



Making San Francisco Bay Better

BCDC Original

PERMIT NO. M2012.009.00

August 7, 2012

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The California Department of Transportation
111 Grand Avenue
Oakland, California 94612

SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

ATTENTION: Melanie Brent, District Deputy for
Environmental Planning and Engineering

Ladies and Gentlemen:

I. Authorization

A. Subject to the conditions stated below, the permittee, the California Department of Transportation, is hereby authorized to do the following:

Location: In the Bay, on the west span of the San Francisco-Oakland Bay Bridge, in the City and County of San Francisco.

Description: Temporarily (for two years, from approximately September 2012 to September 2014) install a light sculpture consisting of approximately 25,000, 2-inch-in-diameter energy-efficient LED light bulbs along the 616 north facing bridge suspender cables and ranging in height from 5 feet to 240 feet. Installation of the sculpture would require lane closures on the bridge, which will occur at night to minimize impacts to traffic flow. In addition, installation and dismantling work will be conducted with a biological monitor present to avoid any potential disruption to nesting birds. The project will result in no new Bay fill and no new public access.

B. This authority is generally pursuant to and limited by your application, dated April 6, 2012 and received in this office on April 16, 2012, requesting authorization for the project, including all accompanying and subsequently submitted exhibits and correspondence and all conditions of this permit.

C. Work authorized herein must commence prior to September 15, 2013, or this permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within six months, or by March 15, 2014, whichever is earlier subject to the work windows required in this authorization, unless an extension of time is granted by amendment of the permit. All lights shall be removed within two years of the date of completing the installation work, or by March 1, 2016, whichever is earlier.

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 Plans.** The lights authorized in this permit shall be installed at the locations and in the configuration generally shown in the plans that were submitted as part of the application, received on April 16, 2012, entitled "The Bay Bridge 75th Anniversary Light Art Project" prepared by Parson Brinckerhoff and dated January 10, 2012. As long as the installation is generally in accord with these plans, no further plan review is needed and no changes to the design of the project shall be made without the prior written approval of the BCDC staff.

B. Construction Activities

1. **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 their expense.
2. **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 assignee, or successor in interest, or the owner(s) 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.
3. **Monitoring During Installation and Dismantling to Protect Nesting Birds.** In order to avoid impacts to nesting birds that may occur within the project area, the permittee shall perform pre-construction nesting bird surveys prior to both the installation and removal of the lights to ensure that no nests are present. If nests are found to be present within the project area, a trained ornithologist/ avian monitor shall continue to conduct monitoring until all nesting birds are clear from the installation area. In addition, buffer zones should be established to minimize impacts to those nests. If necessary, the avian monitor may require the permittee to stop work until further notice in order to prevent birds from abandoning their nests.
4. **Construction Timing.** All installation and dismantling activities shall be performed between August 15 and January 31 to minimize disturbance to migratory and nesting resident birds.

C. **In-Kind Repairs and Maintenance.** Any in-kind repairs and maintenance of all areas shall only use construction material that is approved for use in San Francisco Bay. Construction shall only occur during current approved months during the year to avoid potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions.

D. **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 assigns or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

E. **Certification of Contractor Review.** Prior to commencing any construction activities or placing any structures in the Bay the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.

F. **Hold Harmless and Indemnify.** The permittee shall hold harmless and indemnify the Commission, all Commission members, Commission employees, and agents of the Commission from any and all claims, demands, losses, lawsuits, and judgments accruing or resulting to any person, firm, corporation, governmental entity, or other entity who alleges injuries or damages caused by work performed in accordance with the terms and conditions of this permit. This condition shall also apply to any damage caused by flooding of or damage to property that is alleged to be caused as a result of some action or lack of action by the Commission growing out of the processing of and issuance of this permit.

G. **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.

III. Findings and Declarations

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

A. **Minor Repair or Improvement.** The project authorized by this permit involves the temporary installation of a light sculpture on the Bay Bridge, a structure in the Bay. The project therefore, involves minor fill in the Bay for improving shoreline appearance that complies with section 10700 that does not exceed 1,000 square feet, as defined by Commission Regulation 10601(a)(7), and therefore, is 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 the project will not adversely affect the Bay nor public enjoyment of the Bay. Special Condition II-B has been included to assure that installation and dismantling activities will be conducted in such a manner that will minimize adverse impacts to birds by limiting work to times when birds are not likely to be present and by requiring monitoring during construction by a trained ornithologist. Special Condition II-B also requires that the permittee prevent construction debris from entering the Bay in order to protect Bay water quality and navigation, consistent with the Bay Plan's policies on these subjects.

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

D. **Environmental Review.** The Bay Area Toll Authority (BATA), acting as the lead environmental agency, issued a notice of exemption, dated June 8, 2012, which found the project categorically exempt from the need to prepare an environmental document under the California Environmental Quality Act (CEQA).

E. **Listing with the Commission.** Pursuant to Regulation Section 10620, this project was listed with the Commission on August 2, 2012.

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 transfers any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the 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 permittee 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.

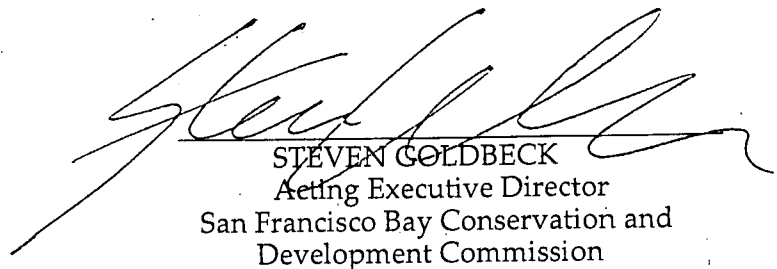
I. Changes to the Commission's Jurisdiction as a Result of Natural Processes. This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of 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 permittee or its assignee if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or its assignee if the permit has been assigned.

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 assignee if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

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.

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


STEVEN GOLDBECK
Acting Executive Director
San Francisco Bay Conservation and
Development Commission

SG/MD/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
City and County of San Francisco Planning Department

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Receipt acknowledged, contents understood and agreed to:

Executed at 111 Grand Ave.
Oakland, CA

California Department of Transportation
Applicant

On Aug. 22, 2012

By: Melanie Burt
Deputy District Director
Title

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