much of the Bay is summer and fall, with species numbers decreasing into the winter season. With construction planned during the fall, there may be impacts to invertebrates and associated feeding shorebirds. Scheduling the beach work in late fall may minimize the impacts. Further, the area is expected to recolonize over time by invertebrate communities, with worm species in the intertidal zone colonizing first, and fairly rapidly, and with other species such as clams and less mobile species colonizing later. Previous beach nourishment projects have found that supra tidal invertebrates with high mobility recolonize nourishment sites over a varying period of time. Full recolonization of the complete invertebrate community will likely occur within 2-3 years. Habitat conversion is not anticipated to occur as part of the project, as the sand will be placed only over areas with existing sand.

- iii. **Sand Grain Size.** The beach sand proposed for placement (approximately 0.8 mm) is coarser than the existing beach sand, which is medium- (0.5 to 0.8 mm) to fine- (0.125 to 0.25 mm) grained. The permittee indicates that the coarser sand is necessary to construct the proposed steeper 7H:1V beach slope, allowing for the creation of a wider beach with a larger area that is dry during high tides. The application stated that “[t]he grain size was selected primarily because it will provide a stable beach slope and won’t be substantially eroded by waves, blown onto the dune, or require on-going maintenance.”

Staff discussed with the permittee that according to their analysis, the beach is not currently eroding, and the possibility that the dunes (discussed in Findings Section III.b.(1).(a) below) may not persist over time due to the placement of coarse-grained sand on the beach, which will prevent transport of finer-grained Aeolian sand onto the dunes. The permittee indicated that transport of

sand from the beach to the dunes does not occur on a large scale under current conditions. This raises the issue that the dunes as designed may not persist over time, and may need to be augmented by additional sand over time. Additionally, while the dunes will provide minor habitat value, they are located within the 100-foot shoreline band with no connectivity to adjacent habitat and are primarily anticipated to serve as an educational public access feature.

iv. Biological Impacts of Shoreline Stabilization and Debris Removal.

The portions of the shoreline stabilization work that will take place in the Bay could have impacts to invertebrate communities, as biological impacts could include burial of benthic organisms during placement of riprap and cobble. However, the current shoreline in this area consists of a dilapidated barge and scattered debris, providing little or no habitat. Removal of the barge and associated debris and filling the area with riprap is also not anticipated to have much habitat value. Biological impacts associated with riprap and cobble placement are anticipated to be minimal with measures incorporated to protect fish, wildlife, and water quality, as would also be implemented for the placement of sand on the beach. These measures include conducting in-water work during low tides and during specified environmental work windows. The removal of the barge and debris is expected to provide some benefits to habitat quality, particularly in the area where cobble is used to transition between the riprap and sandy beach.

(b) Water Quality. The Bay Plan Water Quality policies state, in part, that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board’s (RWQCB) Basin Plan...[and] the policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board and the Regional Board should be the basis for carrying out the Commission’s water quality responsibilities.” Policy No. 3 states, in part, that “[n]ew projects should be sited, designed, constructed, and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay...”

The project may have impacts to water quality during project construction, including increased turbidity during removal of the barge and debris, and placement of sand, riprap, and cobble. These impacts are expected to be temporary as the sand and soil settle to the Bay bottom. The San Francisco Bay Regional Water Quality

Control Board (RWQCB) issued a Water Quality Certification for the proposed project on February 28, 2019. The Water Quality Certification determined that the project would impact 0.62 acres of waters of the State, but would have a net benefit to habitat quality through the removal of debris and increased resiliency of the beach to sea level rise. The Water Quality Certification requires measures to protect water quality and limits in-water work to the period of June 1 to November 30.

Special Condition II.C is included to ensure that the permittee implements measures to protect Bay resources and water quality during construction, and that removal of fill be conducted to provide habitat benefits. Special Condition II.C.1 requires that in-water work be limited to the work window of June 1 to October 31, to minimize impacts to listed species consistent with the NMFS approval, and that beach sand placement and excavation occur as late in this work window as feasible to minimize impacts to invertebrate communities on the existing beach. Special Condition II.C.2 is included to ensure that the permittee implements Best Management Practices and measures to protect water quality and is consistent with the RWQCB Water Quality Certification for the project. These measures include appropriate handling of creosote-contaminated debris and sediment; conducting in-water work at low tide; not fueling, cleaning, maintaining or storing vehicles or equipment within or immediately adjacent to the Bay or within areas where accidental discharge of pollutants to the Bay may occur; and installation of erosion control measures. Special Condition II.C.3 is included to ensure that removal of fill, including the barge and debris, is conducted prior to project completion, to provide benefits to habitat quality at the site.

Therefore, the Commission finds that the project, as conditioned, is consistent with the Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife, and Water Quality.

- (6) **Valid Title.** East Bay Regional Park District leases the project site from the City of Alameda, and thus the permittee has valid title to the property where fill is proposed.

Therefore, the Commission finds that the project, as conditioned, is consistent with the McAteer-Petris Act sections and relevant San Francisco Bay Plan policies regarding fill in the Bay.

- b. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states, in part, that "...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." In addition, the Bay Plan Public

Access policies state, in part, that “a proposed fill project should increase public access to the Bay to the maximum extent feasible...” and that “access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available.” The Bay Plan Public Access policies further state, in part, that “[p]ublic access improvements provided as a condition of any approval should be consistent with the project and the physical environment, including protection of Bay natural resources, such as aquatic life, wildlife and plant communities, and provide for the public’s safety and convenience” and that “improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline...”

(1) Public Access. The project will result in improvements to portions of the 31,200-square-foot public access area at the site, but will not increase the total area of public access. The beach sand placement will provide enhanced public access on the existing beach, as discussed above under Bay Fill. In addition to the beach sand placement, the project will involve the following components related to public access:

(a) Dune Sand Replenishment. The project will involve the placement of approximately 2,000 cubic yards of fine-grained sand over a 21,000-square-foot area and within the 100-foot shoreline band in the existing dune area. The sand will be sculpted to create dune topography and will be seeded with native plant species. Thirteen up to 3-foot-high sand fences will be installed within the dune area, which are intended to maintain the reshaped dune structure and prevent sand loss due to wind erosion. A bollard and cable fence will be installed around the dune area, and interpretive signage will also be installed.

The original permit required that the dune area be made available to the public for unrestricted public access. The dune area is currently used by members of the public for sitting, picnicking, and other recreational activities. While the permittee indicates that the native plant species to be planted in the dune area will provide benefits to common birds and wildlife, potentially including monarch butterflies, the dune area is small, heavily trafficked, and without connectivity to similar habitat. Therefore, the dune area is expected to function as a demonstration dune habitat, akin to a garden, with the provision of educational opportunities for the public rather than providing substantial habitat benefits.

Special Condition II.B.5 allows for use of the dune area as a demonstration dune habitat, rather than as unrestricted public access, surrounded by a low bollard and cable fence that limits physical public access into the area. To ensure that the dune area provides public access benefits into the future, Special Condition II.B.5 requires that if the dunes cease to be maintained, vegetated, or otherwise no longer adequately function as a demonstration dune habitat, the permittee shall remove the fencing and allow for unrestricted public access into the dune area. Special Condition II.B.5 further requires that, while the demonstration dune area is in place, visual access be maintained to the dunes and that interpretive signage be provided. This is necessary to ensure that the dune area provides public access benefits. While the dune area will be physically closed to the public, diminishing public access from the unrestricted access currently available, the demonstration dune habitat – as conditioned – will provide for an educational public experience that complements the public’s use of the beach.

- (b) Trail and Landscaping Improvements.** The project will involve trail and landscaping improvements for public access purposes, including repaving an approximately 220-foot-long section of the Alameda Point Trail; constructing two decomposed granite pathways leading to the adjacent boat launch site; seeding native vegetation adjacent to the trails; replacing interpretive panels and a bench; removing and planting trees; and installing irrigation. A removable, accessible beach pathway known as a “mobi-mat” will also be installed on the beach, to provide ADA-accessible beach access from the edge of the trail to the high tide line. All of these activities will take place within the 100-foot shoreline band.

The trail and landscaping improvements will provide additional connections between Encinal Beach and the adjacent City of Alameda boat launch site, and will update and enhance the public amenities currently available at the Encinal Beach site, serving a variety of users.

Special Condition II.B.1.b requires construction of the two decomposed granite pathways, installation of the “mobi-mat,” and replacement and addition of signage as needed, to ensure that the project provides public access improvements at the site that are consistent with the application. The shoreline trail and benches on the site are required as public access amenities under the original permit.

(c) **Cobble and Sand Interface.** The project involves the placement of riprap to stabilize the bank after removal of the barge, and the placement of cobble to the south of the riprap, transitioning to beach sand. To provide for greater public access benefits, beach sand will be placed over a triangular area at the eastern edge of the cobble, which was proposed for additional cobble placement in the original design. This area of sand will be aligned with the public access path leading down to the shoreline trail from the parking lot, and will allow for more direct visual and physical public access to the beach area from the parking area northeast of the beach. This area of sand will be constructed at an approximately 6.5:1 slope. The permittee indicates that maintenance may be needed over time due to potential downslope movement of sand.

Special Condition II.E is therefore included to allow for the permittee to address future maintenance needs at the cobble and sand interface through the placement of additional cobble or other treatments if needed, while prioritizing the placement and continued use of sand in this area for its public access benefits. Special Condition II.E requires that the permittee monitor the condition of the sand placement at the cobble interface as it relates to downslope movement of sand and maintenance requirements. Special Condition II.E allows for the permittee to submit a sand monitoring report for approval by or on behalf of the Commission no sooner than two years following project completion. Upon determination and approval by the Commission's Executive Director that there has been substantial downslope movement of sand that necessitates a change in design, Special Condition II.E then allows for the approval of a revised design through the plan review process, and requires the permittee to implement the approved remedy.

(2) **Impacts to Existing Public Access During Construction.** During construction, approximately 50 out of 100 parking spaces of the public parking lot adjacent to the site will be used for construction staging. The application stated that "[t]he duration of the closure and the size of the construction area would be refined during construction and minimized to the extent feasible. The number of parking spaces remaining available would be sufficient to accommodate users of nearby amenities and facilities, such as the Encinal Boat Ramp, the Alameda Community Sailing Center, and trail users."

Special Condition II.B.4 is included to ensure that impacts to existing public access during construction are minimized, requires that closures not exceed 90 days, and that onsite signs be provided at least two weeks prior to closure to notify the public.

- (3) **Barrier-Free Access.** Bay Plan Public Access Policy No. 7 states, in part: “Public access improvements provided as a condition of any approval... should permit barrier free access for persons with disabilities to the maximum feasible extent...”

The repaved shoreline trail and additional decomposed granite trails will be universally accessible. The installation of the removable, accessible beach pathway (“mobi-mat”) will create barrier-free beach access from the shoreline trail to just above the high tide line. Special Condition II.B.2.b requires construction of the decomposed granite pathways and installation of the mobi-mat, to ensure that these new public access improvements are provided consistent with the application and will create additional barrier-free access at the site.

- (4) **Operations and Maintenance.** Bay Plan Public Access Policy No. 7 states, in part: “Public access improvements provided as a condition of any approval...should include an ongoing maintenance program.”

The permittee, East Bay Regional Park District, will operate and maintain the public access improvements at the site. The dune area may be subject to continued wind erosion and potentially wave erosion in extreme storm events. As a result, the dune sand has the potential to be blown onto an adjacent public path leading to the jetty on City of Alameda property, which is required public access at the adjacent site (BCDC Permit No. 1979.032.02). The permittee indicates that the sand fences and dune vegetation will help to stabilize the dune sand and minimize loss of sand. The application also stated that, “[i]n the event that sand is blown onto the adjacent path leading to the jetty, District and City staff would coordinate as needed to assess the extent to which this occurs, and determine an appropriate schedule for sweeping the sand back into the restoration area, or devising another solution to ensure continued, unimpeded access along the path.” If the dune sand is lost to wind erosion at a greater rate than expected, the dune area could continue to provide public access, as Special Condition II.B.5 requires that the perimeter bollard and cable fence be removed and the dune area be made available for unrestricted public access if it ceases to function as a demonstration dune habitat. This access would be similar to the unrestricted public access provided under current conditions in the flattened dune area.

- (5) **Sea Level Rise and Flooding.** The Bay Plan Public Access Policy No. 5 states that “public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.”

The project as it relates to the beach and dune nourishment has a design life of 25 years, or through approximately 2045. The berm of the beach will be widened and raised through the placement of sand to an elevation of +10' NAVD88. Based on the 2018 State of California Sea Level Rise Guidance from the Ocean Protection Council and Natural Resources Agency, which represents the best available science for the region, 1.9 feet of sea level rise is anticipated to occur by 2050 under a high-emissions scenario. With these projections, the berm of the beach is anticipated to experience flooding during 2-year or greater storm events, but would remain dry during King Tides (1-year storm events). The raised elevation of the berm will provide greater protection from sea level rise and flooding than currently exists for recreational use of the beach, as the berm of the beach currently floods under high tide conditions. The application states that, "for recreational beaches, it is typically not desirable or practical to build to extreme elevations as a way of accommodating anticipated future sea level rise. Beaches by nature are intended to provide access to the water and raising the beach substantially would inhibit this access."

The permittee also indicates that sea level rise monitoring will be conducted and that adaptation will be incorporated for the beach for the longer term, beyond the anticipated life of the project, consisting of either "(1) adding sand to the beach as needed to meet actual sea level rise; or (2) allow[ing] conversion of the beach to other habitats."

For the reasons discussed above, the Commission therefore finds that the project, as conditioned, is consistent with the McAteer-Petris Act laws and Bay Plan policies on Public Access.

- c. **Recreation.** The Bay Plan Recreation policies state, in part, that "[d]iverse and accessible water-oriented recreational facilities, such as...beaches... should be provided to meet the needs of a growing and diversifying population, and should be...improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels." The Recreation policies also state that "[s]andy beaches should be preserved, enhanced, or restored for recreational use, such as swimming, consistent with wildlife protection" and that "small amounts of Bay fill may be allowed for waterfront parks and recreational areas that provide substantial public benefits and that cannot be developed without some filling."

The project will enhance an existing sandy beach for recreational use through the creation of a larger area of dry sand on an existing beach, and will improve water-oriented recreational opportunities for a variety of users. Trail improvements and the installation of an ADA-accessible "mobi-mat" will facilitate stronger physical connections to the beach, and are required

improvements under Special Condition II.B.2.b. The site has existing beach and dune areas that are currently used for water-oriented recreation, and measures will be taken during construction to minimize impacts to wildlife, including conducting in-water construction during specified environmental work windows as defined in Special Condition II.C.

Therefore, the Commission finds that the project, as conditioned, is consistent with the Bay Plan policies on Recreation.

- d. **Review Boards.** The project was not reviewed by the Commission's Engineering Criteria Review Board or Design Review Board, as Commission staff determined that the project did not raise significant issues related to safety of fills or design of the public access.
- B. **Conclusion.** The project authorized by this amended permit is consistent with the McAteer-Petris Act and with the San Francisco Bay Plan in that, as conditioned, it will not adversely affect the Bay nor public access to and enjoyment of the Bay.
- C. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.
- D. **Environmental Review.** Pursuant to Regulation Section 11501, the project authorized by ~~this~~ the original permit is was categorically exempt from the requirement to prepare an environmental impact report.
- On July 5, 2017, the East Bay Regional Park District, as the lead agency, adopted a Mitigated Negative Declaration for the work associated with Material Amendment No. One.
- E. **Listing with the Commission.** Pursuant to Regulation Section 10620, ~~this~~ the original project was listed with the Commission on June 7, 2007.
- F. **Enforcement Program and Civil Penalties.** The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts materials, or makes any substantial change in use of any water, land or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor.

IV. Standard Conditions

- 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.** 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.
- 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.

- ~~A. This permit shall not take effect unless the permittee executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.~~
- ~~B. 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. The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers 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 permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director (call for a copy of the form or download it from our website). 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 permit and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.~~

- ~~D. Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.~~
- ~~E. Unless otherwise provided in this permit, any work authorized herein shall be completed within the time limits specified in this permit, or, if no time limits are specified in the permit, within three years. If the work is not completed by the date specified in the permit, or, if no date is specified, within three years from the date of the permit, the permit shall become null and void. If a permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this permit shall be removed by the permittee or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.~~
- ~~F. 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 permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.~~
- ~~G. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.~~
- ~~H. 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 permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.~~
- ~~I. Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.~~
- ~~J. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit.~~
- ~~K. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.~~
- ~~L. This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may,~~

in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.

- M. Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or its assignee if the permit has been assigned.
- N. Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee or its assignee if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.