

# San Francisco Bay Conservation and Development Commission

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## Agenda Item #10

April 10, 2020

## Staff Recommendation

### San Francisco Recreation and Parks Department

### India Basin 900 Innes Remediation Project

(For Commission consideration on April 16, 2020)

<b>Permit Application Number:</b>	2019.003.00
<b>Applicant:</b>	San Francisco Recreation and Parks Department
<b>Project Description:</b>	Remediate approximately 3.38 acres of upland, tidal flats, and nearshore portions of 900 Innes in India Basin to prepare the site for future park development and construction.
<b>Location:</b>	In the Bay and within the 100-foot shoreline band, a San Francisco Bay Plan-designated Waterfront Park, Beach Priority Use Area, and San Francisco Waterfront Special Area Plan-designated Park Priority Use Area, along the southern San Francisco shoreline, in the City and County of San Francisco.
<b>Application Filed Complete:</b>	March 5, 2020
<b>Deadline for Commission Action:</b>	June 3, 2020
<b>Staff Contact:</b>	Anniken Lydon (415/352-3624; <a href="mailto:anniken.lydon@bcdc.ca.gov">anniken.lydon@bcdc.ca.gov</a> )
<b>Staff Recommendation:</b>	<b>APPROVAL WITH CONDITIONS</b>

### Basis for Recommendation

The staff recommends approval of the application as conditioned in the recommended resolution, below. The project would remediate sediment and soil located at the 900 Innes property that have elevated concentrations of Contaminants of Concern (metals, polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), and petroleum hydrocarbons). This project is a voluntary clean-up being conducted to meet the remediation goals in the Final Remedial Action Plan and Remedial Design Report, dated July 2019, developed by Anchor QEA for the San Francisco Recreation and Parks Department (SFRPD), and in collaboration with the Regional Water Quality Control Board (Water Board) and U.S. Environmental Protection Agency (EPA). The remediation is being conducted to prepare the site for a public park that is anticipated to be the subject of a future permit application and Commission action.



The project site is a 3.38-acre area located along the shoreline of India Basin in the City and County of San Francisco. Approximately 3.08 acres of the project activities are in the Commission's jurisdiction. The upland portion of the project site is bounded by the India Basin Shoreline Park (IBSP) to the northwest, San Francisco Bay to the northeast, India Basin Open Space (IBOS) located to the east, the 700 Innes property owned by BUILD, Inc. to the southeast, and Innes Avenue to the southwest. The historic use of the site included maritime boat repair operations that occurred at the site for approximately 120 years. During this use, a number of chemicals were used during the operating of the site and have led to contamination of the site's mudflats and upland soils. During remediation activities, most of the existing buildings and structures on the site would be demolished, with the exception of the historic Shipwright's Cottage and the marine rail portion of the Central Construction Way Ramp, which would be protected in place. The project site is currently gated and inaccessible to the public.

The remediation project would improve water quality and habitat in the Bay and eliminate the human health exposure pathway in the upland portion of the site. Additionally, the project includes a temporary, accessible, and barrier free public access path that would be constructed if the timing between the completion of remediation and the initiation of construction on the public park exceeds six months. The remediation project is not inconsistent with the San Francisco Bay Plan (Bay Plan) Waterfront Park, Beach Priority Use designation or the San Francisco Waterfront Special Area Plan (SF Waterfront SAP) Park Priority Use designation for the site. Additionally, the project would further the goals of expanding public access at the site.

Special Conditions are included to protect Bay resources, provide adequate public access amenities, and ensure that the project is developed consistent with the plans submitted as part of the application.

## 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, the San Francisco Recreation and Parks Department (SFRPD), is hereby granted permission to perform the following actions at the 900 Innes property along the southern San Francisco shoreline in the City and County of San Francisco:

#### Within the Bay:

1. Place a temporary water barrier (approximately 3,407 cubic yards of temporary fill) across an intertidal mudflat (approximately 0.21-acre footprint) to dewater an approximately 38,333 square-foot (0.88-acre) area of tidal flats for removal of contaminated sediment from the nearshore area of the 900 Innes property, and remove this temporary fill following the remediation;

2. Remove approximately 7,200 cubic yards of contaminated sediment below Mean High Water (MHW) over an approximately 38,333 square-foot (0.88-acre) area of the Bay to a depth of approximately four feet below the ground surface and dispose of the material outside of the Commission's jurisdiction;
3. Place approximately 7,400 cubic yards of clean sediment over approximately 38,333 square feet (0.88 acres) of the Bay to backfill the intertidal mudflat areas to their original elevation;
4. Remove approximately 320 cubic yards of Bay fill over approximately 7,000 square feet (0.16 acres), including solid marine debris, concrete debris, timber piles, marine rails structures (West Marine Way and East Marine Way Tracks), floating docks (Modern Dock), pile-supported structures (East Outfitting Dock, and Blacksmith, and Machine shops), and a small portion of the Central Construction Way concrete ramp, and dispose of the material outside of the Commission's jurisdiction;
5. Reuse and maintain metal beams from the marine rail structures onsite if the beams are successfully remediated;
6. Place approximately 800 cubic yards of sand to cap two mudflat areas totaling approximately 17,424 square feet (0.4 acres) near India Basin Shoreline Park (IBSP).

**Within the 100-foot Shoreline Band:**

7. Remove concrete, asphalt, and upland structures (including utility poles, sanitary manholes, sewer systems, Blacksmith and Machine shops, Paint Shop, Compressor Shop, Boatyard Office, toolshed, water tank building, and storage buildings) prior to soil excavation, and dispose of the all material outside the Commission's jurisdiction;
8. Protect the marine rail ladder portion of the Central Construction Way Ramp in place, and use, and maintain all existing marine rail structures onsite;
9. Demolish and remove two wharves making up a majority of the Central Construction Way Ramp, including the bulkhead walls, concrete slabs, and 80 support timber pilings, in their entirety;
10. Remove contaminated soil over an approximately 78,408 square-foot-area (1.8 acres) along 600 linear feet of shoreline, and dispose of the soil outside the Commission's jurisdiction;
11. Install and maintain a visual demarcation layer over the 78,408 square-foot (1.8-acre) area of the shoreline, and backfill the area with an equivalent volume of soil to achieve the pre-project site elevations;

12. Construct, use, and maintain a minimum 12-foot-wide, 806-foot-long, temporary, accessible, and barrier free public access path through 900 Innes connecting with the India Basin Shoreline Park, and composed of decomposed granite or similar material over compacted aggregate base as described in Special Condition II.C below; and
13. Place and maintain a minimum of two public shore wayfinding signs and two waste containers, with a minimum of one of each amenity located at each pathway entrance.

- B. **Based on Application Dated.** This authority is generally pursuant to and limited by the application dated July 23, 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 August 30, 2021 or this permit will lapse and become null and void, unless an extension of time is granted by amendment of the permit. Such work must also be diligently pursued to completion and must be completed within two years of commencement, or by June 30, 2025, whichever is earlier, unless an extension of time is granted by amendment of the permit.

D. **Project Summary**

1. **Bay Fill.** The India Basin 900 Innes Remediation Project will remediate the approximately 3.38-acre site to prepare the area for future park construction that will be incorporated into the San Francisco Bay Trail and the City of San Francisco's Blue Greenway. The project includes shoreline and intertidal mudflat remediation, placement of two sand caps on the mudflat, and construction of temporary public access. Approximately 55,757 square feet (1.28 acres) of the site are within the Commission's Bay jurisdiction and approximately 78,408 square feet (1.8 acres) are in the Commission's 100-foot shoreline band. During remediation activities, contaminated sediment will be removed, and clean fill will be placed to backfill approximately 38,333 square feet (0.88 acres) of the Bay to the original site elevations. Additionally, approximately 800 cubic yards of sand will be placed over approximately 17,424 square feet (0.4 acres) of the Bay floor to cap two mudflat areas near IBSP. The fill for these activities includes placing a total of 1,000 cubic yards of sediment and sand over the approximately 55,757 square feet (1.28 acres) of the Bay floor. The project will also result in the removal of approximately 320 cubic yards of solid fill (marine debris, pilings, floating docks) and pile-supported structures currently covering approximately 7,000 square feet (0.16 acres) of the Bay. Additionally, the remediation work within the Commission's 100-foot shoreline band includes soil excavation and the removal of structures (wharves, pile-supported structures, etc.) that would open approximately 5,711 square feet of new Bay surface area. The project will result in an increase in the surface area of the Bay by approximately 12,711 square feet (0.29 acres).

2. **Public Access.** The project results in the construction of approximately 9,672 square feet (0.22 acres) of interim public access within in the Commission's 100-foot shoreline band jurisdiction if the time between the completion of remediation and construction on the park exceeds six months. The project includes a minimum 12-foot-wide, 806-foot-long interim public pathway that connects to IBSP and India Basin Open Space (IBOS) trails and will be provided until such time that a future public park, landscaping, and a variety of public access amenities can be constructed at this location to improve this area for public use. The future park will be subject to a future BCDC permit application (BCDC Permit Application No. 2020.001.00).

## 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. **Construction Document(s).** The development authorized herein shall be built generally in conformance with the *India Basin – 900 Innes Voluntary Cleanup Project – 90% Design* plans prepared by Anchor QEA and dated October 2019. The final, signed design plans shall be submitted prior to construction. 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.
- B. **Plan 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 45 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 45-day period, the permittee may carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A of this permit.
  1. **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, grading limits; and the boundaries of public access areas required herein. 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 amendment of this permit.
  2. **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.

3. **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 conditions shall prevail.
  4. **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.
- C. **Interim Public Access.** If the timing between the completion of remediation and the initiation of construction of the public park is expected to exceed six months, or by such timeline as modified by or on behalf of the Commission, the permittee shall construct and make available to the public an interim public pathway and all required improvements and provide this pathway for unrestricted public access and use. The interim public access pathway shall be constructed and operated consistent with the following conditions:
1. **Area.** The permittee shall construct a temporary, accessible, and barrier free public access pathway through the 900 Innes site within six (6) months of completing the remediation project, unless this timeline for construction is otherwise modified by or on behalf of the Commission. The approximately 9,762 square-foot (0.22-acre) temporary public access area shall be constructed in general accordance with Exhibit B and be made available to the public for unrestricted public access for walking, bicycling, viewing, and related purposes. If the permittee wishes to use the interim public access area for uses inconsistent with public access purposes, the permittee shall obtain prior written approval by or on behalf of the Commission.
  2. **Improvements Within the Interim Public Access Area.** All public access improvements including, but not limited to, surfacing, paving, signage, and waste containers, shall be subject to final plan review approval pursuant to Special Condition II.B of this permit. The permittee shall install and make available the following improvements, as generally shown on Exhibit B:
    - a. A 12-foot-wide, 806-foot-long, accessible and barrier free pathway constructed with decomposed granite or similar material over compacted aggregate base;

- b. Appropriate erosion control measures on either side of the pathway;
  - c. Appropriate public shore signage at all entrances to the pathway; and
  - d. Waste containers at or adjacent to pathway entrances, with a minimum of one container at each entrance to the pathway.
3. **Maintenance.** The areas and improvements as shown in Exhibit B along the approximately 806-foot-long temporary public pathway shall be maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; repairs or replacement as needed of any public access amenities such as signs and trash containers, etc.; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; repairs to public access amenities damaged by flooding, and assuring that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site.
4. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the temporary public access areas to correct particular problems that may arise, and may regulate the hours of use of the site consistent with the rules and regulations contained in the SFRPD's ordinances and operations for the adjacent IBSP. Any additional 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, etc.
5. **Permanent Pathway.** If the permittee does not begin construction on the future public park for this site within three years of the completion of the remediation project authorized herein, the permittee shall install improvements to convert the interim pathway into a more permanent shoreline path that would be required to be barrier free and open to the public. The permittee shall at that time apply for approval and authorization by or on behalf of the Commission to make modifications to provide a more permanent path.

**D. Construction Measures**

1. **Construction Management Plan.** The permittee shall submit a Construction Management Plan to the Commission at least 30 days prior to construction, which shall provide details such as methods for installing the water barrier, soil/sediment removal, best management practices used during construction, construction monitoring, and maintenance.

2. **Staging Area.** The permittee shall use the staging area(s) as described in the project plans for handling and or treating any sediment or soil that is excavated from the site as specified in the project plans, unless another site is approved by or on behalf of the Commission through plan review.
3. **Water Barrier**
  - a. **Dewatering Plan.** The permittee shall submit to the Commission any dewatering plans required by the Water Board for in-water work that will require dewatering, which will describe the areas proposed to be dewatered and the timing and methods to be implemented as consistent with this permit. Dewatering methods used during construction shall be removed immediately upon completion of the project activities requiring dewatering.
  - b. **Installation Methods.** The permittee shall install the temporary water barrier and initially leave a segment open to allow the natural ebb of tidal water to exit the area behind the barrier to provide a passive exit route for any fish. The barrier shall then be closed off before the tide starts to rise again.
  - c. **Fish Screens.** If a water-filled type barrier, such as a water bladder, is deployed, the permittee shall ensure that all water intakes for the barrier are covered by a fish screen consistent with NMFS criteria for anadromous fish and also approved by CDFW.
4. **Backfilling and Testing Criteria.** All imported backfill soil and sediment shall be tested and meet the criteria for chemical constituents that is laid out in the Final RAP/RDR and Tier I Environmental Screening Levels established by the Water Board. The permittee shall ensure that all soil and sediment meet the unrestricted ecological and human health use standards prior to placing the material.
5. **Permanent Fill Removal and Disposal.** The permittee shall dispose of all sediment, soil, and debris removed during remediation activities at an appropriate, upland location outside the Commission's jurisdiction.
6. **Removal of All Temporary Fill.** All temporary fill placed as part of the project shall be removed from the Bay within 30 days of completing the remediation, or by November 30<sup>th</sup>, whichever occurs earlier, unless an extension of time is obtained from the Executive Director to leave the fill in place after consultations with the resource agencies.
- E. **Protection of Special Status Species.** The permittee shall minimize impacts to Bay resources and water quality at the site by implementing the following measures. Minor modifications to the below requirements may be approved by the Executive Director upon a finding that they are no less protective of Bay resources or water quality.

1. **Environmental Work Window.** The permittee shall conduct all work authorized by this permit below the Mean High Water line between June 1<sup>st</sup> and November 30<sup>th</sup> of each year, unless the permittee seeks and obtains approval by the Executive Director to work outside this window, and consults with the National Marine Fisheries Service (NMFS) and the California Department of Fish and Wildlife (CDFW) regarding minimization and avoidance measures for Central California Coast (CCC) Distinct Population Segment (DPS) of steelhead and southern DPS of North American green sturgeon, and longfin smelt (CDFW only).
2. **Other Protection Measures.** Work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing native upland vegetation, outside of the construction of the remediation area, including no work occurring at night.
3. **USFWS Consultation.** The permittee shall adhere to the avoidance and minimization measures, including best management practices and worksite protocols, to protect the California Ridgway's rail and other sensitive species in the vicinity of the project site as stated in the Informal Consultation on the India Basin 900 Innes Avenue Remediation Project October 29, 2019, by the US Fish and Wildlife Service (USFWS), or as amended and approved by or on behalf of the Commission.
4. **NMFS Consultation.** The permittee shall adhere to the avoidance and minimization measures, described in the Endangered Species Act Section 7 (a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the India Basin 900 Innes Avenue Remediation Project in San Francisco County, California dated December 11, 2019 (Reference No. WCRO-2019-02340) by the National Marine Fisheries Service (NMFS), or as amended and approved by or on behalf of the Commission, to minimize potential project impacts on federally-listed fish species and their habitat.
5. **Incidental Take Permit (ITP).** The permittee shall obtain an incidental take permit from the California Department of Fish and Wildlife (CDFW), if one is necessary, prior to initiating any site in-water work and preparations for the remediation project. The permittee shall submit a copy of the ITP to the Commission for review and approval within 30 days of obtaining the ITP. All work authorized herein shall be conducted in accordance with the ITP, if required, from CDFW.
6. **Qualified Biologist.** The permittee shall utilize a qualified biologist that has experience with sensitive species that have occurred on the project site to conduct pre-project clearance surveys for nesting birds. The biological monitor shall be given the authority to stop work if a Ridgway's rail is encountered and to contact USFWS for next steps.

- F. **Water Quality.** The permittee shall ensure that project construction and operations for the work authorized by this permit are in compliance with the Water Board's Water Quality Certification issued for the project on January 31, 2020, or as amended and approved by or on behalf of the Commission, including required construction planning, equipment maintenance protocols, and best management practices.
1. **Remediation Plan.** The permittee shall conduct all remediation activities in compliance with the Final RAP/RDR approved by the Water Board on December 18, 2019, or as amended and approved by the Water Board and Commission.
  2. **Water Quality Plans.** The permittee shall submit the Construction Management Plan, Construction Quality Assurance Plan, Storm Water Pollution Prevention Plan, Spill Prevention Control and Countermeasures Plan, and any other plans that include measures to prevent impacts to the Bay to the Commission for review after the contractor has prepared them and at least 45 days prior to the commencement of construction. BCDC shall review the plans within 30 days and either approve the plans or recommend changes to the plans to make them consistent with the Commission's laws and policies and the conditions of this permit. If the Commission does not respond within 30 days, then the permittee shall be allowed to proceed with the project.
  3. **Erosion Control.** The permittee shall implement appropriate erosion control methods, such as installing silt fences and straw rolls, as needed during construction activities within the project area to avoid adverse impacts to water quality in the Bay. Areas cleared of vegetation, pavement, or other substrates shall be stabilized as quickly as possible to prevent erosion and runoff.
  4. **Spill Prevention.** The permittee shall notify the Commission and the Water Board of any petroleum hydrocarbon, free product, or other chemical contamination spills that occur during the project activities and consult with staff on the appropriate response actions to implement to remedy the situation.
  5. **Removal of Marine Debris and Piles.** All in-water work to remove the piles shall be conducted slowly and with care to minimize disturbance to the surrounding sediment.
  6. **Creosote Treated Wood.** The permittee shall remove all creosote treated pilings and other wooden structures present on the site in their entirety to the extent feasible. The permittee shall remove such structures by pulling with a cable or vibratory hammer with the intention to remove the entire pile length.
- G. **Sand Cap.** The permittee shall place all sand within the north and south sand cap footprints as generally shown in the approved project plans discussed in Special Condition II.A above, or as modified and approved through plan review pursuant to Special Condition II.B.

1. **Placement.** The sand cap shall be approximately one-foot thick, but shall be no less than six-inches thick in any location of the cap. The permittee shall exercise caution when placing offshore sand covers to minimize sediment resuspension during periods of placement. The permittee shall obtain approval by or on behalf of the Commission for the final methods selected for the placement of the sand in the cap areas.
2. **Turbidity Control.** The permittee shall implement appropriate turbidity control methods for in-water work, including using decreased placement speed for the sand cap material, and placing the sand in “thin lifts” to reduce turbidity impacts to Bay waters.

H. **Monitoring and Reporting.** The permittee shall conduct the following monitoring.

1. **Water Quality Monitoring.** The permittee shall provide the Water Quality Monitoring and Reporting Plan to the Commission for review at least 30 days prior to construction. The Water Quality Monitoring and Reporting Plan shall contain the duration and frequency of monitoring during construction activities, including the need to determine the baseline water quality prior to construction and include measurements of the following: turbidity, total suspended sediment, dissolved oxygen, and pH at a minimum. If the monitoring and reporting plan is not reviewed by or on behalf of the Commission within 30 days, the permittee may carry out the project authorized herein.
2. **Post-Construction Monitoring and Report.** The permittee shall sample and test the exposed soil/sediment footprint after excavation and assess the concentrations of contaminants of potential concern to ensure that the new surface meets the remedial goals established by the Water Board and EPA prior to placing any visual demarcation layer fabric or clean backfill material. The permittee shall submit to the Commission a post-remediation report that includes a discussion of any project elements that were modified in the field during construction, results of the soil/sediment testing, actual volumes and square footages of fill removed from the Bay during the project, and the surface area of the Bay that was opened as a result of the project.
3. **Final Approval of Remediation Completion.** The permittee shall submit documentation of the final Water Board approval of the remediation activities to the Commission within 30 days of the Water Board issuing the approval.
4. **Annual Sand Cap Monitoring.** The permittee shall conduct one post-construction bathymetric survey within 30 days of completing the construction activities and then conduct bathymetric surveys annually for a minimum of three years to monitor the two sand caps placed near sediment sample station INN-SE-10 and IB-08 to ensure that the material is staying in place. The monitoring reports and results shall be submitted to the Commission by January 31<sup>st</sup> of each year. If the surveys indicate

problems associated with the sand caps, the permittees shall, within six months of the submittal of the reports and results, develop and implement a remedial action that resolves the issue.

5. **Interim Management and Monitoring Plan.** The permittee shall submit a final version of the Interim Management and Monitoring Plan (IMMP) for review and approval within 30 days of completing the Final IMMP or by August 30, 2020, whichever occurs earlier. The permittee shall adhere to the final approved IMMP. If the final version of the IMMP is not reviewed by or on behalf of the Commission within 75 days, the plan shall be deemed approved.

### III. Findings and Declarations

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended Coastal Zone Management Program for the following reasons:

#### A. Site History and Description

1. **Project Site History and Current Conditions.** The project site is an approximately 3.38-acre site with upland, open water, and mudflat habitat areas in India Basin, and it formerly supported maritime boat building and repair activities for over 120 years. The permittee acquired the property in 2014. The site contains "character defining" cultural resources, include the Shipwright's Cottage and the marine rails, but many of the current structures are non-historical buildings, paved areas, boat launches, and docks in poor condition. The site is located along the shoreline of India Basin, between the India Basin Shoreline Park (IBSP) and India Basin Open Space (IBOS).

The site is currently fenced off from the adjacent Innes Avenue and from connections with IBSP to the northwest and IBOS to the east. As a result of the prior boat building and repair activities, the site contains elevated levels of Contaminants of Concern (COCs) in both the upland soils and sediment making up the intertidal mudflats. The soils in the upland portion of the site contain mainly lead, nickel, PCBs, and benzo(a)pyrene, and the sediments in the mudflats contain mainly lead, mercury, and PCBs, at elevated concentrations. The upland portion of the site currently contains ruderal vegetation and degraded paved areas, and the nearshore areas support intertidal mudflats and tidal wetlands. At high tide, there is very little tidal marsh vegetation present at the site that could provide protection from predators and the site is unlikely to support listed tidal marsh species, such as the California Ridgway's rail. The contaminated sediments in the mudflats currently provide degraded habitat for fish species that may be in India Basin.

The nearshore basin is relatively shallow and depositional in nature near the site and is currently estimated to receive about 0-2 inches of sediment annually. Existing patches of pickleweed and saltgrass within the project area are small, isolated,

sparse, and unlikely to support marsh species. Although there is little tidal marsh vegetation and habitat present, there are extensive mudflats in the nearshore and offshore areas of the project site. These mudflats extend in all areas of the project site at elevations slightly above the MLLW and occur between elevations from 0-3 feet NAVD88. During the lowest tides, the mudflat is exposed for approximately 40 feet laterally from the shore in all locations of the basin. The offshore areas of India Basin remain shallow until the deeper areas adjacent to Heron's Head Park to the north, where the depth of the Bay floor ranges from -4 to -10 feet NAVD88. The conditions of India Basin limit site access for remediation activities via the water.

The landward side of the project area slopes from Innes Avenue down to the water at a steep grade (10-15% slope), with the northwest portion of the site adjacent to IBSP containing a bluff at elevation 17 NAVD88 and sloping down to the waterline at a 6-7% slope. A portion (approximately 50 feet) of this bluff slope is a soft shoreline, and the remaining bluff is stabilized by concrete rubble. The top of the bluff contains a concrete pad, which would serve as the staging area for the construction activities and sediment storage/treatment area prior to the sediment and soil being hauled off to an appropriate landfill for disposal.

- 2. Project Description.** This project involves voluntary cleanup actions to remove historic contaminants (including metals, petroleum hydrocarbons, PCBs, PAHs, etc.) from the former land uses at the site, and to meet both Water Board- and EPA-approved cleanup targets. The project involves remediation of both the landside portion of the site and intertidal nearshore sediments. The goal is to achieve remedial targets spatially across the site by removing all soils that is considered hazardous waste according to California's Total Threshold Limit Concentration (TTLC) values, removing between two to five feet of top soil across the entire upland portion of the site, excavating all sediments to a depth of four feet below the sediment surface to remove all sediment above the ecological not-to-exceed (NTE) thresholds, and backfilling all areas to their original grade with clean cover suitable for unrestricted human health and ecological uses. No significant contamination was detected in the site groundwater and this project does not involve groundwater remediation.

More specifically, the project involves the removal of approximately 7,200 cubic yards of contaminated sediments over approximately 38,333 square feet (0.88 acres) from the tidal flats adjacent to 900 Innes and backfilling the same area with 7,400 cubic yards of clean cover material (mixture of sand and silt) to the original site elevation. Additionally, the project involves the placement of approximately 800 cubic yards of sand in two mudflat areas, totaling approximately 17,424 square feet (0.4 acres) of permanent fill, near IBSP (Exhibit A). Total fill placement in the Commission's Bay jurisdiction will be approximately 1,000 cubic yards of clean sediment and sand over approximately 55,757 square feet (1.28 acres) of the Bay floor. The permittee is also removing approximately 320 cubic yards of fill from the

Bay, including pile-supported structures, pilings, docks, a portion of the Central Construction Way Ramp, and marine debris, currently covering approximately 7,000 square feet (0.16 acres) of the Bay.

Work in the upland portion of the site includes improvements within the Commission's 100-foot shoreline band through the removal of approximately 11,600 cubic yards of contaminated soil covering approximately 78,408 square feet (1.8 acres) of the shoreline, placing a visual demarcation fabric, and backfilling the same area with an equal volume of appropriate clean cover material. Additionally, the project involves removal of debris along the shoreline, and removal of multiple structures including: (1) two marine rail structures (West Marine Way and East Marine Way Tracks), (2) the Blacksmith shop, (3) the Dock Gangway, (4) the Paint shop and Compressor House, (5) two, concrete wharf decks protected by bulkhead walls and supported by approximately 80 interior pilings, and (6) a portion of the toolshed and water tank buildings. The metal marine rails will be reused on the site if they can be salvaged after remediation activities. Following the demolition and removal of many of the structures on the site, the Bay will gain approximately 12,711 square feet (0.29 acres) of water surface area that was previously filled or is an area newly opened to tidal action.

The EPA and the San Francisco Restoration Authority provided grant funding to the permittee to conduct the remediation project to improve water quality and site conditions for future public uses. The project will prepare the site for the redevelopment of the site as a public park, which would be part of an improved network of parkland and open space along the shoreline of India Basin. The future park would be integrated as part of the City of San Francisco's Blue Greenway and connect the San Francisco Bay Trail.

#### **B. Waterfront Park, Beach Priority Use Area**

1. **Use.** The site is located within a San Francisco Bay Plan-designated "Waterfront Park, Beach" Priority Use Area, identified on Bay Plan Map No. 5. The project area is also located within the San Francisco Waterfront Special Area Plan (SF Waterfront SAP) in the Southern Waterfront of San Francisco. The SF Waterfront SAP discusses that this portion of the shoreline has "little public access to the Bay along this extensive stretch of waterfront...Significant recreation potential also exists at a number of other sites, including Warm Water Cove, Islais Creek, and India Basin..." The SF Waterfront SAP allows for public recreation/open space/public access and marina uses within India Basin and states that "[t]he India Basin area should be developed as a major waterfront park in accordance with the Recreation and Open Space Plan of the City of San Francisco. Some fill may be needed." Additionally, SF Waterfront SAP Map 7 shows the project area as a Park Priority Use area.

The project would remediate the site and bring it back up to the existing elevation to support the future redevelopment and construction of a public park on the site. Special Condition II.C requires an interim public pathway that opens this site up to temporary public access prior to the construction of the future public park, which would provide permanent public access to the shoreline. Additionally, Special Condition II.C.1 allows for some flexibility in the timeline trigger for construction of the interim public access, if the permittee is close to beginning construction on the public park but needs more than six months to initiate those construction activities. The interim public pathway will connect the Bay Trail from the IBSP on the northwest of the site with the IBOS area to the east, until such time that permanent access can be constructed. If the remediation activities authorized herein are completed and the construction on the public park begins within six months of completing the remediation, then the permittee is not required to construct the interim public pathway.

Although the project does not include permanent waterfront park amenities, the project furthers the goals of redeveloping this site for use as a waterfront park public access area and enhancing recreational opportunities in this area of the shoreline. The project includes some fill in the Waterfront Park, Beach Priority Use Area to elevate the site back up to the existing condition following the remediation. The project is necessary to address ecological and human health concerns and ensure that the site is prepared for future park redevelopment.

As conditioned, the Commission finds that the project is consistent with the Waterfront Park, Beach Priority Use Area designation in the Bay Plan and with the geographic-specific policies and Map 7 of the SF Waterfront SAP.

### **C. Benefits, Purposes, and Manner of Filling**

The Commission may allow fill only when it meets the requirements identified in Section 66605 of the McAtter-Petris Act, which provides, in part, that: (a) the public benefits of the fill should clearly exceed the public detriment from the loss of water area and the fill should be limited to water-oriented uses (such as water-oriented recreation or public assembly) or “minor fill for improving shoreline appearance or public access”; (b) fill in the Bay should be approved only when “no alternative upland location” is available; (c) fill should be “the minimum amount necessary to achieve the purpose of the fill”; (d) “the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment...”; (e) “[t]hat public health safety, and welfare require that fill be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters...”; (f) “fill should be authorized when the filling would, to the maximum extent feasible, establish

a permanent shoreline”; and (g) “fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.”

**1. Public Benefit Versus Detriment and Water-Oriented Use.** The overall purpose and goal of the project is to improve this site for habitat and recreational opportunities in this area of the Bay and shoreline. The project involves: (1) removing Bay sediments and upland soils with elevated levels of contaminants from approximately 120 years of historic boat building and repair activities on the site; (2) removing dilapidated structures and marine debris; (3) placing clean backfill material; and (4) capping two mudflat areas with a sand/silt mixture to prevent the sediment from being disturbed. The fill associated with the project will provide public benefits through two main components:

- a. Remediating contaminants on the site resulting in improved water quality and habitat benefits in the future; and
- b. Improving site conditions to support the redevelopment of the site into a public park that would provide recreational opportunities and public access to the Bay.

The project involves placing a net of approximately 1,000 cubic yards of clean, permanent fill (200 cubic yards of clean cover in the sediment excavation area and 800 cubic yards of sand for the two sand cap areas). The project would also remove approximately 320 cubic yards of solid fill (structures and marine debris) and restore approximately 12,711 square feet (0.29 acres) of Bay through demolition, removal, and remediation activities. Although there is a small net increase in volume of Bay fill, the project will improve water quality and habitat within the area. Temporary fill in the Bay during construction activities is necessary to isolate the excavation and remediation area from Bay waters during project activities. Public detriments associated with the project include habitat impacts to the existing mudflats present at the site from removal of the entire sediment surface and backfilling with new material to achieve the benefits described above. Special Condition II.D and II.G require the permittee to use environmental protection measures to minimize these impacts from placing fill during the project.

The fill associated with the remediation is water-oriented in nature in that it involves cleanup and improvements to water quality and habitats for native species. As a result, the public benefits of the project exceed the public detriments from the fill.

**2. Alternative Upland Location.** The Commission finds that, by the nature of the contamination being present within the soils and sediments at this particular site, there are no upland alternative locations for backfill or sand cap fill material, which must be located in the Bay and the 100-foot shoreline band to successfully remediate the site.

3. **Minimum Amount Necessary.** The McAteer-Petris Act states that fill should be “the minimum amount necessary to achieve the purpose of the fill...” Bay fill associated with the project includes the placement of clean backfill (silt/sand mixture) to replace the excavated contaminated sediment and capping two mudflat areas near IBSP during remediation activities. The project would result in approximately 200 cubic yards of clean cover placed over approximately 38,333 square feet (0.88 acres) of the Bay, and placing approximately 800 cubic yards of clean sand fill to cap two areas totaling approximately 17,424 square feet (0.4 acres) of the mudflats near IBSP that have elevated concentrations of contaminants located in the sediment slightly below the sediment surface. All sediment, soil, debris, and structures removed during remediation activities will be disposed of outside the Commission’s jurisdiction pursuant to Special Condition II.D.5.

The permittee plans to place two sand caps in the mudflats near IBSP to protect the current sediment from disturbance and prevent uncovering of sediment that contains slightly elevated concentrations of contaminants of concern below the surface. As required in Special Condition II.G.1, each sand cap will be between six inches and one foot thick to contain the sediment with slightly elevated contaminant concentrations. The 800 cubic yards of sand was calculated based upon a sand cap thickness of one foot. The permittee anticipates that this thickness for the sand caps is enough to cover the sediments while also allowing the final grades in the cap areas to be similar to existing elevations and the natural shoreline topography. Additionally, the permittee anticipates that sediment in India Basin will deposit on top of the sand caps to further cover the material. Special Condition II.H.4 requires the permittee to conduct three years of annual monitoring to assess the conditions of the sand caps and ensure they are being maintained in place and that this fill is not moving to adjacent areas.

The project includes the removal of all dilapidated in-water structures and marine debris from the Bay during the demolition and remediation activities. These structures include pile-supported structures, pilings, docks, a portion of the concrete surrounding the Central Construction Way Ramp, and marine debris totaling approximately 320 cubic yards of Bay fill that currently covers approximately 7,000 square feet (0.16 acres) of the Bay floor. Additionally, the permittee would remove two wharf structures along the Central Construction Way Ramp that project out into the Bay and are currently within the Commission’s 100-foot shoreline band. Following the remediation of the site and removal of structures from the Bay and 100-foot shoreline band, the Bay will increase in water surface area by approximately 12,711 square feet (0.29 acres).

The excavation and backfilling activities in the Bay, which will add approximately 200 cubic yards of additional sediment in the Bay, would modify the mudflat habitat in this area and result in permanent impacts to this area from changing the sediment grain size from fine silts/clays to a sand/silt mixture. This fill would be spread over

38,333 square feet (0.88 acres) and is not expected to raise or modify the elevations of the area significantly. Additionally, the permittee stated that the *India Basin Waterfront Parks and Open Space, Coastal Processes and Shoreline Improvements* report prepared by Moffat & Nichol in April of 2017 for Build, Inc. indicates that this portion of India Basin has a relatively high sedimentation rate (0-2 inches annually). The permittee anticipates that after the placement of clean fill and the ongoing deposition of fine-grained sediment, the benthic community will recolonize rapidly, and the overall mudflat habitat will recover within 1-2 years.

Additionally, to isolate the mudflat areas for remediation activities, the permittee would need to place a water barrier that would cover approximately 9,142 square feet (0.21 acres) of the mudflat and account for 3,701 cubic yards of temporary fill. This temporary barrier would isolate the approximately 38,333 square-foot (0.88-acre) mudflat area for excavation. The water barrier will be removed after remediation activities, as required in Special Condition II.D.6.

The project will backfill all excavated areas in the Bay and 100-foot shoreline band to meet the pre-existing grade of the site with clean cover material. The site is intended to support a future public park that would contain public access that needs to be resilient to sea level rise, based upon the life of that project, and it is prudent to raise the elevation of the site back up to grade rather than leaving it at lower elevations. The fill that is being placed within the Bay is the minimum amount necessary to achieve the goals of the remediation project and to prepare the site for future public access.

#### 4. Minimize Harmful Effects to the Bay

- a. **Water Surface Area and Volume.** The San Francisco Bay Plan contains policies on the Water Surface Area and Volume of the Bay. Policy No. 1 states, “The surface area of the Bay and the total volume of water should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action. Filling and diking that reduce surface area and water volume should therefore be allowed only for purposes providing substantial public benefits and only if there is no reasonable alternative.”

A total of approximately 1,000 cubic yards of sediment/sand will be placed over approximately 55,757 square feet (1.28 acres) of mudflats in the Bay during remediation activities. This volume of clean sediment will be spread over a large area and is not anticipated to significantly change to bathymetry of the areas below MHW. Additionally, the permittee will remove approximately 320 cubic yards of solid fill during the demolition of structures and marine debris during this project. By removing the dilapidated structures (floating and pile-supported docks), pilings, and marine debris from the project area along the shoreline, the permittee would be restoring approximately 7,000 square feet (0.16 acres) of intertidal mudflats in the Commission’s current Bay jurisdiction.

Additionally, the permittee would be opening up new areas along the shoreline to Bay waters by removing two wharf structures surrounded by bulkhead walls that predate the Commission's establishment. Together, the debris and structure removal would create a total of approximately 12,711 square feet (0.29 acres) of new Bay surface area. The remediation of the sediment and soil at the site and the opening up of the Bay waters to areas previously closed off from tidal inundation provides substantial public benefits in terms of improved habitat for species, improved water quality, improved shoreline appearance, and new Bay surface area.

The benefits of the remediation activities offset potential detriments from the placement of limited Bay fill during remediation activities. As conditioned, the Commission finds the project is consistent with the Water Surface Area and Volume policies in the Bay Plan and the requirements of the McAteer-Petris Act.

- b. **Water Quality.** The Bay Plan Water Quality Policy No. 1 states, in part, that “[b]ay water pollution should be prevented to the greatest extent feasible. The Bay's tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality.” Policy No. 2 states, in part, that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay...” and “[t]he policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Board, should be the basis for carrying out the Commission's water quality responsibilities.” Additionally, Policy No. 3 states, in part, that “[n]ew projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay by: (a) controlling pollutant sources at the project site; (b) using construction materials that contain nonpolluting materials; and (c) applying appropriate, accepted and effective best management practices...” Finally, Water Quality Policy 4 states, “[w]hen approving a project in an area polluted with toxic or hazardous substances, the Commission should coordinate with appropriate local, state and federal agencies to ensure that the project will not cause harm to the public, to Bay resources, or to the beneficial uses of the Bay.”

The sediment and soil present at the project site were tested in 2013, 2015, 2017, 2018, and 2019 to delineate the areas of contaminants of concern (COCs) present at the site. Testing conducted on the site indicated that most of the COCs occur near the surface of the soil and sediment, with some of the highest concentrations of COCs occurring along the shoreline of the project site. The soil and sediment currently on the project site contain elevated concentrations of metals, total petroleum hydrocarbons (TPHs), PCBs, and PAHs, above the remediation goals set for the site. To address these results, the project proponents developed a voluntary remediation plan for the site. Along the

shoreline and nearshore portion of the site, remediation below MHW involves the removal of sediment to a depth of four feet below the sediment surface to address elevated concentrations of lead, mercury, and PCBs, and in the upland portions of the site remediation involves removal of between 2-5 feet of soil across the site to address elevated concentrations of lead, nickel, PCBs, and benzopyrene at the site. As required in Special Condition II.D.5, all soil and sediment will be hauled offsite to an appropriate landfill facility for disposal. During the development of the Final RAP/DRD, the permittee worked with the Water Board and EPA to develop the remediation goals and appropriate screening levels to achieve these goals.

The Final RAP/RDR was approved by the Regional Water Quality Control Board on December 18, 2019. The objectives of the plan are to remove contaminated sediment and soil on the site that could contribute to adverse effects to biological resources, human health, and beneficial uses of the Bay if not removed. The sediment remediation will result in improved water quality and habitat by reducing the potential for contaminants to come into contact with Bay waters. The soil remediation will reduce impacts to human health from contact with the soils on the site and prepare the site for enhanced recreational opportunities in the future. The cleanup actions will be evaluated with oversight from the Water Board and the EPA.

More specifically, the remediation goals for the intertidal sediment includes not-to-exceed and area-weighted average goals for lead, mercury, and PCBs, which are consistent with other cleanup efforts nearby at Yosemite Slough and Hunters Point Naval Shipyard, and using the National Oceanographic and Atmospheric Administration's effects range medium (ERM) values and ambient concentrations in nearshore sediments to set the cleanup levels. The remediation goals for the landside soils were established to protect future human health uses at the site and include not-to-exceed levels for lead, nickel, PCBs, and benzopyrene. Special Condition II.F.1 requires the permittee to conduct the remediation activities in accordance with the Final RAP/RDR.

No significant contamination was detected in the groundwater on the site, however slight exceedances of the screening levels were detected. The groundwater exceedances are expected to attenuate with the removal of the contaminated soil and sediment sources and as the groundwater migrates to the Bay. According to the Final RAP/RDR, the groundwater exceedances "are not expected to pose a significant threat to water quality" and are anticipated to naturally attenuate to levels below the remediation goals following the remediation activities. Additionally, a visual demarcation fabric will be placed on the landside portion of the site prior to backfilling the site with clean fill to serve as a marker and prevent any residual contaminants that may be in the native soil from impacting the clean fill material placed on the surface. Clean cover will be

brought onsite to restore the excavated areas within the Bay and the 100-foot shoreline band to their original elevation.

Most remediation work, with the exception of the two offshore sand cap areas and some debris removal, will be conducted behind a water barrier (likely a bladder dam, or other containment structure) to eliminate any potential turbidity impacts or the release of suspended sediment and contaminants into the Bay during remediation work. Special Conditions II.D and II.F require the implementation of best management practices during construction activities to prevent and control any spills, erosion, or discharge of sediment to the Bay.

There is potential to resuspended sediment during the placement of the sand in the cap areas. Although the fill placement may lead to temporary increases in turbidity in the Bay water, use of a silt curtain, which is typically used to reduce turbidity, would be difficult and likely lead to higher localized turbidity if it were to get stuck in the mud and disturb submerged contaminants that are meant to be kept in place. Therefore, a silt curtain is not required during sand placement in the cap areas. Special Condition II.G requires the permittee to ensure that contractors place the sand slowly and at a controlled speed to reduce turbidity impacts and that the sand will be placed in incremental volumes (“thin lifts”) to manage water quality impacts. Additionally, other conditions regarding erosion protection, stormwater management, methods of construction, etc. are required to ensure that water quality in the area is preserved during the project activities.

The success of the remediation will be evaluated with oversight from the Water Board and the EPA. The Water Board issued a water quality certification for the project on January 31, 2020. The remediation would result in improved water quality by reducing the potential for contaminants to come into contact with Bay waters and all material will be disposed at an appropriate landfill outside the Commission’s jurisdiction. Special Condition II.F requires compliance with the Water Board’s water quality certification. Special Condition II.H.3 also requires that the permittee provide evidence to the Commission that the EPA has approved the remediation activities after they are completed.

- c. **Tidal Flats, Fish, and Wildlife Resources.** Bay Plan Tidal Marshes and Tidal Flats Policy No. 1 states, in part: “Tidal marshes and tidal flats should be conserved to the fullest possible extent...” Fish, Other Aquatic Organisms, and Wildlife Policy 1 states, “To assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay’s tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased.”
  - (1) **Consultations with State and Federal Wildlife Agencies.** The Bay Plan Fish, Other Aquatic Organisms and Wildlife Policy No. 4 states, in part, “[t]he Commission should: (a) Consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or the National Marine Fisheries



Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species; (b) Not authorize projects that would result in the "taking" of any plant, fish, other aquatic organism or wildlife species listed as endangered or threatened...unless the project applicant has obtained the appropriate "take" authorization from the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or the California Department of Fish and Game; and (c) Give appropriate consideration to the recommendations of the California Department of Fish and Game, the National Marine Fisheries Service or the United States Fish and Wildlife Service in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat."

The current project site contains intertidal mudflat habitat in the Bay that is unlikely to support certain listed fish species, such as steelhead, due to a lack of spawning habitat and limited foraging opportunities in the degraded habitat. Additionally, there is little chance of protected tidal marsh species being present at the site. At high tide, there is little tidal marsh vegetation present that could provide protection from predators and it was determined that the project site is unlikely to support listed tidal marsh species, such as Ridgway's rail. The permittee will not be actively restoring habitat after the completion of the remediation project but anticipates that it will recover within a year or two through natural sedimentation. The permittee also plans to include some habitat features in the park redevelopment planned for the site to further improve habitat at the site.

The permittee received a Letter of Concurrence (LOC)s from NMFS on December 11, 2019 that includes avoidance and minimization measures to reduce impacts to federally-listed Central California Coast steelhead DPS, and North American green sturgeon southern DPS that may be present in the project area. The project has the potential to increase levels of turbidity, increase exposure to contaminants, disturb benthic habitat, and cause potential entrainment/impingement on the intake pumps for the water-filled barrier. The project may affect listed species, but NMFS determined that the project is not likely to adversely affect listed species and their critical habitat due to the project activities occurring during the in-water work windows, isolating a majority of the work area from the Bay waters using the temporary barrier, and due to the localized and temporary nature of species exposure to increased turbidity, contaminants, and noise during the project. NMFS did not consider these issues to be significant. NMFS also determined that the project will have beneficial effects that include removing contaminated sediment and debris to improve the habitat quality in San Francisco Bay.

Additionally, the project site is located within an area defined by the Magnuson-Stevens Fishery Conservation and Management Act as Essential Fish Habitat (EFH) for various fish species, and included in the Pacific Coast Salmon Fishery Management Plan (FMP), the Pacific Groundfish FMP, and the Coastal Pelagic FMP, and also within designated Habitat Areas of Particular Concern for the Pacific Groundfish and Pacific Coast Salmon FMPs. The project may have short-term adverse effects on Essential Fish Habitat (EFH), but NMFS determined that the removal and sequestration of harmful chemical contaminants will provide long-term benefits and they did not include any additional conservation recommendations in the EFH consultation. Special Condition II.E.4 requires that the permittee comply with the requirements of the NMFS Letter of Concurrence and implement the measures contained in the document, including the environmental work window required in Special Condition II.E.1.

NMFS determined that a total of approximately 1.5 acres (65,430 square feet) of soft-bottom benthic habitat below the high tide line (mudflats) will be converted to coarse sediment (sand) as a result of the 1.1 acres (47,916 square feet) of remediated sediment area and 0.4 acres (17,424 square feet) of sand caps. These actions will remove and change the organisms found within the invertebrate community and the food availability for fish species. However, the existing habitat has contaminated sediments, which suggests that benthic organisms may also contain these contaminants. Removing the contaminated sediment and species within this layer could remove potential contaminated food sources for fish present in the project area.

There will be some habitat type conversion of mudflats due to differences in grain size. This may alter the composition of organisms found in this area from those adapted to higher percentages of mud/fine-grained sediment to similar species that are more well-adapted to greater sand content. However, NMFS found that the offshore areas adjacent to this area offer ample foraging habitat and mudflats present near the project site. Additionally, modeling conducted by Moffat & Nichol in 2017, indicates that the project area is depositional and has a sedimentation rate of approximately 0-2 inches each year. As a result, the site can be expected to be covered by a layer of fine-grained sediment in a matter of a few years, assuming that this sedimentation rate continues.

USFWS issued an Informal Consultation Letter under the Endangered Species Act of 1973 on October 29, 2019 for the project. USFWS determined that the remediation project may affect but is not likely to adversely affect the endangered California Ridgway's rail because the Ridgway's rail is unlikely to occur at the site. The site does not provide nesting habitat for Ridgway's rail and only contains low-quality foraging habitat. The closest known occurrence

of the Ridgway's rail is far from the project site at Heron's Head Park. With the implementation of the avoidance measures and best management practices required by USFWS, the impacts of the project will be minimized. The permittee is required in Special Condition II.E.3 to comply with the USFWS Informal Consultation Letter.

CDFW plans to issue an Incidental Take Permit (ITP) for longfin smelt for this project. On March 5, 2020, the Executive Director waived the CDFW ITP as a filing requirement for the BCDC permit application, pursuant to Regulation Section 10311(a), and based on the following information: (1) the staff obtained confirmation that SFRPD has applied to CDFW for an ITP, (2) the staff has been coordinating with CDFW staff to understand the conditions and timing of the ITP, which is scheduled to be issued in late May of 2020, (3) the Commission has required, per Special Condition II.E.5, that the final ITP be submitted prior to beginning any in-water construction or work included in this authorization, and (4) the permittee needs all permits prior to June 1, 2020 to complete the remediation in 2020 and start preparing for permitting and construction of the public park anticipated in 2021. Additionally, the permittee will still need a USACE authorization after the Commission acts on the permit application. To accommodate the permittee's construction timeline for the remediation, the Executive Director determined that it was reasonable in this case to waive the ITP as the last filing requirement for the application. Special Condition II.E.5 requires the submittal of the final ITP prior to conducting any in-water work and compliance with the ITP.

There are also other native species present at the project site. Small invertebrates within the sediment in the project area would be removed during project activities, but these organisms are likely to return following remediation activities after the area naturally sediments in. Aquatic species that may be living in and foraging in this area will be excluded from a majority of the project site by the water barrier and are not likely to be negatively impacted by the project activities. Shorebirds are likely to forage in this area, eating small invertebrates living in the sediment. Removal of contaminated sediments during remediation activities eliminates exposure pathways for these all of these species, and thereby improves the habitat and health of aquatic and avian species in the project area. Special Conditions II.E.1-6 require the permittee to construct the project using measures to minimize harmful effects to sensitive species in the Bay consistent with the consultations with the USFWS, NMFS, and CDFW.

- (2) **Minimizing Construction Impacts.** Tidal Marshes and Tidal Flats Policy No. 2 of the Bay Plan states, “[a]ny proposed fill, diking, or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects.”

Special Condition II.E.1 requires work to be conducted during the in-water work windows required by USFWS and NMFS, and Special Condition II.E.1-6 require the permittee to use appropriate methods designated to avoid harmful effects on sensitive species in the Bay and adjacent areas, including fish species, consistent with the consultations with USFWS, NMFS, and CDFW. The project incorporates minimization measures and various methods to reduce entrainment of fish species present in the project area, including: installing any water-filled barrier in a manner that allows the isolated area to be mostly dewatered prior to fully inflating the barrier; removing all piles not in the isolated area slowly; and placing all sand fill for the sand caps slowly and in a controlled manner. Once the remediation area is isolated from the Bay by the water barrier, sediment excavation and backfilling can proceed in a manner that has minimal impacts to water quality and species present in the area. Further, Special Conditions II.E.2, II.F and II.G require the permittee to use careful measures when working in-water to remove old pilings and placing the fill for the sand caps. These methods will help reduce turbidity impacts and the resuspension of contaminants. The project will eventually lead to higher quality habitat than what currently exists on the site.

Additionally, if a water pump is used to inflate a water bladder or other isolation structure, NMFS determined that the water pump could entrain fish into the pump and bladder. The project now includes the incorporation of a fish screen that meets NMFS criteria, as required by Special Condition II.D.3.c, to minimize entrainment through the water intake pumps. However, for the much smaller longfin smelt, a state-listed species, their swimming capability is less robust than green sturgeon and impingement may occur. The CDFW ITP is likely to contain an evaluation of this impact on longfin smelt and have measures to reduce or mitigate for impacts to this species. Although this project will result in short-term impacts to the project area, the project will lead to better quality habitat for marine species in the future.

As conditioned, the Commission finds the project is consistent with the Fish, Other Aquatic Organisms and Wildlife, Tidal Marshes and Tidal Flats, Water Surface Area and Volume, and Water Quality policies in the Bay Plan and the requirements of the McAteer-Petris Act.

5. **Sound Safety Standards.** The Bay Plan Climate Change , Policy No. 7 states, in part, that “[u]ntil a regional sea level rise adaptation strategy can be completed, the Commission should evaluate each project proposed in vulnerable areas on a case-



by-case basis to determine the project's public benefits, resilience to flooding, and capacity to adapt to climate change impacts. The following specific types of regional benefits, advance regional goals, and should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding...[including](a) remediation of existing environmental degradation or contamination, particularly on a closed military base." Additionally, Safety of Fills Policy states, in part, that "[a]dequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project...New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy,...or employ other effective means of addressing the impacts of future sea level rise and storm activity."

Special Condition II.A requires the project to be constructed in accordance with the 90% project plans submitted to the Commission. The permittee is required to submit a final, signed plan set to the Commission for review prior to initiating construction. This condition ensures that final construction documents conform to the plans reviewed as part of the application package. If the plans are substantially modified, then the permittee is required in Special Condition II.B to obtain Commission approval through plan review or an amendment to this permit if necessary. The project will not result in the placement of any structures or shoreline protection elements in the Commission's Bay jurisdiction. The project will result in approximately 1,000 cubic yards of sediment/sand fill in the Bay, and temporary fill placed in the Bay to isolate the intertidal work area during the project. The project is intended to be followed by the redevelopment of the site into a public park and it is intended to be interim in nature, with the exception of the two sand caps.

The permittee provided an analysis of the localized hydrodynamics present near the sand cap sites. The analysis, *Hydrodynamic Evaluation of Offshore Cover Placement Areas and Potential Contaminant Transport, 900 Innes Shoreline Restoration Project* prepared by Anchor QEA and dated December 6, 2019, describes that the environmental conditions in the sand cap areas are not erosive in nature, as evidenced by the persistence of extensive mudflats currently present in this area. The sand cap material will be placed between approximately 1.5-6 feet NAVD88 for the southern cap and 0.5-2feet NAVD88 for the northern cap. This means that both cap areas are mostly exposed on the low tides and submerged on the high tides. These project features are intended to be flooded and submerged. The wind wave and tidal current modeling indicates that the currents will not have much effect on these areas. However, the analysis found that wave breaking and runup during low tides and storm events could impact the capped areas. The largest waves will come from the southeast winds. The analysis indicated that the wave runup and rundown velocities could be enough to mobilize the sand cap material, although such events would be short in duration. Special Condition II.H.4 requires the permittee to

monitor the offshore cap for a minimum of three years to evaluate the efficacy of this technique and if the cap is staying in place and being covered with new silty sediment.

Following the excavation and backfilling, the upland and offshore areas of the project site will generally have similar elevations to the pre-project condition. The current 100-year base flood elevation (BFE) for the site is 10 feet NAVD88. This project is intended to be an interim phase for the site prior to the construction of the public park. All sediment fill placed in the Bay is intended to be subject to tidal action and submergence. Therefore, the permittee was not required to prepare an analysis of sea level rise and flooding impacts on this fill placed in the Bay and for the portions of the project in the Commission's 100-foot shoreline band jurisdiction. If the interim public pathway is required to be made permanent in the future, that will be the time to evaluate the life of the public access pathway and determine if a sea level rise and flooding evaluation is necessary.

Special Condition II.A is included to ensure the project is constructed consistent with the application and provides for plan review to ensure that construction complies with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.

- 6. Permanent Shoreline.** The project will result in a newly aligned shoreline along this portion of the Bay and India Basin following the removal of remnant structures from the historic boat repair activities as the site. The shoreline will be pulled back and make the Bay slightly larger, while not significantly altering or impacting the established shoreline around the India Basin Area. After the remediation, the Bay will be increased in size by approximately 12,711 square feet (0.29 acres) following the removal of approximately 320 cubic yards of Bay fill including all pile-supported structures, floating fill, marine debris, and the wharves around the Central Construction Way Ramp. As a result of the project, two wharves and the Central Construction Way Ramp will be completely removed from the shoreline band, including the bulkhead walls, support pilings and all concrete decking. The permittee plans to utilize some of the removal of these structures as fill removal credits for the placement of some Bay fill, likely piers and/or a floating feature, associated with the future public park for public access features that would connect the public to the Bay.

Additionally, the project will result in an interim shoreline, which will be modified during the subsequent park construction to create a more permanent shoreline. The project represents the maximum feasible permanent shoreline consistent with the remediation activities, knowing that in the near future this area will be further modified.

7. **Valid Title of Project Site.** The permittee provided the Commission with a document summarizing the City's title insurance and legal property interest in each property impacted by the project (whether it be fee title, easement, or right-of-way), and the underlying documentation of the City's legal interest in these properties.

As conditioned, the Commission finds that the fill removal and placement for the project is consistent with the McAteer-Petris Act and Bay Plan policies on allowable fill of the Bay.

- D. **Public Access.** The McAteer-Petris Act Section 66602 states, in part, that "...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Additionally, Section 66605.1, states in part, that "to make San Francisco Bay more accessible for the use and enjoyment of the people, the bay shoreline should be improved, developed, and preserved..." When the activity under consideration is proposed by a public agency, such as the SFRPD, the Commission also evaluates whether the proposed public access is reasonable in light of the project scope.

1. **Maximum Feasible Public Access.** In assessing whether the proposed project would provide maximum feasible public access consistent with the proposed activities, the Commission relies on the McAteer-Petris Act, the Bay Plan policies on Public Access and other policies in the Bay Plan. The Bay Plan Public Access Policy No. 1 states, "A proposed fill project should increase public access to the Bay to the maximum extent feasible, in accordance with the policies for Public Access to the Bay." Policy No. 2 states, in part, that "In addition to the public access to the Bay provided by waterfront parks, beaches... and fishing piers, 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..."

The project site is in a Waterfront Park, Beach Priority Use Area and is currently gated off and not accessible to the public. There are existing public parks and open spaces adjacent to the project site. To the northwest of the site, IBSP consists of approximately 5.6 acres of parkland that contains a public trail through that site, which is part of the City of San Francisco's Blue Greenway and also an existing segment of the San Francisco Bay Trail. To the east of the project, is the 6.2-acre IBOS that is currently an SFRPD open space area adjacent to the Bay with an approximately quarter-mile trail segment along the shoreline. The 900 Innes project site lies between these two open spaces along the shoreline and is planned for development into a public park in a later phase of site development. The future public park would provide a Bay Trail connection through the site and various public access amenities and allow for connections from adjacent communities for public use and enjoyment of the Bay.

As mentioned in sections above, the site currently contains contaminated soil/sediments that provide limited habitat value and also prevent the area from being opened to the public in the current state. The project site is unlikely to support protected and sensitive species that could be impacted by a public access pathway in the upland portion of the project area following remediation activities. The remediation of contaminated soil and sediment to varying depths across the project site will remove contaminants of concern and backfill with clean material. The goals of the voluntary remediation plan and project are to ensure that the site can be used in the future for unrestricted ecological and human uses without public safety concern from current site contamination.

During discussions with the permittee, it became apparent that an interim trail across the site was feasible to construct and could provide interim access across the site, connecting IBSP with IBOS along the shoreline, prior to the construction of the 900 Innes public park. At the time of application submittal and discussions with the permittee, the timeline for the construction of the public park was uncertain. However, in early March 2020, the permittee received necessary grant funding to move forward with the planning and construction of the public park sometime in early 2021, assuming the issuance of all permits for that project. The grant funding requires that the 900 Innes public park be constructed and open to the public by March of 2022. Because of this accelerated timeline for the planning and construction of the public park, the permittee now anticipates that there will likely only be 3-6 months between the completion of the remediation project and the time that they start to stage and prepare the site for construction of the public park in late Spring/early Summer of 2021. The permittee states that it is not financially feasible to justify the cost to build the interim pathway when the public park would begin construction in such a short period of time after the remediation.

Although the timing for the planning and construction of the public park has accelerated, the interim 12 foot-wide, 806 foot-long, public pathway (906 square-foot area), as required by Special Conditions II.C, is the maximum feasible public access consistent with the project. The staff recognizes the timing and cost issues of constructing an interim pathway and then requiring its removal shortly after to begin construction on the much larger public park. However, in the event the park construction does not begin as anticipated in 2021, Special Condition II.C ensures that the interim public pathway will be constructed and offers barrier free access for the public to the Bay and adjacent public park and open space areas.

As required in Special Condition II.C., the permittee has up to six months to build the interim public pathway, unless this timeline is further modified by or on behalf of the Commission. If park construction begins in that timeframe, then the permittee would not be required to build the interim public pathway. The interim public pathway is not intended to stay in place long-term, but this connection would open up the site to the public and provide access to the adjacent parks until such time

that the public park is constructed at the 900 Innes site. If the interim pathway is constructed, it may be closed to accommodate the construction of the future park at the site. If the interim pathway is constructed and in place for three years following the time that the remediation was completed, Special Condition II.C.5 requires improvements to make the interim public pathway more permanent. Additionally, Special Condition II.I requires the permittee to submit a final Interim Management and Monitoring Plan for the site, which includes management measures to be used on the site prior to public park construction.

- 2. Public Access Design and Operation.** Public Access Policy No. 4 of the Bay Plan states, in part, that “Public access should be sited, designed and managed to prevent significant adverse effects on wildlife” and “[s]iting, design and management strategies should be employed to avoid or minimize adverse effects on wildlife, informed by the advisory principles in the Public Access Design Guidelines.” Policy No. 5 of the Bay Plan policies on Public Access 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. 7 states that “Public access improvements provided as a condition of any approval should be consistent with the project and the physical environment, including protection of Bay natural resources, such as aquatic life, wildlife and plant communities, and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.” Policy No. 12 states, in part, that “The Public Access Design Guidelines should be used as a guide to siting and designing public access consistent with a proposed project...”

The Public Access Design Guidelines say that projects should provide physical access to and along the shoreline and Objective No. 1 of the Public Access Design Guidelines states, in part, that projects should “make public access public” and should “provide physical public access to and along the shoreline and visual public access (views) to the Bay from other public spaces... provide clear connections to public rights-of-way, be related to the adjacent uses and be designed, built and maintained in a way that indicates their public character” and “be designed in a manner that [feels public] and “[makes] the shoreline enjoyable to the greatest number of people .”

Consistent with the Public Access Design Guidelines, the permittee is required in Special Condition II.C.2 to provide a minimum of two public shore wayfinding signs, one at each trail entrance, “to assist shoreline users in and along the Bay.” Additionally, the interim public pathway is required to be a minimum of 12 feet-wide to maintain consistency with the IBSP Bay Trail with and the Public Access Design Guidelines. The interim public pathway is required to be accessible and barrier free

and to be constructed with decomposed granite, or similar material, underlaid by an aggregate base appropriate for the interim nature of the trail and the post-remediation conditions of the site. The elevation of the interim public pathway would be between 9-16 feet NAVD88. Additionally, per Special Condition II.C.3, the permittee is allowed reasonable rules and restrictions for the public pathway, including hours of operation. Additionally, there is currently degraded habitat present at the project site and the existing areas will be completely disturbed during remediation activities and placement of clean fill. The interim pathway will be constructed high above tidal marsh and tidal flat elevations and there is not likely to be conflicts between the public use of the interim public pathway and wildlife that may use the site post-remediation.

The interim public pathway is not intended to serve as a long-term pathway or to last beyond mid-century, but to serve as an interim access opportunity available while planning for the 900 Innes public park occurs. The current 100-year flood elevation near the site is approximately 9.93 feet NAVD88 (SF Bay Tidal Datums Study (FEMA/AECOM 2016)). The interim pathway has a low likelihood of closures related to flooding and is unlikely to be in place long enough to be impacted by sea level rise. After three years, the permittee is required to construct improvements to convert the pathway to a permanent public access facility if the future park development does not occur. If a more permanent pathway is constructed, then an assessment of the sea level rise impacts on that public access will be required consistent with the Bay Plan policies in place at that time to ensure the pathway is sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding.

The interim public pathway, if constructed, will serve the adjacent community and anyone visiting or passing through this area of the shoreline. The interim public pathway will have the same operating hours as the adjacent IBSP to provide continuity in the public access throughout this area. Additionally, Special Condition II.C.2 requires that the pathway be accessible and barrier free to provide access to all users. This interim public pathway, when and if constructed, will provide access to a shoreline area that has long been inaccessible to the public. The permittee is required in Special Condition II.C.3 to maintain the interim trail in-kind until such time that a permanent trail, or other public access area is constructed on the site.

Finally, the project will allow the site to be prepared for the future public park, which will be part of an improved network of parkland and open space along the shoreline of India Basin. For this to occur, the project site must be remediated to address public safety concerns and be approved by the EPA and Water Board prior to construction of the public park. If the phasing between the completion of the remediation and the public park construction becomes longer than anticipated, then

the permittee is required to come back to the Commission and consult with staff on a way to move forward with constructing a more permanent public access pathway as required by Special Conditions II.C.5.

3. **Adjacent Community.** The community adjacent to the project site is the Bayview Hunters Point neighborhood. This community includes some commercial properties, and many residential units, including public housing complexes. This community is comprised of many people of color and low-income households. The Commission's Vulnerable Communities Index Tool classifies this area as a highly vulnerable community.

The project will provide an area of the shoreline that is improved through remediation activities to address public safety concerns onsite from historical contamination present at the site. The remediation must occur before public park construction, and before the site can be opened to the public. If there is any delay in the construction of the public park, which is anticipated to start in late Spring or early Summer of 2021, the permittee is required to construct an interim public pathway for use by the public within six months of completing the remediation activities, or as modified by or on behalf of the Commission. The permittee will be providing this interim public access that can be enjoyed by the adjacent residents and anyone else visiting or passing through this area of the shoreline. The interim public pathway will connect adjacent parklands that are currently disconnected, and it would reconnect the surrounding community with the Bay for their use and enjoyment. This interim public access will accommodate a range of passive water-oriented recreational activities for people of all races, cultures, ages and income levels.

The application for this project was submitted in the summer of 2019 prior to the Commission's adoption of the Environmental Justice and Social Equity policies that were established to ensure that people regardless of race, culture, and income are treated fairly and included in the project planning process in a meaningful way, but all future projects at this site will be required to be consistent with those policies. Although this project was not subject to those specific policies, the permittee has been working with various members of the adjacent community, and non-profits, to develop the design for the 900 Innes public park to serve the community desires to the extent feasible, and also offer public access amenities that would be desirable to the public.

As conditioned, the Commission finds the project is consistent with the policies in the Bay Plan on Public Access, and the requirements of the McAtteer-Petris Act.

- F. **Review Boards.** The Commission staff determined that this project did not involve significant fill or safety of fills concerns that would require the project to be reviewed by the Commission's Engineering Criteria Review Board. Additionally, the 900 Innes public

park project did go to the Commission's Design Review Board in November 2016 and February 2020 for evaluation of the public access, but the remediation activities that are the subject of this authorization were not specifically evaluated by either board.

- G. **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.
- H. **Public Trust.** The project authorized herein will remediate a portion of the shoreline and Bay intertidal mudflats to improve water quality and habitat in the project area. Additionally, the project has the potential to provide temporary public access to the shoreline prior to the construction of a public park that will serve a regional and statewide need. Therefore, the Commission finds the project is consistent with public trust needs for improved wildlife habitat and recreation.
- I. **Environmental Review.** SFRPD conducted a joint environment review process with Build, Inc., owners of a proposed mixed-use development, which includes parks and open spaces, located at 700 Innes Avenue. The remediation project activities were considered during this environmental review process. The project was reviewed by multiple City and County of San Francisco Commissions, including the San Francisco Recreation and Park Commission, Port Commission, Planning Commission, Municipal Transportation Agency, and the San Francisco Public Utilities Commission, as part of the Mixed-Used Project at India Basin. The City of San Francisco Board of Supervisors certified the Environmental Impact Report and Negative Declaration (State Clearinghouse Number 2016062003) for the India Basin Mixed-Used Project (700 Innes Avenue, 900 Innes Avenue, India Basin Open Space, and India Basin Shoreline Park) on November 1, 2018. The City of San Francisco Board of Supervisor determined that for the overall mixed-use development, including the 900 Innes remediation activities, there would be significant effects on the environment, and adopted findings of overriding consideration pursuant to Sections 15091 and 15093 of CEQA and a statement of overriding consideration was made. Mitigation measures were also made a condition of the project.
- J. **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.

- K. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the McAteer-Petris Act, the San Francisco Bay Plan, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California Coastal Zone.

#### IV. Standard Conditions

- A. **Permit Execution.** This permit shall not take effect unless the permittee executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. **Permit Assignment.** The rights, duties, and obligations contained in this permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur necessary to achieve full compliance of one or more conditions to this permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director transferring permittee's rights, duties and obligations contained in this permit to the assignee(s) with respect only to the property interest transferred to assignee(s). 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 assignee(s) 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 Water 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. **Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in the 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 with 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 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 permittee shall immediately retrieve and remove such material at its expense.
- O. **In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.