



Making San Francisco Bay Better

CORRECTED PERMIT NO. M08-30

August 25, 2010

City of Oakland
1 Frank H. Ogawa Plaza, Third Floor
Oakland, California 94612

ATTENTION: Dan Lindheim

AND

Port of Oakland
530 Water Street, Second Floor
Oakland, California 94607

ATTENTION: Jerry Servanti

Ladies and Gentlemen:

I. Authorization

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

Location: Within the 100-foot shoreline band, between Union Point Park and the corner of Embarcadero and Dennison Streets, in City of Oakland, Alameda County.

- Description:** Construct, use, and maintain the following public access improvements within a 40,172-square-foot area along an approximately 300-foot-long section of the shoreline:
- a. An approximately 370-foot-long, 12-foot-wide asphalt trail and an adjacent 260-foot-long, three-foot-wide decomposed granite trail;
 - b. An approximately 10,299-square-foot concrete plaza with eleven tree wells and seat walls, and an approximately 3,369-square-foot concrete-paved area for various connector paths around the site;
 - c. An approximately 4,022-square-foot asphalt driveway with a passenger drop off area and up to four ADA-accessible parking spaces;
 - d. Landscape approximately 21,165 square feet throughout the site;
 - e. An approximately 42 to 56-inch-high, 330-foot-long fence along the shoreline to prevent access to a heavily contaminated section of the Bay; and

f. Riprap on an approximately 1,728-square-foot area.

B. This authority is generally pursuant to and limited by your application dated August 12, 2008, including its accompanying and subsequently submitted exhibits and correspondence and all conditions of this permit.

C. Work authorized herein must commence prior to December 1, 2010, or this permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within two years of commencement, or by December 1, 2012, whichever is earlier, unless an extension of time is granted by amendment of the permit.

II. Special Conditions

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

A. Specific Plans and Plan Review

1. **Construction.** The final plans submitted pursuant to this condition shall generally conform with the plan entitled "Cryer Site Park," prepared by Transystems Corporation Civil Engineer, as revised through November 14, 2008. No changes to the design of the project shall be made without the prior written approval of the BCDC staff.
2. **Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, engineering, grading, architectural, and landscaping plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.

Site, engineering, grading, architectural, and landscaping plans shall include and clearly label the shoreline (Mean High Water or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if tidal marsh is present), the line 100 feet inland of the line of the shoreline, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements. The site plan shall provide a dimension line which marks the minimum distance between a proposed structure authorized by this permit and the Mean High Water Line (or, if marsh is present, the inland edge of marsh vegetation up to 5 feet above mean sea level NGVD (National Geodetic Vertical Datum)). Additional dimension lines shall be provided, as necessary, to locate where this minimum dimension occurs in relation to either the property line, the top of bank, or some other fixed point upon the site.

Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:

- a. completeness and accuracy of the plans in showing the features required above, particularly the shoreline (Mean High Water Line or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if tidal marsh is present), property lines, and the line 100-feet inland of the shoreline, and any other criteria required by this authorization;
- b. consistency of the plans with the terms and conditions of this authorization;
- c. the provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization, but limited to ensuring: (1) the public's use and enjoyment of the access area; (2) public safety; (3) accessibility for persons with disabilities; (4) sufficient durability and maintenance; and (5) the access is clear and continuous and encourages public use; and
- d. consistency of the plans with the recommendations of the Design Review Board;

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

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

B. Public Access

1. **Area.** The approximately 40,172-square-foot area, along approximately 300 feet of shoreline as generally shown on Exhibit "A" shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, and related purposes. If the permittees wish to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission.

The overall proposal for public access for this project includes:

New public access within the shoreline band:

Approximately 21,402 square feet

New public access outside the shoreline band:

Approximately 22,790 square feet

2. **Improvements Within the Total Public Access Area.** Prior to the use of any structure authorized herein, the permittees shall install the following improvements, as generally shown on attached Exhibit A:
 - a. An approximately 370-foot-long, 12-foot-wide asphalt trail and an adjacent 260-foot-long, three-foot-wide decomposed granite trail;
 - b. An approximately 10,299-square-foot concrete plaza with eleven tree wells and seat walls, and an approximately 3,360-square-foot concrete paved area for connector paths;
 - c. An approximately 21,165-square-foot landscaped area; and
 - d. A minimum of three public access parking spots, two trash receptacles, three seat walls or benches, and two BCDC public shore signs and, where appropriate, Bay Trail signs.
3. **Shoreline Fence.** The approximately 330-foot-long fence along the Bay shall be no more than 42 to 56-inches-high and shall be as transparent as possible to provide views to the Bay while precluding children and pets from squeezing through the fence. If the contaminated shoreline is ever cleaned up and is deemed safe for human contact by the Regional Water Quality Control Board, the fence shall be removed within 90 days of notification by or on behalf of the Commission.
4. **Maintenance.** The areas and improvements within the total 40,172-square-foot public access area shall be permanently maintained by and at the expense of, the permittees or their assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as paths signs, benches, drinking fountains, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assuring that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittees shall correct any maintenance deficiency noted in a staff inspection of the site.
5. **Assignment.** The permittees shall transfer maintenance responsibility to a public agency or another party acceptable to the Commission at such time as the property transfers to a new party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
6. **Reasonable Rules and Restrictions.** The permittees may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved in writing by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
7. **Future Public Access Connection to Neighboring Parcel** The permittees shall enable the construction of a future public access connection between this property and the neighboring parcel(s) to facilitate the completion of the Bay Trail / shoreline path. Within one year of commencement of construction of any shoreline public access

area on the neighboring parcel(s), the permittees shall install improvements to create a physical connection to the new public access areas from the public access areas required herein. At such time, the permittee(s) shall reasonably coordinate the design, construction, and maintenance with the permittee(s) of the adjacent parcel(s) to create a continuous and seamless transition between the public access areas, including landscaping. The exact manner in which the connection is made shall be reviewed, and if adequate, approved by or on behalf of the Commission pursuant to Special Condition II-A.

C. In-Kind Maintenance and Replacement of Authorized Facilities. This permit authorizes in-kind repairs and maintenance of the facilities and improvements authorized herein.

D. Construction Operations and Debris Removal. All construction operations shall be performed so as to minimize turbidity and the roiling of waters, to prevent any construction materials from falling, washing, or blowing into any tidal areas of the Bay and drifting and presenting a navigation or pollution hazard. In the event that any such material is placed or escapes into any area subject to tidal action of the Bay, the permittees, their assigns or successors in interest, or the owner of the improvements shall immediately retrieve and remove such material at their expense. All construction debris shall be removed to an authorized location outside the Commission's jurisdiction.

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

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

III. Findings and Declarations

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

A. Consistency with Commission Regulations. The project authorized by this permit involves creating a 40,172-square-foot public access area along a 300-foot-long section of the shoreline. Improvements include a decomposed granite trail, public access plaza, riprap for shoreline protection and various site amenities and landscaping, and therefore involves the placement of small amounts of inorganic material, and maintenance and repair that will not adversely affect public access or the environment, conflict with a priority use designation, or substantially change use of the site as defined by Regulation Section 10601(b)(1) and 10601(b)(5), thereby qualifying as a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).

B. Consistency with McAteer-Petris Act and San Francisco Bay Plan. The project authorized by this permit is consistent with the McAteer-Petris Act and with the San Francisco Bay Plan in that it will not adversely affect the Bay nor public access to and enjoyment of the Bay. Special Conditions have been included to assure that the project will be designed to provide the most attractive, usable and safe public access given site constraints, that the improved area will be maintained to provide such access, and that construction activities will not adversely impact the Bay's natural resources, water quality, or navigation, as required by the Bay Plan policies on public access, fish, other aquatic organisms, and wildlife, tidal marshes and tidal flats, water quality, and navigational safety. Due to past uses of the site, the shoreline at the site is contaminated and the Regional Water Quality Control Board has required a fence along the

shoreline to keep the public from contact with contaminated sediments. Therefore, if the shoreline at the site is cleaned up to the standards of the Regional Board, this authorization requires the removal of the fence to promote a more desirable public access experience, consistent with the Commission's Bay Plan public access policies. A special condition has also been included to restrict the height of the fence along the shoreline to no more than 56-inches, and for the fence to be as transparent as possible for the public to enjoy views of the Bay.

C. Consistency with Coastal Zone Management Act. The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

D. Consistency with California Environmental Quality Act. Pursuant to Regulation Section 11501, the project authorized by this permit is categorically exempt from the requirement to prepare an environmental impact report.

E. Listing with the Commission. Pursuant to Regulation Section 10620, this project was listed with the Commission on November 20, 2008.

F. Enforcement Program and Civil Penalties. The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts materials, or makes any substantial change in use of any water, land or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor.

IV. Standard Conditions

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

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

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

D. Permit Runs With the Land. Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

E. Other Government Approvals. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.

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

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

H. Commission Jurisdiction. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

I. Changes to the Commission's Jurisdiction as a Result of Natural Processes. This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.

J. Violation of Permit May Lead to Permit Revocation. Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittees or their 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 permittees or their 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 permittees or their 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 permittees 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.

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

WILL TRAVIS
Executive Director
San Francisco Bay Conservation and
Development Commission



CAITLIN SWEENEY
Chief Deputy Director

CS/KW/ra

cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn.: Certification Section
Environmental Protection Agency

* * * * *

Receipt acknowledged, contents understood and agreed to:

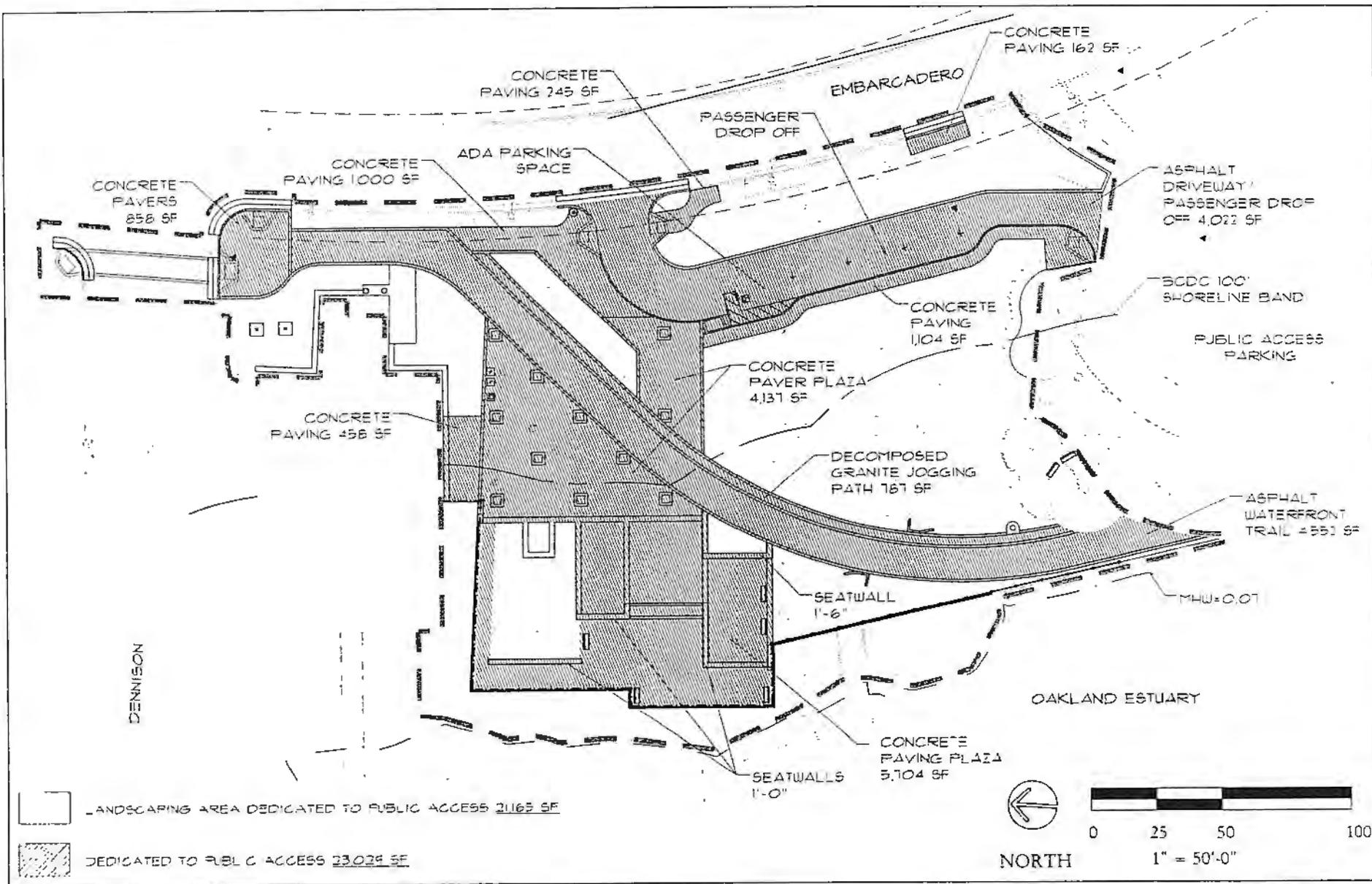
Executed at _____ City of Oakland
Applicant

On _____ By: _____
Title

Receipt acknowledged, contents understood and agreed to:

Executed at _____ Port of Oakland
Applicant

On _____ By: _____
Title



	DESIGN, COMMUNITY & ENVIRONMENT	DRAWING TITLE: Public Access Diagram	SHEET REFERENCE:
	1825 SHATTUCK AVENUE SUITE 300 BERKELEY, CA 94709 TEL 510 848 3815 FAX 510 848 4315	PROJECT TITLE: Cryer Site Park	PROJECT NUMBER: 705.W DATE: 10/23/08

EXHIBIT A