



Making San Francisco Bay Better

BCDC Original

PERMIT NO. M03-28
(Issued on March 25, 2004, As
Amended Through August 13, 2004)
AMENDMENT NO. ONE

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SEP 10 2004

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

The Unity Council
1900 Fruitvale Avenue, Suite 200
Oakland, California 94612

ATTENTION: Ms. Evelyn Johnson

AND

City of Oakland
Public Works Department
250 Frank Ogawa Plaza
Oakland, California 94612

ATTENTION: Ms. Lily Soo Hoo

Ladies and Gentlemen:

I. Authorization

A. Subject to the conditions stated below, the permittees, the Unity Council and the City of Oakland, are hereby authorized to do the following:

Location: In the Bay and within the 100-foot shoreline band, along the Oakland Estuary, south of Dennison Street, west of the Embarcadero and north of the Con Agra grain elevator, in the City of Oakland, Alameda County.

Description: As part of developing the 7-acre Union Point Park, install, use and maintain the following improvements:

In the Bay: (1) Place 320 cubic yards of rock riprap along an existing 16,875 square foot portion of the shoreline for shoreline protection; and (2) install a ~~40~~ 730-square-foot, metal public access platform/tidal sculpture and cantilevered deck supported by 10 concrete pilings.

Within the 100-foot Shoreline Band: (1) Within the area of the northern parking lot: (a) expand a portion of the existing northern parking lot by 1,400 square feet to accommodate a total of 71 vehicles; (b) provide a total of two seating areas totaling 803 square feet; (2) provide a 9,868-square-foot portion of an entry plaza

between the Union Point Park Hill and the southern parking area; (3) construct, use and maintain a 900-square-foot portion of a new parking area along the southern portion of the site that will accommodate a total of 48 vehicles; (4) install, use and maintain 25,240 square feet of pathways throughout the site; (5) construct, use and maintain a 20,110-square-foot playground area; (6) renovate and expand an existing 630-square-foot restroom by 206 square feet; (7) construct a 2,025-square-foot, 25-foot-high, open-walled pergola; and (8) install, use and maintain 153,311 square feet of landscaping; and (9) at the northern end of the park install an outfall that will drain stormflows from the parking lot and other imperious surfaces in the park (Amendment No. One).

B. This authority is generally pursuant to and limited by your original application dated July 31, 2003, and your request for Amendment No. One dated July 19, 2004, including its accompanying exhibits and all conditions of this permit.

C. Work authorized under the original authorization was required to ~~herein must~~ commence prior to September 1, 2004, or this the original permit will was to lapse and become null and void. Such work ~~must was~~ also required to be diligently pursued to completion and ~~must~~ be completed within three years of commencement, or by September 1, 2007, whichever ~~is was~~ earlier, unless an extension of time ~~is was~~ granted by amendment of the original permit. Work authorized under Amendment No. One must commence by June 1, 2005 or this amended permit will lapse and become null and void. Such work must also be diligently pursued to completion and completed by December 1, 2005 unless an extension of time is granted by further amendment of this amended permit.

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

1. **Construction.** The final plans submitted pursuant to this condition shall generally conform with the plans entitled "Union Point Park, Materials and Furnishings Plan North" and "Union Point Park, Materials and Furnishings Plan South", sheets L1.01 and L1.02, prepared by PGA Design, Inc., dated September 23, 2003. No noticeable changes to the design of the project shall be made without the prior written approval of the BCDC staff.
2. **Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, shoreline protection, grading, layout 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. To save time, preliminary drawings should be submitted and approved prior to final drawings.

- a. **Site, Grading, Layout and Landscaping Plans.** Site, grading, and landscaping plans shall include and clearly label the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if 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, 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.

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

3. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.
4. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittees are 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.

B. RipRap

1. **Riprap Material.** Riprap material 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.
2. **Riprap Placement.** 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). 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.

3. Riprap Plans

- a. **Design.** Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design of the shoreline protection improvements authorized herein.
- b. **Plan Review.** No work whatsoever shall be commenced on the shoreline protection improvements authorized herein until final riprap plans have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The plans shall consist of appropriate diagrams and cross-sections that (1) show and clearly label the mean high tide line, property lines, grading limits, and details showing the location, types, and dimensions of all materials to be used, (2) indicate the source of all materials to be used, and (3) indicate who designed the proposed shoreline protection improvements and their background in coastal engineering and familiarity with the Commission's concerns. Approval or disapproval of the plans shall be based upon (1) completeness and accuracy of the plans in showing the features required above, (2) consistency of the plans with the terms and conditions of this permit, (3) assuring that the proposed fill material does not exceed this permit, (4) the appropriateness of the types of fill material and their proposed manner of placement, and (5) the preparation of the plans by professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes. All improvements constructed pursuant to this permit shall conform to the final approved plans. No changes shall be made thereafter to any final plans or to the constructed shoreline protection improvements without first obtaining written approval of the change(s) by or on behalf of the Commission.

4. **Maintenance.** The shoreline protection improvements authorized herein shall be regularly maintained by, and at the expense of the permittees, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Within 30 days after notification by the staff of the Commission, the permittees or any successor or assignee shall correct any maintenance deficiency noted by the staff.

C. Public Access

1. **Area.** The approximately 144,520-square-foot area (3.32 acres) along approximately 1,441 linear feet of the shoreline as generally shown on Exhibit "A", shall be made available exclusively to the public for public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. If the permittees wish to use the public access area for other than public purposes, they must obtain prior written approval by or on behalf of the Commission.
2. **Improvements Within the Public Access Area.** The permittees shall install the following improvements within the public access area:
 - a. **Landscaping.** 153,311 square feet of landscaping;

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- b. **Pathways.** A total of 25,240 square feet of pathways;
 - c. **Entry Plaza.** Between the south parking area and Union Point Park Hill, a 9,868-square-foot entry plaza;
 - d. **Sitting Areas.** A total of two seating areas, totaling 803 square feet in area, located adjacent to the northern parking area;
 - e. **Playground.** A 20,110-square-foot playground area;
 - f. **Pergola.** A 2,025-square-foot, open-walled pergola;
 - g. **Site Amenities.** A minimum of 30 benches, nine picnic tables, ten trash containers, and two bicycle racks;
 - h. **Signs.** A total of four public access and/or Bay Trail signs of a design and at locations approved by or on behalf of the Commission pursuant to Special Condition II-A, above.
3. **Maintenance.** The improvements authorized herein shall be permanently maintained by and at the expense of the permittees or its assignees. Such maintenance shall include but is not limited to, repairs to all path surfaces and landscape berms; replacement of any trees, lawn, or other plant materials that die or become unkept; repairs or replacement as needed of any public access amenities such as signs, benches, and trash containers; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assuring that public access signs remain in place and visible. Within 30 days after notification by staff, the permittees shall correct any maintenance deficiency noted in a staff inspection of the site.
 4. **Assignment.** The permittees 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 the permit.
 5. **Reasonable Rules and Restrictions.** The permittees 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 permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
 6. **ADA Access.** To the maximum extent feasible, the permittees shall construct all public access improvements authorized or required herein to be accessible by those with disabilities and consistent with local, state, and federal accessibility laws including, but not limited to, the Americans with Disabilities Act.

D. Maintaining Views to the Bay from the Embarcadero. To maintain views to the Bay from the Embarcadero, the permittees shall place plant materials in appropriate locations and maintain plant levels at appropriate heights in the area of the southern parking lot.

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E. Best Management Practices

1. **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 permittees, their assigns, 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 permittees shall immediately retrieve and remove such material at their expense.

F. Site Access. The permittees 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/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.

G. Notice to Contractor. The permittees shall provide a copy of this permit to any contractor or person working in concert with the permittees to carry out the activities authorized herein and shall point out the special conditions herein.

H. Recording. The permittees shall record this permit or a notice specifically referring to this permit on all parcels affected by this permit with Alameda County within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.

III. Findings and Declarations

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

A. Minor Repair or Improvement. The project authorized by this the original permit and Amendment No. One involves the placement of riprap, installation of a 40 730-square-foot public walkway/art sculpture and cantilevered deck, construction of a portion of a 7-acre park, as well as installation of a storm drain outfall. As such, the project involves the placement of fill in the Bay that would cover less than 10,000 square feet and is necessary to stabilize an existing bank, as defined by Regulation Section 10601(a)(2), the placement of minor fill in the Bay to improve public access that covers less than 1,000 square feet, as defined by Regulation Section 10601(a)(7), and the placement and extraction of small amounts of inert inorganic fill and a change in use within the 100-foot shoreline band that will not have a substantial adverse impact on present or future maximum feasible access to the Bay or Bay resources, as defined by Regulation Section 10601(b)(1). Therefore, the work authorized herein is considered a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a) and may issue an amendment to an existing permit pursuant to Government Code Section 66632(f) and Regulation Section 10622.

B. Consistency with the McAteer-Petris Act and the Bay Plan. The project authorized by this amended permit is consistent with the McAteer-Petris Act and with the San Francisco Bay Plan in that it will not adversely affect the Bay nor public access to and enjoyment of the Bay. The project

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authorized in this amended permit involves the construction of a portion of a 7-acre park and will provide much needed public access at this former industrial site. To stabilize the shoreline at the site, riprap will be added to the existing riprapped shoreline. Special Condition II-B has been included in this authorization to ensure that the riprap is constructed in a manner that is consistent with the Bay Plan policies on shoreline protection. Additionally, a ~~40~~ 730-square-foot tidal sculpture/public walkway and cantilevered deck will be constructed over the Bay. While ~~this~~ the sculpture will result in Bay fill, it will also provide unique interpretative opportunities that would not be possible if the sculpture were constructed on land. These opportunities will result from the placement of stainless steel mirrors along the water's edge ringing the walkway, that will refract light and shadows from the Bay's tidal currents. The sculpture/walkway will result in the placement of the minimum amount of fill necessary to ensure that access on the sculpture/walkway and cantilevered deck ~~are~~ is safe and ~~to~~ provide the desired interpretative effects.

Other special conditions included herein will also ensure that the project is constructed in a manner that will avoid adverse impacts to the Bay. These conditions include requiring the permittees to remove and dispose of any materials that inadvertently enter the Bay and that contractors working on the project review the permit to ensure that they are aware of the special conditions contained in the permit. In addition, Special Condition II-A will ensure that the park is constructed pursuant to plans that are reviewed and approved by or on behalf of the Commission and Special Condition II-C has been included to ensure that views to the Bay from the Embarcadero are maintained.

C. Amendment No. One. Amendment No. One to the permit involves revising the permit to authorize more Bay fill associated with the sculpture/walkway and authorizing an outfall within the 100-foot shoreline band. The size of the sculpture/walkway will increase by 690 square feet of pile-supported and cantilevered fill. The majority of this new fill will result from the construction of a cantilevered public access deck that will be built above the water sculpture. This deck will provide a unique Bay experience to public access users and will also provide a unique view of the water sculpture by allowing public access users to view where the water line meets the sculpture. Additionally, Amendment No. One authorizes the construction of an outfall that drains runoff from the parking lot to the Bay. The drainage from the parking lot will be directed to bioswales that will help filter toxins and other substances prior to it entering the Bay.

~~C.~~ D. Consistency with the Coastal Zone Management Act of 1972. 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.~~ E. Environmental Document. The City of Oakland, the lead CEQA agency for this project, certified a Mitigated Negative Declaration for ~~this~~ the original project on May 10, 2000.

~~E.~~ F. Listing. Pursuant to Regulation Section 10620, ~~this~~ the original project was listed with the Commission on January 15, 2004.

IV. Standard Conditions

A. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city

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

B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

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

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

E. The rights, duties, and obligations contained in this amended permit are assignable. When the permittees transfer any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittees/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit .

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

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

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

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

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

K. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the 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.

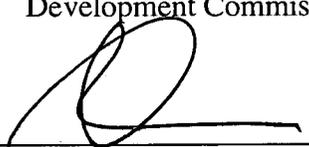
L. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

M. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittees or their assignee if the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

WILL TRAVIS
Executive Director
San Francisco Bay Conservation and
Development Commission

By: _____


STEVEN A. McADAM
Deputy Director

SAM/MBL/ra

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
Environmental Protection Agency, Attn: Mike Monroe-WTR-8
City of Oakland Planning Department

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* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at OAKLAND, CA

[Signature]
Applicant

On AUGUST 17, 2004

By: EVYIN JENNINGS
PROJECT DIRECTOR
Title

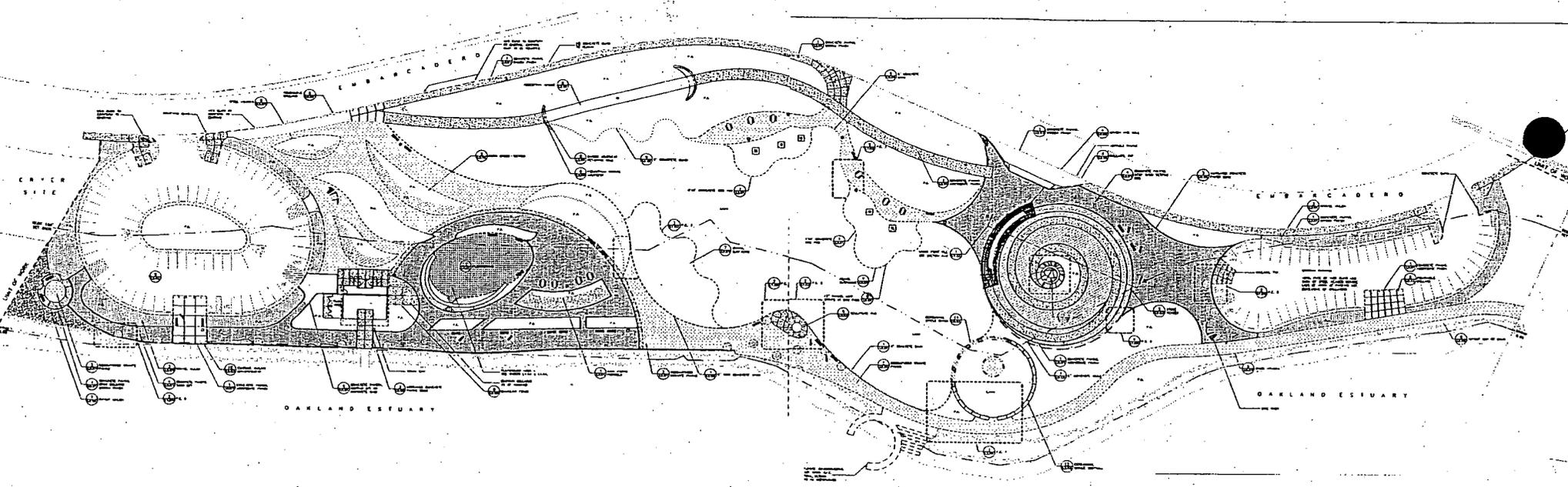
Receipt acknowledged, contents understood and agreed to:

Executed at Oakland, CA

[Signature]
Applicant

On 8.27.2004

By: Raul Cardenas II
Public Works Director
Title



UNION POINT PARK
 EXHIBIT A
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— · — · — · —
 limits of Commission's 100-FT
 shoreline band (limits of
 3.32-acre portion of park)

UNION POINT PARK
 EXHIBIT A
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