

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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January 23, 2009

TO: Commissioners and Alternates

FROM: Will Travis, Executive Director (415/ 352-3653, travis@bcdc.ca.gov)
Bob Batha, Chief of Permits/ Staff Biologist (415/ 352-3612 bobb@bcdc.ca.gov)

SUBJECT: **Staff Report and Recommendation on Revisions to Regionwide and Abbreviated Regionwide Permits**
(For Commission consideration on February 5, 2009)

Summary

The staff recommends that the Commission hold a public hearing on February 5, 2009 and vote to revise Commission Regionwide Permit No. Three and Abbreviated Regionwide Permit No. One to advance the Commission's goal of making its regulatory process more efficient, effective, and expeditious. The only difference in these two permits from the version presented at the Commission's December 18, 2008 public hearing is: (1) a revision to Special Condition II-F (in both permits), Impacts to Fish from Pile-Driving, reflecting advice from the National Marine Fisheries Service; and (2) a change to Special Condition II-A specifically identifying construction plans authorized by the permit.

Regionwide and Abbreviated Regionwide permits were first adopted by the Commission on December 4, 1986 and, subsequently, revised on April 16, 1996 to create a class of permits already issued by the Commission for projects, which are fully consistent with its laws and policies and raise no significant issues. To obtain a Regionwide or an Abbreviated Regionwide Permit, applicants complete a simplified notice of intent to proceed. For Regionwide Permits, the notice is a slightly shorter version of the Commission's full permit application and differs mostly by not requiring local government approval or environmental documentation. For Abbreviated Regionwide Permits, the notice is a much condensed version of the Commission's full permit application. The staff reviews the form to determine whether the project qualifies for a Regionwide or an Abbreviated Regionwide Permit and, if it does, concurs that a permit has already been



Making San Francisco Bay Better

approved by the Commission for the activity and subsequently, issues the appropriate permit.

Staff Recommendation

The staff recommends that the Commission amend Regionwide Permit No. Three and Abbreviated Regionwide Permit No. One as follows:

1. **Authorize Routine, In-Kind Maintenance.** The existing Regionwide and Abbreviated Regionwide Permits for the activities authorized in the existing permits allow one-time repairs only. The proposed amendments would allow routine, on-going, in-kind repairs and maintenance for as long as the authorized facilities exist. A new special condition has been included specifying that such repairs are limited to in-kind repairs, shall only use material approved for use in San Francisco Bay, and shall occur only during those months of the year that avoid or minimize potential adverse impacts to fish and wildlife.
2. **Consolidate Related Regionwide Permits.**
 - a. Existing Regionwide Permit No. 3 (reconstruction and replacement of pilings, boat docks on pilings, boat slips and other pile-supported structures used for water-oriented purposes, and wildlife habitat improvement structures such as fish screens and ladders) has been combined with Regionwide Permit No. 7 (construction of a floating dock or fixed pier for mooring a boat that would not exceed a total of 1,000 square feet, where no pile-supported portion is wider than eight feet, and where such dock would not raise public access issues or adversely impact Bay-related resources) into new Regionwide Permit No. 3 (attached here).
3. **Update Special and Standard Conditions to Reflect Current Commission Policy.** Changes to the Standard Conditions since the last revisions to Regionwide Permits include the following:
 - a. A title has been given to each standard condition;
 - b. The standard condition advising permittee(s) that the placement of fill does not change the Commission's underlying jurisdiction has been combined with the standard condition advising that the Commission's Bay jurisdiction follows the tide for projects that introduce tidal action into an area. The new condition is entitled "Commission Jurisdiction."
 - c. A condition advising permittee(s) that the Commission's jurisdiction may change as the result of natural processes.
 - d. The condition requiring work be performed so as to minimize muddying of waters and waterproofing of dikes has been deleted because it duplicates a special condition (Construction Operations and Debris Removal) and references dikes for which no Regionwide Permit applies.
 - e. The condition specifying that the permittee(s) must return the executed permit within ten days (as opposed to 14 days in the existing standard conditions).

Changes to Special Conditions include:

- a. Inclusion of a special condition for maintenance and replacement of authorized facilities.
- b. Inclusion of a special condition specifying that work constructed must be built in conformance with the plans submitted as part of the notice of intent to proceed.
- c. Inclusion of a special condition addressing impacts to fish from pile driving that reflects the latest advice from the National Marine Fisheries Service.

4. **Clarify the Criteria for Determining Whether a Project Qualifies for a Regionwide or An Abbreviated Regionwide Permit.** Both Regionwide and Abbreviated Regionwide Permits would be amended to make it clear that such permits are limited to sites that do not already have an existing BCDC permit and to projects that would not adversely impact the Bay, Bay resources that are scarce or have an abundance and diversity of fish, other aquatic organisms and wildlife (such as tidal marshes or eelgrass beds), or existing or possible future visual or physical public access to and along the Bay from public access areas, public roads, or pathways.
5. **Clarify the Distinction between Regionwide and Abbreviated Regionwide Permits.** The proposed amendments would clarify that Abbreviated Regionwide Permits are for projects that involve routine repair and replacement of approximately 50 percent or less of a structure, whereas Regionwide Permits are for projects that involve a more substantial repair, replacement, reconstruction, or minor expansion of existing improvements, and certain specified classes of new structures.
6. **Change the Format of Regionwide and Abbreviated Regionwide Permits to Clarify the Specific Activities Authorized by the Permit.** The proposed amendments would change the authorization section to mirror that of the Commission's administrative permits, clearly stating the project location address and the specific work authorized. The existing Regionwide and Abbreviated Regionwide Permits include a generic project location and description that has sometimes led to the impression that all activities listed, even those for which authorization has not been sought, are authorized.
7. **Specify that Certain Related Activities Are Included in the Authorization.** Proposed Regionwide Permit No. 3 specifically authorizes boat hoists, floating docks and mooring buoys, improvements not specifically authorized in the existing Regionwide Permit. Including such work in these permits will make this Regionwide Permit more clear.
8. **Expand Findings to Better Justify Certain Conditions Included in the Authorization.** Typically, Commission permits have findings that fully explain the conditions included in the authorization to assure the project's consistency with the Commission's law and policies. The findings of the Regionwide Permits have been expanded to provide such an explanation.
9. **Include the Enforcement Finding.** The Regionwide and Abbreviated Regionwide Permits would be amended to include the Enforcement finding advising permittee(s) of the possible fines that may incur if the terms of the permit are violated.
10. **Reorganize the Order of the Special Conditions.** The order of the special conditions would be reorganized to be consistent among Regionwide and Abbreviated Regionwide Permits. The new order follows that used in the Commission's administrative and major permits and would facilitate staff review of the permits.



Bay Area Conservation and Development Commission

**REGIONWIDE PERMIT NO. RWP-3
(As Amended Through December 18, 2008)
AMENDMENT NO. ONE
(Construction, reconstruction, replacement,
and maintenance of: (1) new docks, piers,
boat hoists, associated pilings and mooring
buoys of less than 1,000 square feet; (2)
wildlife habitat improvement structures; and
(3) other pile-supported, water-oriented uses)
in the Bay, certain waterways, managed
wetlands and shoreline band)
NOTICE OF INTENT TO PROCEED NO. NOI-**

[DATE]

ATTENTION: _____

Ladies and Gentlemen:

On December 4, 1986, the San Francisco Bay Conservation and Development Commission, by a vote of 21 affirmative, 0 negative, and 0 abstentions, approved the issuance of the original of this Regionwide Permit, ~~and~~ ~~On~~ April 18, 1996, the Commission, by a vote of 17 affirmative, 0 negative, and 0 abstentions, approved Amendment No. One of this Regionwide Permit. On _____, the Commission by a vote of _____ affirmative, _____ negative, and _____ abstentions, approved Amendment No. Two of this Regionwide Permit upon which your authorization is based:

I. Authorization

A. Subject to the conditions stated below, the permittee(s) is hereby authorized to do the following:

Location: Project Address.

~~Anywhere in the Bay, in certain waterways, and within managed wetlands.~~ (Moved to Findings)

Description: Authorized Project.

~~Reconstruction and replacement of existing, currently used pilings, boat docks on pilings, boat slips and other pile-supported structures being used for water-oriented purposes., and wildlife habitat improvement structures such as fish screens and ladders and other waterway devices, that do not involve any substantial enlargement,~~

~~any substantial extension into the water or wetlands, or any substantial change in use. (Moved to Findings)~~

B. This authority is limited to activities undertaken at a site where activities are not already authorized by another BCDC permit and to projects that would not adversely impact: (1) the Bay; (2) Bay resources such as those that are scarce or have an abundance and diversity of fish, other aquatic organisms or wildlife (such as tidal marshes or eelgrass beds); and (3) existing or possible future visual or physical public access to and along the Bay from public access areas, roads and pathways. This authority is generally pursuant to and limited by your notice of intent to proceed under a Regionwide Permit dated _____, including its accompanying exhibits, any subsequent additions or modifications, and all conditions of this amended Regionwide Permit.

C. Work authorized herein must commence within ~~two~~ one years of the date of the transmittal of this amended Regionwide Permit by the Executive Director to you or the authorization of your work will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within ~~two~~ three years of commencement, or within three years of the date of transmittal of this amended Regionwide Permit to you, whichever is earlier, unless an extension of time is granted by the Executive Director.

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. **Limit of Work.** Authorized work shall be built in general conformance with the plans entitled _____, prepared by _____ and dated _____, submitted as part of the application.

B. **Construction Operations and Debris Removal.** All construction operations shall be performed so as to minimize turbidity and the roiling of waters, to prevent ~~timbers, floats, or other~~ construction materials from falling, washing, or blowing into any tidal areas of the Bay or 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 permittee(s), its assigns or successors in interest, or the owner of the improvements shall immediately retrieve and remove such material at its expense. All construction debris shall be removed to an authorized location outside the Commission's jurisdiction.

C. **Habitat Marsh Protection.** The work authorized by this amended Regionwide Permit shall be performed so as to prevent any significant adverse impact on any tidal marsh, tidal flat, eelgrass habitat or other sensitive ~~wetland~~ Bay resources. If any unforeseen adverse impacts occur to any such area as a result of the activities authorized herein, the permittee(s) shall restore the area to or improve the area above its previous condition, which may include ~~ing~~ returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, seeding all disturbed areas with appropriate ~~marsh~~ vegetation.

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D. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, in any salt pond, or in any managed wetland within the Commission's jurisdiction as part of the project authorized herein.

E. Maintenance and Replacement of Authorized Facilities. Any construction of a new boat dock or wildlife habitat improvement facility, and any in-kind repairs and maintenance of an authorized boat dock, pier, boat hoist, wildlife habitat improvement or other water-related structure, shall only use construction material that is approved by the Commission in consultation with the Regional Water Quality Control Board and the California Department of Fish and Game for use in San Francisco Bay. Construction shall only occur during those months of the year, as approved by the Commission in consultation with resource agencies such as U.S. Fish and Wildlife Service, Department of Fish and Game and National Marine Fisheries Service, that avoid or minimize potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions.

F. Impacts to Fish from Pile Driving. The permittee shall assure that sound pressure levels generated from pile driving do not exceed injury threshold levels for fish established by the Natinal Marine Fisheries Service. Two criteria have been established to determine the onset of physical injury to fish: peak sound pressure level of 206 decibels (dB) or more, and accumulated sound exposure level (SEL). The criterion for accumulated SEL is based upon the mass of the fish under consideration. The onset of physical injury is expected if fish smaller than 2 grams are present and 183 dB SEL is exceeded. If larger fish are present, physical injury is expected if 187 dB SEL is exceeded. Projects where sound pressure levels may exceed either or both of these criteria do not qualify for a regionwide permit.

G. Diked Wetlands Protection. No work authorized herein on any structure of facility shall significantly alter water management, circulation or drainage patterns or otherwise adversely affect any salt pond, managed wetland, or other sensitive diked wetland resources.

H. Abandonment. If, at any time, the Commission determines that the improvements 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(s), 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.

I. Notice to Contractor. The permittee(s) shall provide a copy of this amended Regionwide Permit to any contractor or person working in concert with the permittee(s) to carry out the activities authorized herein and shall point out the special conditions contained herein.

III. Findings and Declarations

The Commission hereby finds, declares, and certifies that:

A. Consistency with Commission Regulations. The projects authorized by this amended Regionwide Permit ~~involve~~ include: (1) construction, reconstruction, maintenance and use of a floating dock, fixed pier, gangway, boat hoist or mooring buoy in the Bay, in certain waterways, in managed wetlands, and within the 100-foot shoreline band that satisfies the following criteria: (a) the pier, gangway, and/ or dock is no larger than a total of 1,000 square feet; and
(b) any pile-supported or cantilevered portion of the pier, is no more than 8 feet wide;

(2) wildlife habitat improvements, such as fish screens and ladders, tidegates and other devices that do not involve any substantial enlargement or extension into the Bay, in certain waterways, and within managed wetlands; and (3) reconstruction, replacement and maintenance of other pile-supported, water-oriented uses in the Bay, certain waterways and managed wetlands. Such projects have been authorized by the Commission as qualifying for a Regionwide Permit because they involve ~~on pilings, and similar structures, and repairs to facilities needed to provide improved wildlife habitat,~~ as defined in Regulation Sections 10601(a)(1), 10601(a)(2), 10601(a)(6) and 10601(c)(2), or activities similar to those described above, as defined in Regulation Section 10601(e)(3) (2), and thus are equivalent to a “minor repair and improvement” and qualify for authorization under a Regionwide Permit that may be issued by the Commission and approved by the Executive Director, pursuant to Government Code Section 66632(f) and Regulation Sections 11700 and 11713.

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 project construction, materials and the improvements themselves will not adversely affect the Bay’s natural resources, water quality or navigation and that any deteriorated improvements will be removed if they adversely impact the Bay’s natural resources, water quality, or pose a navigation hazard, as required by the *San Francisco Bay Plan* policies on fish, other aquatic organisms, and wildlife, tidal marshes and tidal flats, water quality, and navigational safety.

C. Consistency with Coastal Zone Management Act. The 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. California Public Resources Code Section 21084 provides that the California Environmental Quality Act (CEQA) guidelines shall include a list of classes of projects that have been determined not to have a substantial adverse impact on the environment and are therefore exempt from the requirements of CEQA. This list of “categorical exemptions” is located at 14 Cal. Code Reg. Sections 15300 through 15329. Section 15301 (Class 1) exempts the operation, repair, maintenance or minor alteration of existing public or private structures or facilities that involve negligible or no expansion of previous use. Section 15302 (Class 2) exempts the replacement or reconstruction of existing structures or facilities where the new structure will be located on the same site as the structure being replaced and will have substantially the same purpose and capacity as the replaced structure. The Commission's own regulations provide that the Commission need not prepare an environmental assessment before it issues a permit for a project that falls within the list of categorically exempt activities (14 Cal. Code Reg. Section 11501). This amended Regionwide Permit is therefore categorically exempt because it authorizes only reconstruction and replacement of existing, currently-used pilings, boat docks on pilings, boat slips, and other pile-supported structures being used for water-oriented purposes, and wildlife habitat improvement structures such as fish screens and ladders and other waterway devices, that do

not involve any substantial enlargement, any substantial extension into the water or wetlands, or any substantial change in use.

E. **Listing with the Commission.** The Commission staff will prepare a description and indicate the location of any project authorized under this amended Regionwide Permit, along with the name and address of the permittee(s), and attach such information to the listing of administrative permits, marsh development permits, and federal consistency actions that is sent to the Commission, immediately following the Executive Director's approval of the project under this amended Regionwide Permit.

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. 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 and/or county in which the work is to be performed, whenever any of these may be required. This amended Regionwide Permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.~~

~~B. Work must be performed in the precise manner and at the precise locations indicated in your notice of intent to proceed under a Regionwide Permit, as such may have been modified by the terms of the amended Regionwide Permit, and any plans approved in writing by the Executive Director.~~

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

~~D. The rights, duties, and obligations contained in this amended Regionwide Permit are assignable. When the permittee(s) transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended Regionwide Permit, the permittee(s)/ 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~~

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~~amended Regionwide Permit and agrees to be bound by the terms and conditions of the amended Regionwide Permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended Regionwide Permit.~~

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

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

~~G. Unless otherwise provided in this amended Regionwide Permit, any work authorized herein shall be completed within the time limits specified in the amended Regionwide Permit, or, if no time limits are specified in the amended Regionwide Permit, within three years of the date of transmittal of the amended Regionwide Permit by the Executive Director to you. If the work is not completed by the date specified in the amended Regionwide Permit, or, if no date is specified, within three years from the date of the transmittal of the amended Regionwide Permit by the Executive Director to you, the authorization provided to you by this amended Regionwide Permit becomes null and void. If an authorization under this amended Regionwide Permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on the authorization of this amended Regionwide Permit shall be removed by the permittee(s) or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.~~

~~H. Except as otherwise noted, violation of any of the terms of this amended Regionwide Permit shall be grounds for revocation of the authorization provided to you by this amended Regionwide Permit. The Commission may revoke any authorization of this amended Regionwide Permit for such violation after a public hearing held on reasonable notice to the permittee(s) or its assignee if the amended Regionwide Permit has been effectively assigned. If an authorization under this amended Regionwide Permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structures placed pursuant to the authorization under this amended Regionwide Permit shall be removed by the permittee(s) or its assignee if the amended Regionwide Permit has been assigned.~~

~~I. The authorization under this amended Regionwide Permit shall not take effect unless the permittee(s) executes the original of this amended Regionwide Permit and returns it to the Commission within fourteen days after the transmittal of the amended Regionwide Permit by the Executive Director to you. No work shall be done until the acknowledgment is duly executed and returned to the Commission.~~

~~J. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under the McAteer-Petris Act at the time the authorization of the amended Regionwide Permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended Regionwide Permit.~~

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

~~L. Unless the Commission directs otherwise, the authorization provided by this amended Regionwide Permit shall become null and void if any term, standard condition, or special condition of this amended Regionwide Permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If the authorization provided by this amended Regionwide Permit becomes null and void, any fill or structures placed in reliance on the authorization provided by this amended Regionwide Permit shall be~~

~~subject to removal by the permittee(s) or its assignee if the amended Regionwide 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.~~

A. **Permit Execution.** This amended Regionwide Permit shall not take effect unless the permittee(s) executes the original of this amended Regionwide Permit and returns it to the Commission within ten days after the date of the issuance of the amended Regionwide Permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

B. **Permit Assignment.** The rights, duties, and obligations contained in this amended Regionwide Permit are assignable. When the permittee(s) 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 amended Regionwide Permit, the permittee(s)/ transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the amended Regionwide Permit and agrees to be bound by the terms and conditions of the amended Regionwide Permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended Regionwide Permit.

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

D. **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 amended Regionwide Permit does not relieve the permittee(s) of any obligations imposed by State or Federal law, either statutory or otherwise.

E. **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 amended Regionwide Permit and any plans approved in writing by or on behalf of the Commission.

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

G. **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 amended Regionwide Permit is granted or thereafter

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shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended Regionwide 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 amended Regionwide Permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

H. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This amended Regionwide Permit reflects the location of the shoreline of San Francisco Bay when the amended Regionwide 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 amended Regionwide Permit does not guarantee that the Commission's jurisdiction will not change in the future.

I. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this amended Regionwide 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(s) or its assignee if the permit has been effectively assigned. If the amended Regionwide Permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended Regionwide Permit shall be removed by the permittee(s) or its assignee if the amended Regionwide Permit has been assigned.

J. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this amended Regionwide Permit shall become null and void if any term, standard condition, or special condition of this amended Regionwide Permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended Regionwide Permit becomes null and void, any fill or structures placed in reliance on this amended Regionwide Permit shall be subject to removal by the permittee(s) or its assignee if the amended Regionwide 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.

K. **Permission to Conduct Site Visit.** The permittee(s) 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.



~~Bay Area Conservation and Development Commission~~

**ABBREVIATED REGIONWIDE PERMIT NO. ARWP-1
(As Amended Through December 18, 2008)
(Minor repairs and maintenance (i.e., less than
approximately 50% of an existing structure) to
utilities, boat docks, pilings, and the removal of
structures in the Bay, certain waterways, managed
wetlands, and shoreline band)
NOTICE OF INTENT TO PROCEED NO. ANOI __**

[DATE]

ATTENTION: _____

Ladies and Gentlemen :

On April 18, 1996, the San Francisco Bay Conservation and Development Commission, by a vote of 17 affirmative, 0 negative, and 0 abstentions, approved the issuance of ~~this~~ the original of this Abbreviated Regionwide Permit. On _____, the Commission by a vote of _____ affirmative, _____ negative, and _____ abstentions, approved Amendment No. One of this Abbreviated Regionwide Permit upon which your authorization is based:

I. Authorization

A. Subject to the conditions stated below, the permittee(s) is hereby authorized to do the following:

- Location:** Project Address.
~~Anywhere in the Bay, in certain waterways, in managed wetlands, and within the 100-foot shoreline band.~~ (Moved to Findings)
- Description:** Authorized Project.
- (1) ~~Routine repair and maintenance of existing, currently used timber, steel, or concrete structural, shoreline protective works, such as bulkheads and seawalls, that do not involve any substantial enlargement or any substantial extension into the Bay;~~
(2) ~~routine repair and maintenance of existing currently used outfall pipes, service lines, utility cables, pipelines, and similar facilities that do not involve any substantial enlargement or any substantial extension into the Bay;~~ (3) ~~routine repair and maintenance of existing, currently used pilings, boat docks on pilings, boat slips and other pile-supported structures being used for water-oriented purposes, and wildlife habitat improvement~~

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~~structures such as fish screens and ladders and other waterway devices, that do not involve any substantial enlargement, any substantial extension into the water or wetlands, or any substantial change in use; and (4) removal of structures or improvements so long as the removal will not adversely affect present or possible future public access to the Bay, or will not involve a structure or improvement of historical, archeological, or architectural significance. (Moved to Findings)~~

B. This authority is limited to activities undertaken at a site where activities are not already authorized by another BCDC permit and to projects that would not adversely impact: (1) the Bay; (2) Bay resources such as those that are scarce or have an abundance and diversity of fish, other aquatic organisms or wildlife (such as tidal marshes or eelgrass beds); and (3) existing or possible future visual or physical public access to and along the Bay from public access areas, public roads and pathways. This authority is generally pursuant to and limited by your notice of intent to proceed under an Abbreviated Regionwide Permit dated _____, including its accompanying exhibits, any subsequent additions or modifications, and all conditions of this Abbreviated Regionwide Permit.

C. Work authorized herein must commence within within ~~two one~~ two years of the date of the transmittal of this Abbreviated Regionwide Permit by the Executive Director to you or the authorization of your work will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within ~~two three~~ two years of commencement, or within three years of the date of transmittal of this Abbreviated Regionwide Permit to you, whichever is earlier, unless an extension of time is granted by the Executive Director.

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. Limit of Work. All work authorized by this Abbreviated Regionwide Permit shall be built in general conformance with the plans entitled _____, prepared by _____, and dated _____, submitted as part of the application.

B. Construction Operations and Debris Removal. All construction operations shall be performed so as to minimize turbidity and the roiling of waters, to prevent ~~timbers, floats, or other~~ construction materials from falling, washing, or blowing into any tidal areas of the Bay or 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 permittee(s), its assigns or successors in interest, or the owner of the improvements shall immediately retrieve and remove such material at its expense. All construction debris shall be removed to an authorized location outside the Commission's jurisdiction.

C. Habitat Marsh Protection. The work authorized by this Abbreviated Regionwide Permit shall be performed so as to prevent any significant adverse impact on any tidal marsh, tidal flat, eelgrass habitat or other sensitive ~~wetland~~ Bay resources. If any unforeseen adverse impacts

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occur to any such area as a result of the activities authorized herein, the permittee(s) shall restore the area to or improve the area above its previous condition, which may include~~ing~~ returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, seeding all disturbed areas with appropriate ~~marsh~~ vegetation.

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D. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, or in any managed wetland within the Commission's jurisdiction as part of the project authorized herein.

E. **Maintenance and Replacement of Authorized Facilities.** Any in-kind repairs and maintenance of an authorized shoreline protective work shall only use construction material that is approved by the Commission in consultation with the Regional Water Quality Control Board and the California Department of Fish and Game for use in San Francisco Bay. Construction shall only occur during those months of the year, as approved by the Commission in consultation with resource agencies such as U.S. Fish and Wildlife Service, Department of Fish and Game and National Marine Fisheries Service, that avoid or minimize potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions.

F. **Impacts to Fish from Pile Driving.** The permittee shall assure that sound pressure levels generated from pile driving do not exceed injury threshold levels for fish established by the National Marine Fisheries Service. Two criteria have been established to determine the onset of physical injury to fish: peak sound pressure level of 206 decibels (dB) or more, and accumulated sound exposure level (SEL). The criterion for accumulated SEL is based upon the mass of the fish under consideration. The onset of physical injury is expected if fish smaller than 2 grams are present and 183 dB SEL is exceeded. If larger fish are present, physical injury is expected if 187 dB SEL is exceeded. Projects where sound pressure levels may exceed either or both of these criteria do not qualify for an abbreviated regionwide permit.

G **Diked Wetlands Protection.** No work authorized herein on culverts, outfalls, tide gates, or similar facilities shall significantly alter water management, circulation or drainage patterns or otherwise adversely affect any salt pond or other sensitive diked wetland resources.

H. **Water Quality.** Prior to undertaking any work authorized herein on any outfall pipe or similar facility, the permittee(s) shall receive all necessary approvals from the California Regional Water Quality Control Board, San Francisco Bay Region, for any discharge or emission from such structure.

I. **Abandonment.** If, at any time, the Commission determines that the improvements 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(s), 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.

J. **Notice to Contractor.** The permittee(s) shall provide a copy of this Abbreviated Regionwide Permit to any contractor or person working in concert with the permittee(s) to carry out the activities authorized herein and shall point out the special conditions contained herein.

III. Findings and Declarations

The Commission hereby finds, declares, and certifies that:

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A. **Consistency with Commission Regulations.** The projects authorized by this Abbreviated Regionwide Permit involve repairs and maintenance to less than approximately 50% of an existing structure anywhere within the Commission's jurisdiction. Such work includes: (1) repairs to existing protective works such as timber or steel bulkheads or seawalls in the minimum amount necessary to stabilize existing dikes and banks, as defined in Regulation Sections 10601(a)(2), 10601(a)(6) and 10601(b)(1); (2) routine in-kind repairs and maintenance to outfall pipes approved by the California Regional Water Quality Control Board, San Francisco Bay Region, utility cables on or under the bottom of the Bay that do not involve any substantial enlargement or extension into the Bay, and similar facilities, as defined in Regulation Sections 10601(a)(5), 10601(a)(6), ~~and~~ 10601(b)(1) and 10601(b)(5); (3) routine repair, reconstruction, replacement, and maintenance of pilings, boat docks in pilings, boat slips on pilings, and similar structures, and repairs to facilities needed to provide improved wildlife habitat, as defined in Regulation Sections 10601(a)(6), 10601(b)(5) and 10601(c)(2); and (4) removal of deteriorated structures and facilities, as defined in Regulation Sections 10601(a)(6), 10601(b)(1), 10601(b)(5) and 10601(c)(2), or activities similar to those described above, as defined in Regulation Section 10601(e)(3), and thus are equivalent to a "minor repair and improvement" and qualify for authorization under an Abbreviated Regionwide Permit that may be issued by the Commission and approved by the Executive Director, pursuant to Government Code Section 66632(f) and Regulation Sections 11700 and 11713.

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 project construction, materials and the improvements themselves will not adversely affect the Bay's natural resources, water quality or navigation and that any deteriorated improvements will be removed if they adversely impact the Bay's natural resources, water quality, or pose a navigation hazard, as required by the San Francisco Bay Plan policies on fish, other aquatic organisms, and wildlife, tidal marshes and tidal flats, water quality, and navigational safety.

C. **Consistency with Coastal Zone Management Act.** The 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.** California Public Resources Code Section 21084 provides that the California Environmental Quality Act (CEQA) guidelines shall include a list of classes of projects that have been determined not to have a substantial adverse impact on the environment and are therefore exempt from the requirements of CEQA. This list of "categorical exemptions" is located at 14 Cal. Admin. Code Sections 15300 through 15329. Section 15301 (Class 1) exempts the operation, repair, maintenance or minor alteration of existing public or private structures or facilities that involve negligible or no expansion of previous use. Section 15302 (Class 2) exempts the replacement or reconstruction of existing structures or facilities where the new structure will be located on the same site as the structure being replaced and will have substantially the same purpose and capacity as the replaced structure. The Commission's own regulations provide that the Commission need not prepare an

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environmental assessment before it issues a permit for a project that falls within the list of categorically exempt activities (14 Cal. Admin. Code Section 11501). This Abbreviated Regionwide Permit is therefore categorically exempt because it authorizes routine repair and maintenance of existing structures that do not involve any substantial enlargement or any substantial extension into the Bay.

In addition, the California Environmental Quality Act (CEQA) generally requires that before an agency can issue a permit for a project that is neither statutorily exempt nor categorically exempt, it must either certify a “negative declaration” that the project will have no substantial adverse impact on the environment or it must prepare an environmental impact report (EIR). Pursuant to CEQA Section 21080.5, the Secretary for Resources has certified the Commission's permit regulations as functionally equivalent to the CEQA review process. Commission Regulation Section 11511 requires the Executive Director to determine either that a project will have no substantial adverse environmental impact or to prepare an “environmental assessment,” which functions as a Commission equivalent to an EIR. This Abbreviated Regionwide Permit also authorizes the removal of structures or improvements from the Commission's jurisdiction. However, this Abbreviated Regionwide Permit requires that the removal will not adversely affect present or future public access to the Bay, will not affect a structure or improvement of historical, archeological, or architectural significance, will be performed to minimize turbidity and the roiling of waters and to prevent the drifting of construction materials, will not adversely affect any tidal marsh, managed wetland, or other sensitive wetland resource, and will not result in any disposal within any wetland. Therefore, the Commission finds that the removal authorized by this Abbreviated Regionwide Permit will have no substantial adverse impact on the environment.

E. **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 (Same as RWP-3)