

San Francisco Bay Conservation and Development Commission

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September 6, 2019

Staff Recommendation **3000–3500 Marina Boulevard** **Life Science and Office Development Project** (For Commission consideration on September 19, 2019)

Permit Application Number: 2019.001.00
Applicant: BP3-SF5 3000-3500 Marina, LLC
Project Description: Develop a life science and office corporate campus.
Location: Within the 100-foot shoreline band, at 3000–3500 Marina Boulevard, in the City of Brisbane, San Mateo County.
Application Filed Complete: August 30, 2019
Deadline for Commission Action: November 30, 2019
Staff Contact: Yuri Jewett (415/352-3616; yuriko.jewett@bcdc.ca.gov)
Staff Recommendation: **APPROVAL WITH CONDITIONS**

Basis for Recommendation

The staff recommends approval of the application as conditioned in the recommended resolution, below. The project would develop an approximately 422,552-square-foot life science and office campus on the last major undeveloped parcel on the shoreline of the Sierra Point peninsula, in the City of Brisbane, San Mateo County. The proposed use is not in conflict with any Priority Use Areas established by the Bay Plan.

The applicants propose to construct approximately 1.62 acres of dedicated shoreline public access areas, which would include shoreline paths, lawn areas, and public seating. The project would also provide a Courtyard Level publicly accessible area between the three main buildings of the campus, which would be open to the public from dawn to dusk. Within the Courtyard Level, additional public amenities including a lawn area and a public restroom would be provided.

At present, the Bay Trail extends around most of the perimeter of Sierra Point, but it is rerouted onto the public road where it intersects with the project site. The project would develop an 18-foot-wide shoreline trail along the perimeter of the project site. In addition, the applicants are in the process of obtaining an easement to allow for construction of a trail extension onto the neighboring property to the south of the project site (1000 Marina Boulevard). Therefore, a special condition is included to require construction of a trail alignment as shown on Exhibit B, which would allow for Bay Trail to be rerouted from the street to a dedicated trail and, for the first time, extend around the full perimeter of Sierra Point.



Special Conditions are also included to establish a view corridor from Marina Boulevard to the Bay, provide adequate signage and wayfinding, and ensure that the project is developed consistent with the plans submitted as part of the application. The project site is not expected to experience coastal flooding during its anticipated life. However, in the event the project site experiences significant flooding in the future because the campus remains in place longer than anticipated, or should flooding impacts related to sea level rise be worse than currently projected, a special condition is included to require preparation and implementation of a sea level rise adaptation plan.

Recommended Resolution and Findings

The staff recommends the Commission adopt the following resolution:

I. Authorization

- A. **Authorized Project.** Subject to the conditions stated below, the permittee, BP3-SF5 3000-3500 Marina, LLC, is hereby granted permission to construct the following at 3000–3500 Marina Boulevard, in the City of Brisbane, San Mateo County:

Within the 100-foot Shoreline Band:

1. **Site Preparation.** Place fill material and install a clay cap within an approximately 93,684-square-foot area.
2. **Surface Area Parking.** Install, use, and maintain in-kind, a parking area (approximately 36,887 square feet) with approximately 109 parking spaces, including eight “Public Shore” parking spaces.
3. **San Francisco Bay Trail.** Install, use, and maintain in-kind an approximately 1,135-foot-long, minimum 18-foot-wide segment of the San Francisco Bay Trail (approximately 20,434 square feet).
4. **North Fitness Lawn and Recreation Area.** Install, use, and maintain in-kind an approximately 8,962-square-foot fitness and recreation lawn area.
5. **Pedestrian Pathways.** Install, use, and maintain in-kind an approximately 6,928-square-foot network of pedestrian pathways.
6. **Grass Pavers/Emergency Vehicle Access.** Install, use, and maintain in-kind an approximately 10,968-square-foot area of grass pavers suitable to accommodate an emergency vehicle access route
7. **Habitat Fence.** Construct, use, and maintain in-kind a low (no more than 36 inches high), transparent (e.g. two-rail fence with screen or similar design), approximately 1,154-foot-long fence along the Bay Trail adjacent to sensitive habitat areas.
8. **Planting Areas.** Install, use, and maintain in-kind native planting areas totaling approximately 11,749 square feet.

- B. **Based on Application Dated.** This authority is generally pursuant to and limited by the application dated January 31, 2019, as modified by subsequent correspondence and exhibits, and all conditions of this permit.
- C. **Deadlines for Commencing and Completing Authorized Work.** Work authorized herein must commence prior to January 1, 2023 or this permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within three years of commencement, or by January 1, 2026 whichever is earlier, unless an extension of time is granted by amendment of the permit. Maintenance authorized herein may be conducted in perpetuity so long as the development authorized herein remains in place.
- D. **Project Summary.** The 3000–3500 Marina Boulevard Life Science and Office Development Project develops a life sciences campus on an 8.87-acre site on the Sierra Point peninsula in the City of Brisbane, San Mateo County. The project includes three office buildings constructed above a two-story podium parking garage. The buildings will primarily be used for laboratories and related research and development activities. The campus is anticipated to serve approximately 800 to 1,200 employees.
- E. **Public Access.** The project results in the construction of approximately 70,437 square feet (1.62 acres) of new public access areas, including 48,383 square feet (1.11 acres) within in the Commission’s 100-foot shoreline band jurisdiction and 22,054 square feet (0.5 acres) outside of the Commission’s permitting jurisdiction. The project includes a minimum 18-foot-wide (12 feet in width, with 3-foot shoulders on each side) segment of the San Francisco Bay Trail (Bay Trail) along the perimeter of the project site. The project also provides fitness and recreation lawns, secondary public pathways, and amenities including seating, bicycle parking and eight “Public Shore” parking spaces.

The project also provides approximately 103,706 square feet (2.38 acres) of publicly accessible open space, primarily on the elevated Courtyard Level area atop the parking podium and between the office buildings, which includes a public lawn, a wood deck area with planter box seating, other hardscaped areas that contain weather-protected seating, and a public restroom. These publicly accessible areas are free and open to all members of the public during the period from dawn to dusk. The Courtyard Level will be accessible from a grand staircase and ramp that connects to the shoreline public access area, as well as a staircase and elevator on the Marina Boulevard entrance to the campus.

II. Special Conditions

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

- A. **Plan Review.** This authority is generally pursuant to and limited by the application dated January 31, 2019, as modified by subsequent correspondence and exhibits, and all conditions of this permit.



1. **Construction Documents.** The development authorized herein shall be built generally in conformance with the following drawing set: “3000-3500 Marina Boulevard BCDC Application – Exhibit B,” dated August 30, 2019, prepared by Skidmore Owings Merrill (SOM).

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

2. **Construction Documents Review and Approval.** No work whatsoever shall commence pursuant to this permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed within 60 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. If final construction document review is not completed by or on behalf of the Commission within the 60-day period, the permittee may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A.1 of this permit.
 - a. *Document Details.* All construction documents shall be labeled with: 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.
 - b. *Conformity with Final Approved Documents.* All authorized development and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been implemented in accordance with the approved criteria and in substantial conformance with the approved documents. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.
 - c. *Discrepancies between Approved Plans and Special Conditions.* In case of a discrepancy between final approved documents and the special conditions of this permit or legal instruments, the special condition shall prevail.

- d. *Reconsideration of Plan Review.* The permittee may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission’s Executive Director. Following the Executive Director’s receipt of such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the permit and/or consultation with the Commission Design Review Board.

B. Public Access.

1. **Area.** The approximately 70,437-square-foot area (1.62 acres), along the approximately 1,164 linear feet of shoreline as generally shown on Exhibit A as “Public Access” shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, and related purposes. If the permittee wishes to use the public access area for uses other than public access purposes, it must obtain prior written approval by or on behalf of the Commission.

The overall proposal for the public access for this project includes:

New and improved public access in the shoreline band: 48,383 square feet

New public access outside of the shoreline band: 22,054 square feet

2. **Permanent Grant.** Prior to the commencement of any construction of foundations excluding, for the avoidance of doubt, grading and site work prior to the construction of foundations for vertical construction, the permittee shall, which may be incorporated into the Reciprocal Easement Agreement (“REA”) defined below, dedicate to a public agency or otherwise permanently grant such rights for the public to the new approximately 70,437-square-foot (1.62 acre) public access areas. The instrument(s) shall create rights in favor of the public which shall commence no later than after completion of construction of any public access improvements required by this authorization and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of San Mateo County and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if marsh is present), 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 authorization.
 - b. Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area.
 - c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.
3. **Recordation of Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument on all parcels affected by this 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.
4. **Improvements within the Total Public Access Area.** No later than 12 months following the issuance of a temporary certificate of occupancy for the project authorized herein, the permittee shall install the following improvements, as generally shown on Exhibit A of this permit:
- a. *San Francisco Bay Trail.* A minimum 12-foot-wide accessible, paved bicycle and pedestrian path with 3-foot-wide decomposed granite shoulders along approximately 1,135 linear feet of shoreline, with an appropriate number of wayfinding signs and benches to support users of the trail, and appropriate interpretive signage and waste receptacles to ensure protection of adjacent sensitive habitat.
 - b. *North Fitness Lawn and Recreation Area.* An approximately 8,962-square-foot fitness and recreation lawn area, with a minimum of nine benches and eight bike racks, and appropriate signage and lighting. A portion of the lawn adjacent to the ramp shall slope up to meet the ramp and landings.
 - c. *Pedestrian Pathways.* Paved pathways that vary in width from approximately 11 to 30 feet wide and total approximately 6,928 square feet with appropriate signage and lighting.
 - d. *Grass Pavers/Emergency Vehicle Access.* A minimum 20-foot-wide pedestrian path and emergency vehicle access route made of grass pavers and totaling approximately 10,968 square feet.
 - e. *Planting Areas.* Approximately 12,470 square feet of native planting areas.
 - f. *Passenger Drop-Off Plaza.* An approximately 9,121 square foot passenger drop-off plaza located at the south east end of the project site.
 - g. *Public Shore Parking.* Eight designated “Public Shore” parking spaces located at the southwest corner of the project site adjacent to the ADA parking area.

- h. *Habitat Fence*. An approximately 36-inch-high habitat fence with transparent design (e.g. two-rail fence with screen or similar) located along the Bay Trail adjacent to sensitive habitat areas.

Such improvements shall be consistent with the plans approved pursuant to Condition II.A. of this authorization and substantially conform to Exhibit A of this permit and the plans entitled “3000-3500 Marina Boulevard BCDC Application – Exhibit B,” dated August 30, 2019, prepared by Skidmore Owings Merrill (SOM).

5. **Maintenance**. The areas and improvements within the total 70,437-square-foot area required in Special Condition II.B.1 above and the Publicly Accessible Areas required in Special Condition II.B.8 below 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 assurance 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.
6. **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 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 required in Special Condition II.B.1 above and the Publicly Accessible Areas required in Special Condition II.B.8 below to correct specific 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.
8. **Courtyard Level Publicly Accessible Areas**. An approximately 103,706-square-foot (2.38- acre) publicly accessible area shall be provided as generally shown on Exhibit A and made available to the public free of charge from dawn to dusk. No later than 12 months following the issuance of a temporary certificate of occupancy for any structure authorized herein, the permittee shall install the following improvements, as generally shown on Exhibit A to this permit:

- a. *Lawn*. An approximately 24,857-square-foot lawn on the Courtyard Level with a minimum of 465 linear feet of seatwalls and trees planted along the edge.
 - b. *Paved Open Space*. An approximately 9,485-square-foot viewing deck area with a minimum of 500 linear feet of planter box seating.
 - c. *Wooden Deck with Planters*. An approximately 9,485-square-foot viewing deck area with a minimum of 500 linear feet of planter box seating.
 - d. *Public Restroom*. A public restroom and wayfinding signage to the restroom from the Bay Trail and shoreline public access area.
 - e. *ADA-Accessible Ramp*. A minimum 11-foot-wide ADA-accessible ramp totaling approximately 5,407 square feet connecting the shoreline public access area from the North Fitness Lawn and Recreation Area to an intermediate landing on the step planter, continuing up to the wooden deck and the Courtyard Level.
 - f. *Step Planter Stairway (North)*. An approximately 15-foot wide and 980-square-foot stairway, and approximately 2,362 square feet of step planters connecting to the Courtyard Level adjacent to the ADA-accessible ramp.
 - g. *Step Planter Stairway (East)*. An approximately 1,700-square-foot stairway ranging from approximately 27 to 40 feet in width, and approximately 3,960 square feet of step planters connecting to the Courtyard Level from the passenger drop-off area.
- 9. Bay Trail Extension at 1000 Marina Boulevard**
- a. *Trail Extension*. No later than 12 months following the issuance of a temporary certificate of occupancy for any improvements authorized herein, the permittee shall provide on the 1000 Marina Boulevard parcel a minimum 12-foot-wide accessible asphalt bicycle and pedestrian path with 3-foot-wide decomposed granite shoulders (“trail extension”) along the general alignment shown on Exhibit B and labeled “Proposed Bay Trail extension in 1000 Marina Blvd.” The trail extension shall be made exclusively available to the public for unrestricted public access for walking, bicycling, and related purposes in perpetuity.
 - b. *Reciprocal Easement Agreement*. Prior to applying for any necessary governmental approvals for the trail extension, the permittee shall submit to the Commission’s Executive Director, for her/his review and approval, a Reciprocal Easement Agreement (“REA”) between the permittee and the owner of the 1000 Marina Boulevard parcel that provides for the construction and ongoing maintenance of the trail extension. The REA shall run with the land and respectively burden and benefit future owners. The REA shall be countersigned or acknowledged by the Commission’s Executive Director, and will require that the modification, termination, or removal of the provisions in the REA governing the maintenance and existence of the trail extension will require approval by or

on behalf of the Commission. The Executive Director will approve or disapprove of the instrument within 30 days after submittal for approval on the basis of its sufficiency to create legally enforceable rights and duties to provide the trail extension as required by Special Condition II.B.9.(a). For the avoidance of doubt, the permittee may conduct grading and site work upon the property prior to submission and execution of the REA, which shall only be required prior to construction of foundations for vertical work upon the project.

- c. *Necessary Authorization.* Prior to commencing construction on the trail extension, the permittee shall obtain any necessary approvals and authorizations by the City of Brisbane, including any additional review under the California Environmental Quality Act (CEQA) that the City deems necessary, and the Commission.

10. Signage and Wayfinding. Prior to construction of the public access improvements authorized herein, the permittee shall submit for review and approval by or on behalf of the Commission a comprehensive public access sign program designed to maximize public recognition, use, and enjoyment of the site's public access improvements. The sign program shall provide detail on the location, quantity, and design of wayfinding, interpretive, "Public Shore," and Bay Trail signs. The sign program shall also provide detail on any signage establishing restrictions on the Courtyard Level publicly accessible areas. The sign program shall be reviewed through the plan review process established in Special Condition II.A above.

C. View Corridor.

1. **Visual Access.** The permittee shall leave as open space in perpetuity an approximately 40-foot-wide view corridor located on the east side of the property that the permittee owns and that is the subject of this permit to allow visual access from the public street to the Bay. The view corridor is shown more precisely on Exhibit A to this permit. The permittee shall not allow any portion of the proposed structure or any appurtenant structure to intrude into the view corridor, and the permittee shall landscape the view corridor only with plants or shrubs that do not exceed three feet in height or that have been approved by or on behalf of the Commission pursuant to Special Condition II.A to this permit.
2. **View Corridor Restriction Document.** Prior to the commencement of any construction authorized herein, the permittee shall submit to the Commission's Executive Director a legal instrument that restricts in perpetuity as open space for visual access purposes the 40-foot-wide area on the east side of the property as required by as required by Special Condition II.C.1 to this permit. The open space restriction shall allow construction of improvements as described in this permit. The instrument shall include a map that shows the shoreline (Mean High Water Line or

5 feet above Mean Sea Level if marsh is present) and a metes and bounds description of the area being restricted as open space, and shall be in a form suitable for recording in San Mateo County.

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

3. **Maintenance of Landscaping.** The permittee shall maintain the view corridor. Maintenance shall consist of the regular trimming of shrubs and any plants to prevent their exceeding three feet in height and clearing and replacing of any dead plants.

D. **Flooding and Adaptation.**

1. **Flood Reports.** If any portion of the project, including the required public access area, is subject to coastal flooding that results in its closure in whole or in part, the permittee shall submit to the Commission a written report within 30 days after the flooding with documentation of: the date and duration of the closure; the location of the affected site; the recorded water levels during the closure period; the source of flooding (e.g., coastal flooding or stormwater backup or overland flow); the resulting damage or cleanup; and illustrative photographs with site details. Coastal flooding is defined as Bay overtopping of the shoreline during tides, storms, or both.
2. **Adaption Planning Process.** The permittee shall initiate a sea level rise adaptation planning process for the project, including the public access areas required by Special Condition II.B.1, that will ensure the provision of shoreline access into the future as long as any use authorized herein remains in place. Within 180 days of the first occurrence of coastal flooding that affects the project or results in closure of any portion of the public access, as described in the flood report required by Special Condition II.D.1, or earlier at the discretion of the permittee, the permittee shall submit for Commission review and approval a draft sea level rise adaptation plan that conforms to the requirements in Special Condition II.D.3, below. The draft plan

shall be reviewed by or on behalf of the Commission pursuant to Special Condition II.A.2. Depending on the actions required to implement the sea level rise adaptation plan, the permittee may be required to obtain a permit or permit amendment from the Commission.

3. **Adaption Plan Requirements.** According to the schedule in Special Condition II.D.2, above, the permittee shall submit for Commission review and approval a draft sea level rise adaptation plan that achieves the following objectives:
 - a. Measures shall be developed that will address impacts to the project that arise as a result of flooding for the period during which the authorized uses will remain in place. The public access area required in Special Condition II.B.1 shall be protected from flooding through raising the elevation of the public access, installing a flood protection device (e.g., a barrier wall or guardrail) or by another method acceptable to the Commission. Alternatively, the permittee may propose an alternative, equivalent public access area that provides maximum feasible public access consistent with the project.
 - b. A timeline shall be established to implement the required adaptation measures to ensure that the project addresses the impacts of flooding and storm activities and that the required public access remains viable and is not subject to regular flooding events.
 - c. The adaptation plan shall incorporate sea level rise and storm projections based on the best available science at the time it is developed and/or updated.
- E. **Certificate of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.
- F. **Foundation Layout Inspection.**
 1. **Written Request.** Prior to constructing any building forms for any structure that will be located in or adjacent to BCDC's 100-foot-wide shoreline band or required public access or open space area, the permittee shall request in writing an inspection by the Commission staff of the foundation layout as it has been surveyed and staked in the field relative to MHW or 5 feet mean sea level in marshland. For the avoidance of doubt, the foregoing requirements (including the required inspection) shall only apply to the construction of foundations for vertical work upon the project, and shall not apply to initial grading and site work or foundations for ancillary improvements
 2. **Certificate of Foundation Layout Inspection.** Within five working days of receipt of the written request for an inspection, the Commission's staff will inspect the foundation layout as it has been surveyed and staked in the field for any structure

- that will be located in or adjacent to BCDC’s 100-foot-wide shoreline band or required public access or open space area. The permittee shall not commence construction of the forms or pour the foundation until the staff has confirmed in writing that the foundation layout is consistent with the terms and conditions of the permit by providing the permittee with a Certificate of Foundation Layout Inspection.
3. **Responsibility of Permittee.** If the staff is unable to perform this inspection within the 5-day period, the permittee may commence such work, but the staff’s inability to complete such an inspection does not relieve the permittee of the responsibility to provide public access areas and build any structures (the project) in accord with the approved plans.
- G. **Certificate of Occupancy or Use.** Prior to occupancy or use of any of the improvements authorized herein, the permittee shall submit the Notice of Completion and Compliance required herein and request in writing an inspection of the project site by the Commission staff. Within 30 days of receipt of the written request for an inspection, the Commission’s staff will: (1) review all permit conditions; (2) inspect the project site; and (3) provide the permittee with written notification of all outstanding permit compliance problems, if any. The permittee shall not occupy or make use of any improvements authorized herein until the staff has confirmed that the identified permittee compliance problems have been satisfactorily resolved and has provided the permittee with a Certificate of Occupancy or Use. Failure by the staff to perform such review and inspection and notify the permittee of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the permit, but the permittee may occupy and use the improvements authorized herein.
- H. **Notice of Assignment to Buyers.** Prior to entering into any agreement to transfer any interest in any property subject to this permit, the permittee, or any assignee(s) of this permit or any part of it, shall provide the third party with a copy of this permit and shall call his or her attention to any provisions regarding public access or open space or the need to obtain approval of construction plans prior to the commencement of any construction.
- I. **Recording.** The permittee shall record this permit or a notice specifically referring to this permit on all parcels affected by this permit with San Mateo County within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide a copy of the recorded permit to the Commission.

III. Findings and Declarations

- A. **Use.** The San Francisco Bay Plan designates those areas that should be reserved for priority land uses on the Bay shoreline. Bay Plan Map No. 5 shows the project site and does not designate the site for a priority use. The Bay Plan policies on Other Uses of the Bay and Shoreline state, in part, that “[s]hore areas not proposed to be reserved for a priority use should be used for any purpose (acceptable to the local government having



jurisdiction) that uses the Bay as an asset and in no way affects the Bay adversely” (Policy No. 1). Therefore, the Commission finds the project is not in conflict with any priority use designation for the site.

B. Public Access. The permittee shall record this permit or a notice specifically referring to this permit on all parcels affected by this permit with San Mateo County within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide a copy of the recorded permit to the Commission.

1. Maximum Feasible Public Access. 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 states, in part, that “[w]ithin 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.”

In addition, the Bay Plan policies on Public Access state, in part that “[a] proposed fill project should increase public access to the Bay to the maximum extent feasible” (Policy No. 1),” and “maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline” (Policy No. 2), , and “[w]henver public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed” (Policy No. 6).

In assessing whether a proposed project provides maximum feasible public access to the Bay and its shoreline, the Commission considers existing conditions at the project site, the proposed public access improvements provided by a project, and the existing and future demand for public access facilities. The McAteer-Petris Act and Bay Plan policies must be read in light of court decisions that have established 1) that a public agency must show a nexus, or essential connection, between any requirements included as a condition of a permit and the public burden created by a private development project, and 2) that the condition must be roughly proportional to the burden. In this case, the Commission must evaluate the demand for public access that the project will generate and its anticipated impact on the existing and proposed public access at and near the project site.

a. Existing Conditions and Anticipated Demand for Public Access. The project will bring approximately 800 to 1,200 employees to the project site on workdays. The project site is located on the Sierra Point peninsula, where several other large office buildings and developments are located or under development. The Brisbane Marina, operated by the City of Brisbane is also located on the Sierra Point peninsula, within walking distance of the project site. Each of these office

developments, as well as the City’s marina, provide public access areas along the shoreline. These public access areas can reasonably be expected to see an increased level of use as a result of the addition of the new employees and visitors generated by the project.

The San Francisco Bay Trail runs along the perimeter of Sierra Point through the various office developments and the marina. Employees and visitors to the project site would be anticipated to make use of the Bay Trail for recreation and commuting. At present, the shoreline trail terminates on the western edge of the 3000-3500 Marina Boulevard property while the Bay Trail is routed back onto Marina Boulevard along the property line of the parcel directly adjacent and to the east of the project site. The trail segment that currently exists on the project site was permitted under BCDC Permit No. 1978.014.00 and will be reconstructed and improved as part of the project. The public currently uses this connection to gain access to an informal trail that leads to a beach area located immediately to the north of the project site which is part of a Waterfront Park Priority Use Area.

- b. Public Access Area Provided by Project.* The 3000-3500 Marina Life Sciences Development project will construct approximately 1.62 acres (70,437 square feet) of public access areas, including a Bay Trail segment, fitness and recreation lawn, seating, and bicycle parking. This represents approximately 18 percent of the 8.87-acre project site. As required by Special Condition II.B, the 1.62-acre area dedicated as public access is to be available exclusively to the public for unrestricted access for walking, biking, sitting, viewing, fishing, picnicking, and related purposes.

An additional 2.38-acre area (103,706 square feet), mostly located at the elevated Courtyard Level of the office campus, is to be provided as publicly accessible areas available to the public, free of charge, every day from dawn to dusk, as required by Special Condition II.B.8. This area provides views of the Bays, along with amenities including a public lawn, decks, seating, and a public restroom. A grand staircase with seating elements, and a ramp, provide a connection between the shoreline public access area and the Courtyard Level. Another publicly accessible stairway connects Marina Boulevard to the elevated courtyard. Both the stairways and the ramp leading to the Courtyard Level have been designed in such a way that they will feel inviting to all members of the public.

Finally, Special Condition II.B.9 requires the construction of a minimum 18-foot-wide Bay Trail segment on the adjacent 1000 Marina Boulevard property, to which the permittee is in the process of obtaining a property interest (through the REA), in order to complete the trail loop running along the perimeter of Sierra Point. This extension of the Bay Trail is discussed below.

2. **Public Access Improvements and Amenities.** The Bay Plan establishes that public access “improvements provided as a condition of any approval” should, among other things, “provide for the public’s safety and convenience,” and “be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline” (Public Access Policy No. 7). “[W]aterfront parks should be provided wherever possible” and “[d]iverse and accessible water-oriented recreational facilities...should be provided to meet the needs of a growing and diversifying population, and should be well distributed around the Bay and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels” (Recreation Policy No. 1). “To capitalize on the attractiveness of their bayfront location, parks should emphasize,” among other things, “bicycling,” “picnic facilities,” “environmental, historical and cultural education and interpretation,” and “viewpoints” (Recreation Policy No. 2).

The project creates an inviting shoreline public access area that includes a fitness and recreational lawn, connecting to the improved and expanded Bay Trail and secondary shoreline paths. The project includes an Emergency Vehicle Access way that utilizes grass pavers, so that it essentially extends the lawn area and doubles as a walkable path during all weather conditions.

The project also includes a unique experience for the public by providing the publicly accessible areas at the Courtyard Level of the campus. From this standpoint, approximately 30 feet above the elevation of the shoreline public access area, the public will be afforded expansive views of the Bay and some protection from the elements on windy days. Various seating types will be provided (seatwalls, steps, planter seats) in this area. A wind screen located at the west end of the podium courtyard will provide weather protection, and line of trees along the lawn edge will provide shade. Because the publicly accessible areas are located above the podium of the campus, there is the potential that the space will feel less inviting or “public” in nature. Therefore, the design was carefully considered to ensure that the ramp and stairway connecting the two spaces feel inviting and open to all. In addition, as required by Special Condition II.B.10, signage will be displayed to ensure the publicly accessible nature of the Courtyard Level is evident. Directional signage from the Bay Trail will also direct users to the location of the public restroom located at the Courtyard Level.

Within the shoreline public access area, as well as the elevated Courtyard Level publicly accessible areas, furnishings are provided for seating and viewing of the Bay. Along the Bay Trail and near the shoreline, there will be benches for trail users to rest, as well as bike racks to allow cyclists to explore other parts of the site on foot. Interpretive and wayfinding signage located throughout the project will enable the public to further understand and enjoy the shoreline public access and elevated publicly accessible areas.

- 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 public access areas have been designed to be accessible. An ADA-accessible ramp will provide a clear connection from the public access areas located at grade to the elevated open space and courtyard area. The bottom landing of the ramp will blend with the fitness lawn pathway and serve as a clear visual connection to allow for visitors at grade to access the elevated open space area and its amenities. The top landing of the ramp will be located near the podium deck and planter seating area. Additionally, six ADA-accessible parking spaces will provide a direct connection to the public shoreline from the public pedestrian path that leads to the Bay Trail. Special Condition II.A, which requires final plan review approval, will ensure that public access improvements as constructed will permit barrier-free access to the maximum feasible extent

- 4. Movement Along the Shoreline.** The Bay Plan encourages the design of public access areas that promote movement to and along the water’s edge in most circumstances: “Public access improvements... should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline” (Bay Plan Public Access No. 7). “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” (Bay Plan Public Access No. 9). “Complete segments of the Bay Trail where appropriate.” (Bay Plan Recreation No. 3.a.[9])

As authorized and required by Special Condition II.B.4, the project replaces the existing shoreline trail on the site, which runs along the northern edge of the site, with a minimum 18-foot-wide shoreline trail, and extends the trail along the undeveloped natural areas and drainage slough on the western edge of the project site. To complete the trail loop along the perimeter of the Sierra Point peninsula, Special Condition II.B.9 is included to require the construction of a trail extension onto the adjoining parcel to the south of the project site, at 1000 Marina Boulevard. Running along the general alignment shown on Exhibit B, the trail extension will run from the northern edge of the 1000 Marina Boulevard site and complete a loop that connects to Sierra Point Parkway. The permittee is in the process of acquiring a property interest that will allow for construction of the trail, and Special Condition II.B.9 therefore requires that an REA be obtained sufficient to provide for the construction, ongoing maintenance, and permanent grant of the trail extension for public access purposes. The trail extension will be built to the same standards as the portion of the trail on the 3000–3500 Marina Boulevard site and will be required to open at the same time as the other public access improvements provided by this permit.

As such, the project creates an approximately 18-foot-wide shoreline trail that will allow for a continuous, separated trail along the perimeter of the Sierra Point peninsula. From the project site, the public would be able to access the Bay Trail from a public sidewalk along the southern edge of the site, from the driveway adjacent to the access path at 5000-7000 Marina Boulevard on the eastern edge of the site, or from the building's Courtyard Level elevated open space.

Special Condition II.B.4 requires eight "Public Shore" parking spaces to be constructed at the southeast corner of the parking area, adjacent to the ADA parking spaces. These "Public Shore" parking spaces will be located adjacent to the Bay Trail.

- 5. Views and Visual Character.** Bay Plan policies on Appearance, Design and Scenic Views state, in part, that "[e]nhance the visual quality for development around the Bay..." and "[t]ake maximum advantage of the attractive setting it provides" (Policy No. 1); that "[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay [and] maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas" (Policy No. 2); that "[s]tructures 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" (Policy No. 4); and that "[s]horeline developments should be built in clusters, leaving open area around them to permit more frequent views of the Bay" (Policy No. 8).

Special Condition II.C requires a dedicated 40-foot-wide view corridor to be established on the east edge of the site, to provide a view of the Bay through the site from Marina Boulevard. The view corridor established here is directly adjacent to one required pursuant to BCDC Permit No. M1985.020.01, for the office development directly east of the project site at 5000 Marina Boulevard. This functionally creates a 74-foot-wide view corridor through the two sites that provides a clear view and sense of connection to the Bay from Marina Boulevard.

The public access areas have been carefully designed to maximize views through the project site. The Courtyard Level publicly accessible areas will provide unique and expansive views of the Bay. The courtyard area will provide formal and informal seating options, as well as areas that would be protected from the wind. At grade, benches will be offered along the Bay Trail to allow for viewing opportunities of both the natural marsh area to the west and the Bay to the north.

- 6. Wildlife Habitat.** The Commission's Bay Plan Public Access Policy No. 3 states in part that "[w]ildlife are sensitive to human intrusion...projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided." Additionally, Policy No. 4 states that public access "should be sited, designed and managed to prevent significant adverse effects on wildlife. To the extent necessary to understand the potential effects of public access on wildlife, information on the species and habitats

of a proposed project site should be provided, and the likely human use of the access area analyzed. In determining the potential for significant adverse effects (such as impacts on endangered species, impacts on breeding and foraging areas, or fragmentation of wildlife corridors), site specific information provided by the project applicant, the best available scientific evidence, and expert advice should be used.”

The CEQA Final Mitigated Negative Declaration (FMND) identified the presence of two clapper rail birds (*Rallus crepitans*) in the undeveloped natural area to the west of the developed footprint of the project. This area is bounded by a drainage slough, the lower reaches of which consist of a small tidally influenced salt marsh. The FMND concluded that “a permanent fence adjacent to the pedestrian path and Bay Trail along the western and northern edge of the project site to restrict access of humans and dogs into the salt marsh...” should be installed. Therefore, a habitat fence is authorized as part of the project to provide a delineation between the public access area and the undeveloped natural area. The habitat fence would feature a low-rise and transparent design (e.g. two-rail fence with screen or similar) and would be offset approximately 36-inches from the Bay Trail to maintain shoreline views while providing the required wildlife protection.

- 7. Sea Level Rise and Flooding.** The Commission’s 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.” Policy No. 6 states, in part, “any public access provided as a condition of development should either be required to remain viable in the event of future sea level rise, or equivalent access consistent with the project should be provided nearby.”

In analyzing a project’s risk of flooding as a result of sea level rise, the Commission currently relies on the sea level rise estimates provided in the 2018 California Sea Level Rise Guidance from the Ocean Protection Council and Natural Resources Agency (“2018 State Guidance”), which represents the best available science. The 2018 State Guidance recommends use of probabilistic projections to understand and address potential sea level rise impacts, which associate a likelihood of occurrence with sea level increases and rates tied to a range of emission scenarios. The analysis for this permit relies on the State’s projections for projects where a “medium to high” level of risk aversion is called for. The 2018 State Guidance states that the medium to high risk aversion projections are appropriate to provide “[a] precautionary protection that can be used for less adaptive, more vulnerable projects or populations that will experience medium to high consequences as a result of underestimating sea-level rise...”

The public access areas authorized and required as part of this project, including the Bay Trail and public lawns, will be located at a minimum elevation of +15.2 feet NAVD88. For planning purposes, and consistent with the 2018 State Guidance, the

project was analyzed to consider the impacts of a range of flooding scenarios, assuming 3.1 to 3.5 feet of sea level rise through 2070 or the anticipated life of the project. Using these projections, the following water levels would be planned for:

- At 2050, with an anticipated rise in sea level of 1.9 feet, the Mean Higher High Water (MHHW) level would be +8.6 feet NAVD88. The water levels during a 100-year (1 percent likelihood) storm would be +11.9 feet NAVD88.
- At 2070, assuming a high-emissions scenario, with an anticipated sea level rise of approximately 3.5 feet, the MHHW level would be +10.2 feet NAVD88. The water levels during a 100-year (1 percent likelihood) storm would be +13.5 feet NAVD88.
- At 2100, beyond the anticipated life of the project but possibly during its functional life, assuming a high-emissions scenario with an anticipated sea level rise of approximately 6.9 feet, the MHHW level would be +13.6 feet NAVD88. The water levels during a 100-year (1 percent likelihood) storm would be +16.9 feet NAVD88.

The project is therefore not anticipated to flood, even under extreme storm scenarios during its anticipated 50-year life. Beyond the anticipated life of the project minimal flooding may occur along the lower sections of the Bay Trail during a 5-year storm event. In the event that the project remains in use beyond its anticipated life, or should flooding impacts related to sea level rise be worse than anticipated by the 2018 State Guidance, some measures may be required to adapt the public access areas and ensure their continued viability in the face of flood impacts associated with sea level rise. Therefore, Special Condition II.D is included to require documentation of any major flooding events at the project site. Special Condition II.D requires that the permittee submit a sea level rise adaptation plan to the Commission for review and approval within 180 days of the first occurrence of coastal flooding that results in closure of any portion of the project's required public access areas. This is intended to provide for the timely development of adaptation actions for the site as soon as sea level rise begins to impact the project during tides, storms, or both. The adaptation plan would establish an implementation timeline to ensure the project's adaptability to sea level rise.

- C. **Design Review Board.** The Design Review Board (Board) reviewed the project at its September 17, 2018 meeting. The Board favorably reviewed the project and advised staff to continue to work with the project team to ensure that landscape elements, such as the fitness and recreation lawn area, be designed to feel welcoming the public. The Board also suggested that the ADA-accessible ramp be designed to encourage the public to visit the elevated open space and that clear wayfinding and signage be provided to guide users of the Bay Trail to amenities located at the podium deck and courtyard, including the public restrooms. The project design has been modified in response to the Board's comments.

- D. **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.
- E. **Environmental Review.** The City of Brisbane, the lead agency for the project, prepared, circulated, and, certified a Final Mitigated Negative Declaration (FMND) pursuant to the California Environmental Quality Act in May 2008 for the project at 3000–3500 Marina. Subsequently, the City issued two addendums related to minor changes to the FMND; the first was approved in March 2017 and the second in November 2018.
- 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.
- G. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the McAteer-Petris Act, the San Francisco Bay Plan, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California Coastal Zone.

IV. Standard Conditions

- A. **Permit Execution.** This permit shall not take effect unless the permittee executes the original of this permit and return it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. **Permit Assignment.** The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee/transferrors and the transferees



shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the permit and agree to be bound by the terms and conditions of the permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.

- D. **Permit Runs with the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Build Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission’s “bay” jurisdiction.
- I. **Changes to the Commission’s Jurisdiction as a Result of Natural Processes.** This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission’s regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission’s jurisdiction will not change in the future.

- J. **Violation of Permit may Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or its assignees if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or its assignees if the permit has been assigned.
- K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee or its assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- L. **Permission to Conduct Site Visit.** The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.
- M. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.
- N. **Best Management Practices.**
1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its 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 shall immediately retrieve and remove such material at its expense.

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