

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

May 13, 2010

TO: Commissioners and Alternates

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Karen Weiss, Coastal Program Analyst (415/352-3669, karenw@bcdc.ca.gov)

SUBJECT: **Staff Recommendation on BCDC Permit Application No. 3-09, Reuse of Drydocks Two and Three on Mare Island in the City of Vallejo, Solano County**
(For Commission consideration on May 20, 2010)

Recommendation Summary

The staff recommends that the Commission approve BCDC Permit Application No. 3-09 which, as conditioned, would authorize the following activities, improvements and associated maintenance dredging at Drydocks Two and Three on Mare Island in the City of Vallejo, Solano County.

1. Restore, use and maintain Drydocks 2 and 3 and ancillary facilities, including a new parking lot, storage containers, cranes and existing on-site buildings to repair and dismantle vessels;
2. Dredge up to 610,00 cubic yards of sediment over ten years in Mare Island Strait and in front of Drydocks Two, Three and Four and place the dredged sediment partially at an authorized in-Bay disposal site and partially at an upland location for beneficial reuse; and
3. Install, use and maintain an approximately 22,700-square-foot public access overlook with benches and signs.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. Subject to the conditions stated below, the permittees, Allied Defense Recycling and Lennar Mare Island, LLC., are hereby granted permission to reuse Drydocks Two



Making San Francisco Bay Better

and Three and ancillary facilities on Mare Island and Mare Island Strait in the City of Vallejo, Solano County. Authorized work includes the following:

Within the Mare Island Straits:

1. Conduct maintenance dredging to remove up to 610,000 cubic yards (cy) of sediment over a ten year period (200,000 cy for Episode 1 and 2 and up to 410,000 cy in subsequent years) from the caisson access areas in front of dry docks 2, 3 and 4 to a depth of minus 32 feet mean lower low water (MLLW), at berths 11, 12, 13, 14, 15 and 16 to a depth of minus 30 feet MLLW, and up to two feet over dredge allowance for each area (Exhibit B); and
2. Sixty-six percent of the dredged material would be disposed at the Carquinez Strait (SF-9) disposal site and an estimated 33% of the dredged material (or approximately 66,000 cy from Episodes 1 and 2) would be beneficially reused the Hamilton Restoration site, or disposed at the San Francisco Ocean Disposal Site (SF-DODS), the Montezuma Wetland Project site, or an upland site outside of the Commission's jurisdiction.

Within the Shoreline Band Jurisdiction:

1. Restore, operate to repair and dismantle ships, and maintain in-kind Drydock Two and Three covering approximately 152,000 square feet (3.49 acres);
 2. Restore, use and maintain approximately 11 of the 23 existing on-site buildings and two pumphouses for office space and shipyard storage totaling approximately 18,580 square feet (0.43 acres);
 3. Install, use and maintain an approximately 120-space parking lot, four moveable cranes, four moveable storage boxes for scrap material to be hauled off-site for reuse, and one temporary office trailer for two years; and
 4. Install a public access overlook with an approximately 42-inch-high guardrail, two benches, lighting, a trashcan, and a six-foot-high chain link fence to the northwest and northeast of the overlook site.
- B. This authority is generally pursuant to and limited by the application dated December 2, 2009, including all accompanying and subsequently submitted correspondence and exhibits, but subject to the modifications required by conditions hereto.
- C. The work authorized herein for the shipyard and public access must commence no later than May 1, 2012 and must be diligently pursued to completion by May 1, 2014, unless an extension of time is granted by amendment of the permit. The uses of the dry dock for ship repair and dismantling are authorized for as long as the facilities remain in place. The work authorized herein for maintenance dredging shall commence not later than September 1, 2011 and must be completed by May 20, 2020, unless an extension of time is granted by amendment of this permit.

II. Special Conditions

A. Specific Plans and Plan Review

1. **Construction.** The final plans submitted pursuant to this condition shall generally conform with the plan entitled "Dry Docks 2 and 3, Mean High Water

Line,” as revised through February 3, 2010. Final plans for the project site and public access improvements shall be prepared and submitted for BCDC review as described below. 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 at the project site and at the public access area shall commence until final precise public access 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.

All site plans shall include and clearly label the shoreline (Mean High Water Line), 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, details showing the location, types, dimensions, and materials to be used for all structures, seating, near-by parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements.

3. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the public access facilities authorized herein, the appropriate design professionals 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, signage, landscaping, or parking area, without first obtaining written approval of the change(s) by or on behalf of the Commission.
4. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittees are responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.

B. Public Access

1. **Area.** By June 1, 2011, the approximately 22,700-square-foot area (0.55 acres), along approximately 180-linear 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, 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 approximately:

New public access in the shoreline band: 14,000 square feet.

New public access outside the shoreline band: 8,700 square feet.

2. **Permanent Guarantee.** Once the public access area has been constructed or within one year of issuing this permit (June 1, 2011), whichever is earlier, the permittees shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the new 22,700-square-foot (0.55 acres) public access area. The instrument shall create rights in favor of the public which shall commence no later than after completion of construction of any public access improvements required by this authorization or by September 1, 2011, whichever shall occur first. Such instrument shall be in a form that meets recordation requirements of Solano County and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line), the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:
 - (a) Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this authorization;
 - (b) Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and
 - (c) Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.
3. **Recordation of the Instrument.** Within 30 days after approval of the instrument, the permittees shall record the instrument on all parcels affected by this instrument and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
4. **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 14,000-square-foot seating area/overlook site to provide views of Mare Island Strait and the Vallejo Ferry Terminal, with a guardrail, two benches, one trash container, and lighting;
 - (b) An approximately 300-foot-long, 15 to 45-foot-wide path to the overlook; and
 - (c) No fewer than two public access and, when appropriate, Bay Trail signs, one at the beginning and one in the middle of the trail leading to the waterfront overlook.

Such improvements shall be consistent with the plans approved pursuant to Condition II-A of this authorization and substantially conform to the plans entitled "Lennar Mare Island Public Access", dated April 29, 2010, prepared by Paul Roberts

and Partners.

5. **Maintenance.** The areas and improvements within the total 22,700-square-foot (0.55 acres) 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; repairs or replacement as needed of any public access amenities such as signs, benches, 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.
 6. **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.
 7. **Reasonable Rules and Restrictions.** The permittees may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
- C. **Future Public Access Connection to Neighboring Parcels.** The permittees shall allow the construction of a future public access connection between its property and the neighboring parcels to the northwest and southwest to complete the Bay Trail / shoreline path. Within one year of a project proponent commencing 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 permittees shall reasonably coordinate the design, construction, and maintenance with the permittees of the adjacent parcel(s) to create a continuous and seamless transition between the public access areas, including landscaping, signs, and park furniture. The exact manner in which the connection is made shall be reviewed and approved by or on behalf of the Commission pursuant to Special Condition II-A.
- D. **Protecting Special-Status Fish and Wildlife Species During Drydock Operations.** The permittees shall take all precautions to avoid adverse impacts to special-status species listed on the Endangered Species Act (ESA) and the California Endangered Species Act (CESA), including Delta Smelt (state and federally listed), Winter-run Chinook salmon (state and federally listed), the threatened Longfin smelt (state and federally listed), Spring-run Chinook salmon (state and federally listed), the central coast steelhead (federally listed), and the southern distinct population segment (DPS) of green sturgeon (federally listed). The permittees shall implement all conservation measures described in the Incidental Take Permit (ITP), issued by Cali-

California Department of Fish and Game (CDFG) on April 21, 2010. The conditions of the ITP include:

1. **Designated Representative and Designated Biologist.** The permittees shall designate a representative (Designated Representative) and a biologist (Designated Biologist) to communicate with CDFG and to monitor the impact of the dredging and dry dock operations on the listed species. The Designated Biologist would be authorized to and responsible for:
 - a. Immediately stopping all on-site activities that are not in compliance with the ITP;
 - b. Conducting an education program for all employees regarding the listed species;
 - c. Being present on-site during all dry dock operations to minimize the take of a listed species and to maintain compliance with all mitigation and avoidance measures;
 - d. Preserving and immediately calling the CDFG if a listed species is found dead within the project boundary; and
 - e. Notifying CDFG fourteen days before commencing any dredging and all dry dock operations.
2. **Debris Removal.** All construction debris and any uncovered debris, such as concrete, asphalt, wood, plastics, etc., shall be removed from the project site for proper disposal outside of the Commission's jurisdiction. Excavated debris may be temporarily stored within the Commission's jurisdiction, provided measures are employed to assure that such material does not wash or erode into the surrounding waterways. In the event that any such material is placed in any area within the Commission's jurisdiction for an extended period (i.e., more than 60 days), the permittees, their assigns, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.
3. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittees shall immediately retrieve and remove such material at its expense.
4. **Hazardous Waste.** The permittees shall immediately stop/repair and clean up any fuel or hazardous waste leaks or spills and remove them to an upland, off-site location designated for disposal of hazardous waste material.
5. **Operations.** The permittees must limit operation of the dry docks to: (a) not exceed 16 evolutions (the opening and closing of the dry docks) per year and limit the amount of water allowed into the dry docks to less than 12 million gallons of water; (b) minimize the dewatering operation of the dry docks from January to May to reduce entrainment of delta and longfin smelt larvae and Chinook salmon juveniles; (c) release all listed species from the dry docks if any fish are entrained; and (d) submit a Fish Monitoring Plan and Fish Rescue Plan,

outlining the procedure for rescuing all fish prior to fully dewatering the dry docks.

6. **Monitoring Reports.** The permittees shall provide a yearly monitoring report documenting the on-site operation and dredging activities, including the entrapment, release or taking of any listed species. These annual monitoring reports shall evaluate the effectiveness of the special-status fish and wildlife mitigation measures outlined above. The monitoring report shall include the number of times the dry docks were opened and closed each month, the number of entrained special-status species, special-status species killed or injured, the procedures undertaken to minimize the entrainment of fish species, and the effectiveness of such measures. Should the CDFG alter their ITP based on the monitoring reports, the permittees shall contact Commission staff to determine if this authorization needs to be amended to reflect changes in the ITP.
- E. **Compensatory Mitigation for Unavoidable Impacts to Special-Status Fish Species.** As described in the ITP, to offset the unavoidable adverse impacts to special-status fish species, the permittees shall provide evidence to the Commission that they have removed or provided for the removal of a fish migration barrier and restored a streambed on a Chinook salmon spawning stream in the Napa River Watershed prior to initiating in-water project activities. Possible mitigation projects listed in the ITP include a footpath near the Calistoga Community Center which is currently a low flow migration barrier that is in need of modification to allow Chinook salmon to migrate upstream for spawning. In addition, to mitigate for unavoidable impacts to the Delta and longfin smelt, the permittees shall acquire, restore, enhance and permanently preserve five acres of tidal shallow water habitat prior to initiating in-water project activities. If the five-acre mitigation site is located within the Commission's jurisdiction, the permittees shall obtain authorization from or on behalf of the Commission before the commencement of any on-site work.
- F. **U.S. Fish and Wildlife Service and NOAA Fisheries Biological Opinion.** This authorization is based on the representation of the USFWS and NOAA Fisheries that they have reviewed the CDFG ITP, agree to its provisions, and will issue a Biological Opinion with the same conditions. However, at the date of this authorization, USFWS and NOAA Fisheries have not yet issued their Biological Opinions. This authorization does not take effect until both agencies issue a Biological Opinion that as determined by or on behalf of the Commission imposes mitigation requirements identical to those set forth in the CDFG ITP. If the Biological Opinions differ from the ITP, as determined by or on behalf of the Commission, this authorization shall remain ineffective until the permittees seek and obtain an amendment to this authorization reflecting the Biological Opinions.
- G. **Dredging**
1. **Water Quality Approval.** The water quality certification has been received for Episode 1 of this project. At least 45 days prior to the commencement of any subsequent dredging episode authorized herein, the permittees shall submit to the Executive Director water quality certification, waste discharge requirements, and any other required approvals from the California Regional Water Quality Control Board, San Francisco Bay Region. Failure to obtain such certification prior to

the commencement of any dredging episode shall terminate the Commission's authorization for that episode. The Executive Director may, upon review of the Regional Board approval, either: (1) approve the dredging episode consistent with this authorization; or (2) amend this authorization, as necessary, related to water quality issues. Unless the permittees agree to amend this authorization in a manner specified by or on behalf of the Commission, this permit shall become null and void.

2. **Ten-Year Permit for Dredging.** The approximately 610,000 cy or less of maintenance dredging (200,000 cy for Episode 1 and 2 and up to 410,000 cy in subsequent years) authorized shall be completed within ten years of the date of issuance of this permit. No further dredging is authorized.
3. **Limits on Dredging.** This permit authorizes maintenance dredging only within the areas shown on Exhibit "B" which includes: the caisson access areas in front of dry docks 2, 3 and 4 to a depth of minus 32 feet mean lower low water (MLLW), berths 11, 12, 13, 14, 15 and 16 to a depth of minus 30 feet MLLW, and for each area up to two feet over dredge allowance. Dredging in other areas is not authorized (Exhibit B).
4. **Disposal of Sediment Unsuitable for In-Bay Disposal.** If, during the ten-year authorization period of this permit, any sediment is determined by the Dredged Material Management Office (DMMO) to be unsuitable for in-Bay disposal, it shall be disposed at an appropriate upland disposal facility.
5. **Maintenance Dredging and Disposal Activity**
 - a. **Dredging and Disposal Report and Notice.** At least 45 days before the commencement of any dredging and disposal episode authorized herein, the permittees shall submit to the Commission's Executive Director:
 - (1) A bathymetric map showing the location of all areas authorized to be dredged, the authorized depth including overdredge depth based on MLLW, the volume of material proposed to be dredged, and the approximate date of project commencement. At least two (2) weeks prior to any dredging episode, the permittees shall notify the Executive Director of the commencement date by telephone or in writing. If the date of commencement changes, the permittees shall provide an updated schedule as soon as it is available.
 - (2) A written statement to the Executive Director that contains: (1) the proposed disposal site, quantity of material to be disposed, and dates within which the disposal episode is proposed; (2) if applicable, a discussion as to how the volume proposed for disposal is consistent with in-Bay disposal allocations and disposal site limits; (3) the results of chemical and biological testing of sediment proposed for disposal; and (4) an alternatives analysis or integrated alternatives analysis to explain why ocean disposal, upland disposal or beneficial reuse of dredged material is infeasible. Based on the LTMS Program Manager's review of the Alternative Analysis for the first two dredging episodes, at least 33% of the dredged material must be disposed of outside of San Francisco Bay during the

2010 through 2012 time period. After 2012, an updated alternative disposal site analysis shall be provided for review and approval. In order to meet the LTMS's out-of-bay disposal target, it is estimated that 80% of the dredged material must be placed outside of San Francisco Bay unless it is infeasible to do so.

- b. **Authorization of Disposal.** The authorization for the proposed in-Bay disposal shall become effective only if the Executive Director: (1) informs the permittees in writing or via email that the episode is consistent with the authorization provided herein, alternative disposal and beneficial reuse options are infeasible, the volume proposed for disposal is consistent with both in-Bay disposal allocations, if applicable, and the disposal site limits, and the material is suitable for in-Bay disposal; or (2) does not respond to the permittees' pre-disposal report within 30 days of its receipt. If the Executive Director determines that: (a) ocean disposal, upland disposal, or beneficial reuse of the material is feasible; (b) the material proposed for disposal is unsuitable for the Bay; or (c) the proposed disposal is inconsistent with in-Bay allocations and disposal site limits, the Commission's authorization for in-Bay disposal shall be terminated. As stated above in Special Condition II-G-5-a, after 2012, an updated alternatives analysis is required and 80% of the dredged material shall be placed outside of San Francisco Bay unless it is infeasible to do so.
- c. **Post-Dredging Requirements**
 - (1) Within 30 days of completion of each dredging episode authorized by this permit, the permittees shall submit to the Commission a bathymetric map showing the actual area(s) and depths dredged including overdredge depth based on MLLW, any dredging that occurred outside the area or below the depths authorized herein, and a written statement indicating the total volume of material dredged and disposed and the disposal location.
 - (2) If a dredging episode stops for longer than six consecutive months, the permittees must submit, before the dredging episode has resumed, notification to the Commission that dredging will begin again. If a dredging episode is suspended for more than six months, the Commission may require the permittees to complete: (1) a new sediment characterization; (2) a re-survey of the dredge area; and/or (3) a revised alternative disposal option analysis.
 - (3) If the dredging episode continues longer than one year, whether dredging is continual throughout the year or is fragmented within the episode, the permittees must provide the Commission with the following dredging report: (1) the actual area(s) and the depth dredged based on MLLW and any dredging that occurred outside the area dredged; (2) the actual volume of the material dredged; and (3) the volume and location of the material disposed. The dredging report must be submitted no later than one year after the commencement of the episode, and must be submitted every six months thereafter throughout the life of the permit or until the

episode is complete. The Commission may require additional sediment characterization, bathymetric surveys, and/or alternative disposal analyses at the commencement of the next episode. Within 30 days of the completion of the episode, the permittees must submit a dredging report as described in Special Condition II.G.5.c.

6. **Barge Overflow Sampling and Testing.** Results of any effluent water quality or other testing required by the California Regional Water Quality Control Board, San Francisco Bay Region, shall be submitted in writing to the Commission at the same time such testing is submitted to the Regional Board.
7. **Seasonal Limitations for Maintenance Dredging.** Except as provided below, all dredging and disposal activities, shall be confined to the work window, between August 1st and October 15th of any year, to minimize disturbance to the following endangered and special status species:

Species of Concern	Work Window Period	Consulting Agency
Chinook Salmon and Steelhead	June 1 st to November 30 th	NOAA
Delta Smelt	August 1 st to January 31 st	USFWS
Steelhead	August 1 st to October 15 th	NOAA

USFWS-U. S. Fish and Wildlife Service; California Department of Fish and Game; NOAA-NOAA Fisheries

This work window between August 1st and October 15th is consistent with Tables F-1 and F-2 of Appendix F, "In-Bay Disposal and Dredging," and Figures 3.2 and 3.3 of the Long-Term Management Strategy (LTMS) Management Plan (2001) and as amended by the U.S. Fish and Wildlife Service (USFWS) on May 28, 2004. No work inconsistent with the time and location limits contained in these figures may be conducted without the approval of the Executive Director, provided that such approval may only be issued after: (1) consultation between the U.S. Army Corps of Engineers (USACE) and the USFWS and/or NOAA has occurred; and (2) the Executive Director has determined that dredging and disposal outside of the work window is consistent with the Commission's laws and policies.

8. **Dredging Operations Restrictions.** To minimize dredging impacts to the threatened or endangered species listed above, as well as green sturgeon, the permittees must dredge via a clamshell bucket or mechanical dredge, limit dredging to daylight hours, and dredge no more than two dredging cycles every three-years. The permittees must also notify CDFG fourteen days before commencing any dredging.
9. **Property Interest.** The United States Navy (Navy) owns the submerged lands associated with the dredging portion of this project. A signed copy of the lease between the permittees and the U.S. Navy must be provided to BCDC before any in-Bay work authorized herein can commence. Until the lease is signed by the U.S. Navy and provided to Commission staff, the authorization for the maintenance dredging portion of this permit is null and void.
10. **Compliance Monitoring and Enforcement.** The permittees shall allow the Commission staff or representatives of other state or federal agencies to come

aboard the dredge or barge associated with any dredging or disposal episode, subject to reasonable safety and operational considerations, and observe the operation(s) to ensure that these activities are consistent with pre-dredging reports required herein and other terms and conditions of this permit. Further, the Commission reserves the right to have post-dredging reports inspected by a reliable third party familiar with bathymetric mapping in order to verify the contents of these reports. If a third party selected by or on behalf of the Commission indicates that a post-dredging report is inaccurate, the Commission reserves the right to require the permittees to submit a revised report that meets the conditions of this permit. If the Commission determines that the post-dredging report indicates that work has occurred beyond that authorized by this permit, such violation may result in the initiation of enforcement action by or on behalf of the Commission.

11. **Long-Term Management Strategy Program.** If, at any time during the effective life of this permit, the Commission's laws, Bay Plan policies, or regulations are changed and new laws, policies, or regulations are in effect regarding dredging, dredged material disposal, and beneficial reuse consistent with the multi-agency LTMS Management Plan, this permit shall become null and void unless the permittees agree to amend this authorization to meet the new laws, policies, or regulations in a manner specified by or on behalf of the Commission.
- H. **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 permittees, their 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.
 - I. **Certification of Contractor Review.** Prior to commencing any grading, demolition, construction or dredging, 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.
 - J. **Recording.** The permittees shall record this amended permit or a notice specifically referring to this amended permit on all parcels affected by this amended permit with Solano County within 30 days after execution of the amended permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.
 - K. **Notice of Assignment**
 1. **Notice to Buyers.** Prior to entering into any agreement to transfer any interest in any property subject to this permit, the permittees, or any assignees of this permit or any part of it, shall provide the third party with a copy of this permit and shall call his or her attention to any provisions regarding public access or open space or the need to obtain approval of construction plans prior to the commencement of any construction.

2. **Assignment of Permit.** No more than ten days after transferring any interest in any property subject to this permit to another party, the transferor(s) shall (a) notify the Commission of the nature of the transfer, the name, address, and telephone number of the transferee, and the effective date of the transfer, and (b) shall also submit an assignment of this permit for the area transferred that has been executed by the transferor and the transferee and that indicates that the transferor has transferred the permit as it applies to the property that was transferred and that the transferee has read, understood, and has agreed to be bound by the terms and conditions of this permit.
3. **Assignment of Public Access Maintenance Responsibility.** Prior to assigning any portion of this permit, the permittees shall submit for approval by or on behalf of the Commission a legal instrument that establishes a single entity responsible for maintaining all public access areas and improvements. The Executive Director shall approve the instrument only if it demonstrates to the Executive Director's satisfaction that the entity can and will meet the responsibilities for maintaining all of the public access areas and improvements, required herein.

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), the State Mining and Reclamation Act and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

- A. **Public Access.** Section 66602 of the McAteer-Petris Act states 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." The Bay Plan Public Access Policy 2 states, in part: "...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, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided." The Bay Plan Public Access Policy 5 states, in part: "[w]henver public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed." The Bay Plan Public Access Policy 6 states, in part: "Public access improvements provided as a condition of any approval should be consistent with the project and the physical environment...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 the physically handicapped to the maximum feasible extent, include an ongoing maintenance program, and should be identified with appropriate signs." The Bay Plan Public Access Policy 8 also states, part: "[a]ccess to and along the waterfront should be provided by walkways, trails, or other appropriate means to connect the nearest public thoroughfare where convenient parking or public transportation may be available." The Bay Plan Public

Access Policy 10 states, “[f]ederal, state, regional and local jurisdictions, special districts, and the Commission should cooperate to provide appropriately sited, designed and managed public access, especially to link the entire series of shoreline parks, regional trail systems (such as the San Francisco Bay Trail) and existing public access areas to the extent feasible.” In assessing whether a project provides maximum feasible public access consistent with the project, the Commission relies on the McAteer-Petris Act, the policies of the San Francisco Bay Plan, and also relevant court decisions.

No public access currently exists at or near the site. Due to public safety concerns arising from the industrial nature and authorized uses of the site, on-site public access was determined to be inconsistent with the project purpose. Therefore, this authorization requires the permittees to provide an off-site public access pathway and overlook from Nimitz Street down to Waterfront Avenue approximately $\frac{1}{4}$ of a mile from the project site. Located adjacent to the old ferry access, cranes and rail lines to the east, and Waterfront Avenue to the west, the new overlook will provide views of the Napa River and the Vallejo Ferry Terminal along an approximately 180-foot-long section of the waterfront. Special Condition II-A requires plan review of the public access area and Special Condition II-B requires the installation, maintenance and recordation of the 22,700-square-foot overlook and site amenities, including a 42-inch-high guardrail along the waterfront, two benches, public access signs from the nearest road, lighting and a trash receptacle. As stated in Special Condition II-B-2, these public access improvements must be completed by September 1, 2011; this will allow the permittees time to relocate and remove an existing building and to design and build the proposed railing.

Northwest of the public access area, Lennar Mare Island, LLC is working with the Department of Toxic Substances and Control (DTSC) to cleanup various areas that were contaminated when the U.S. Navy operated Mare Island Shipyard. According to the permittees, once the clean up is completed, the proposed overlook will connect to a public access promenade located along Waterfront Avenue. In the meantime, the project includes a fence west of the overlook, and due to safety concerns arising from old rail lines and cranes east of the overlook, the project includes a fence from the shoreline toward Nimitz Avenue to block access until they can create a safer environment for the public. Special Condition II-C requires the permittees to connect this public access area to the neighboring parcels in the future. Once the cleanup is completed by DTSC and Lennar Mare Island begins to develop the area, the public access area will become a part of a larger public open space, connecting Waterfront Avenue to the Mare Island Historic Museum, and the historic Drydock No. One.

The Commission finds that the approximately 22,700-square-foot (0.53 acre) public access area will provide a unique and desirable public access area, will be an important link in a future public access trail, and constitutes the maximum feasible public access consistent with the project.

B. Natural Resources Policies

1. **Fish, Other Aquatic Organisms and Wildlife.** Policy 2 of the Bay Plan policies on Fish, Other Aquatic Organisms and Wildlife states that, “species threatened or

endangered, species that the California Department of Fish and Game has determined are candidates for listing as endangered or threatened under the California Endangered Species Act, or any species that provides substantial public benefits, should be protected, whether in the Bay or behind dikes." Policy 4 states that, "The 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 pursuant to the state or federal endangered species acts, or the federal Marine Mammal Protection Act, or species that are candidates for listing under the California Endangered Species Act, unless the project applicants have 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."

Due to the in-water work associated with this project, the California Department of Fish and Game (CDFG), the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Association National Marine Fisheries Service (NOAA Fisheries) were consulted. All three agencies expressed concern over the potential impacts of both the dredging and operations of the project on threatened or endangered fish species. The concerns were based on the potential of the entraining and taking of the endangered Delta Smelt (state and federally listed), Winter-run Chinook salmon (state and federally listed), the threatened Longfin smelt (state and federally listed), Spring-run Chinook salmon (state and federally listed), the central coast steelhead (federally listed), and the southern distinct population segment (DPS) of green sturgeon (federally listed). The concern arose from the possibility that juvenile fish may be sucked up by a hydraulic dredge, or entrained in the water filling the dry docks.

Special Condition II-E limits the permittees to using a clamshell bucket or mechanical dredge during an environmental work window from August 1st to October 15th. It also restricts the permittees to dredge only during day light hours and to dredge only two dredging cycles over a 3-year period. These conditions are listed in the Incidental Take Permit (ITP) issued by the California Department of Fish and Game on April 21, 2010 to avoid or minimize impacts to the longfin and Delta smelt and Chinook salmon during dredging.

As stated in Special Condition II-D, during operations, the ITP requires the permittees to designate a representative (Designated Representative) and a biologist (Designated Biologist) to communicate with CDFG and to monitor the impact of the dredging and dry dock operations on the listed species. Special Condition II-D-1 further describes the responsibilities of the Designated Biologist, including: (1) immediately stopping all on-site activities that are not in

compliance with the ITP; (2) conducting an education program for all employees regarding the listed species; (3) being present on-site during all dry dock operations to minimize the take of a listed species and to maintain compliance with all mitigation and avoidance measures; and (4) preserving and immediately calling the CDFG if a listed species is found dead within the project boundary.

Further, under Special Condition II-D, the permittees must notify CDFG fourteen days before commencing any dredging and all dry dock operations, keep the project site clean, properly dispose of all construction refuse, and immediately stop/repair and clean up any fuel or hazardous waste leaks or spills. Special Condition II-D-6 requires the permittees to provide annual compliance reports to the Commission to assure compliance with the ITP and to help evaluate the effectiveness of mitigation measures to protect fish.

Based on the ITP, Special Condition II-D-5 limits dry dock operations to: (1) not exceed 16 evolutions of the docks per year and limit the dry docks to 12 million gallons of water; (2) minimize the dewatering operation of the dry docks from January to May to reduce entrainment of delta and longfin smelt larvae and Chinook salmon juveniles; and (3) submit a Fish Monitoring Plan and Fish Rescue Plan, outlining the procedure for rescuing all fish prior to fully dewatering the dry docks, including the release of all listed species first.

Though implementation of Special Condition II-D will minimize impacts to fish species, Special Condition II-E requires the permittees to mitigate for unavoidable project impacts. Particularly for Chinook salmon, the ITP requires that the permittees remove or provide for the removal of a fish migration barrier and restore a streambed on a Chinook salmon spawning stream in the Napa River Watershed prior to initiating in-water project activities. The ITP lists a footpath near the Calistoga Community Center as a potential mitigation site to modify a low flow migration barrier to allow Chinook salmon to migrate upstream. To mitigate for unavoidable impacts to the Delta and longfin smelt, the ITP requires that the applicants acquire, restore, enhance and permanently preserve five acres of tidal shallow water habitat prior to initiating in-water project activities.

The U.S. Fish and Wildlife Service (USFWS) and NOAA Fisheries have not yet released their Biological Opinions for the project. However, both agencies have stated that the mitigation measures and activities listed in the Biological Opinions will be similar to those listed in the Department of Fish and Game's ITP. To ensure that the Biological Opinions are consistent with Bay Plan policies, Special Condition II-F states that until the Biological Opinions from both agencies have been reviewed by or on behalf of the Commission, the permittees are not permitted to do the work authorized in this permit. Further, it states that if the Biological Opinions differ from the CDFG's ITP, the permittees will need to amend this authorized permit.

With inclusion of these mitigation measures, the Commission finds that the project will minimize impacts to fish species to the extent practical and will mitigate for these adverse impacts that cannot be avoided and, therefore, is consistent with the Commission's policies on Fish and Other Aquatic Organisms.

C. **Dredging.** Bay Plan Policy 1 on dredging states in part, that "[d]redging and dredged

material disposal should be conducted in an environmentally and economically sound manner. Dredgers should reduce disposal in the Bay and certain waterways over time..." According to Dredging Policy 2, the Commission should authorize dredging when it can find that (a) it serves a water-oriented use or other important public purpose; (b) the materials to be dredged meet the water quality requirements of the San Francisco Bay Regional Water Quality Control Board; (c) important fisheries and Bay natural resources would be protected through seasonal restrictions; (d) the project will result in the minimum dredging volume necessary; and (e) the materials would be disposed of in accordance with Policy 3." Dredging Policy 3 states in part, that "dredged materials should, if feasible, be reused or disposed outside the Bay and certain waterways. Except when reused in an approved fill project, dredged material should not be disposed in the Bay...."

1. **Need for Dredging.** To be able to bring ships to the existing dry docks and adjoining berths for repair or dismantling, the permittees propose to dredge the accumulated sediments between the dry docks and the navigable channel of Mare Island Strait. Due to the high siltation rate in Mare Island Straits, the permittees have proposed a ten-year maintenance-dredging program intended to maintain necessary navigation and berthing depths. Special Condition II-G-2 limits the ten-year maintenance-dredging project up to 610,000 cubic yards (cy) over the ten-year period (105,000 for the first episode, and up to a maximum of 200,000 cy for the first two episodes) to a project depth of -26 to -32 feet MLLW, plus a two-foot over-dredge allowance as shown in Exhibit B. Further, Special Condition II-G states that the permittees must seek approval from the Commission 45-days prior to any maintenance dredging beyond the first two episodes.
2. **Water Oriented Use.** The project involves maintenance dredging, and the disposal of dredged sediments in the Bay and beneficial reuse at authorized upland locations to ensure safe navigation at the shipyard, a water-oriented use, as defined in Section 66605 of the McAteer-Petris Act. Section 66663 of the McAteer-Petris Act further states that "...because of the shallowness and high rate of sedimentation of the San Francisco Bay, dredging is essential to establish and maintain navigational channels for maritime commerce."
3. **Seasonal Restrictions.** Both the CDFG and USFWS have referenced the Long Term Management Strategies' (LTMS) seasonal restrictions for maintenance dredging projects to protect important fisheries and related natural resources. Special Condition II-G-7 limits dredging to the prescribed environmental work window from August 1st to October 15th of any year to protect the Delta smelt, Chinook salmon, and steelhead. Special Condition II-G-8 requires the permittees to dredge via a clamshell bucket or mechanical dredge, to limit dredging to daylight hours, and dredge no more than two dredging cycles every three-years in order to further minimize impacts to the above listed species and green sturgeon.

In April 2006, NOAA Fisheries listed the southern population of coastal and Central Valley green sturgeon as a threatened species. However, since that time NOAA Fisheries has not imposed "take prohibitions" or mitigation measures on dredging activities to provide protection to the green sturgeon. It is possible, however, that during the ten-year term of the project, NOAA Fisheries will pro-

pose measures to protect the green sturgeon. At such time that specific protection measures are adopted for the green sturgeon, Special Condition II-G-11 requires the permittees to request an amendment to the permit to assure permit consistency with endangered species protection. The condition further states that the permit becomes null and void if an amendment is not obtained.

4. **Disposal in Accordance with Policy No. 3.** The Bay Plan Dredging Policy No. 3 states in part that “dredged material should, if feasible be reused or disposed outside the Bay and certain waterways.” In addition, Policy No. 3 states, “...dredged material should not be disposed of in the Bay and certain waterways unless disposal outside these areas is infeasible and the Commission finds: (a) the volume to be disposed is consistent with the applicable dredger disposal allocation and disposal site limits adopted by the Commission by regulation; (b) disposal would be at a site designated by the Commission; (c) the quality of material disposed is consistent with the advice of the San Francisco Regional Water Quality Control Board and the interagency (DMMO) and (d) the period of disposal is consistent with the advice of the CDFG, USFWS and NOAA Fisheries.

To reduce in-Bay disposal, as required by Dredge Policy No. 3, the project sponsor has agreed to limit in-Bay disposal at the Carquinez Strait disposal site (SF-9) to 66% of the total material dredged from 2010 through 2012. As stated in Special Condition II-G-5, the remaining approximately 33% of the dredged material (approximately 66,000 cy from dredging Episodes 1 and 2) will be placed upland at the Hamilton Wetlands Restoration Project, the San Francisco Ocean Disposal Site (SF-DODS), the Montezuma Wetland Project Site, or an upland location outside of the Commission’s jurisdiction. The LTMS Program Managers have found this plan acceptable. Special Condition II-G-5 further states that after 2012, the out-of-bay disposal target is 80% of all dredged materials. The permittees will need to comply with the LTMS goals or provide analysis that clearly determines it is infeasible to do so after 2012.

5. **Valid Title of Project Site.** The submerged lands associated with this project are owned by the United States Navy (Navy). While the Navy has stated that they will issue a lease to the permittees once this BCDC permit is issued, Special Condition II-G-9 requires that the applicant provide a signed copy of the lease to BCDC before any in-Bay work authorized herein can commence. Until the lease is signed by the U.S. Navy the work authorized in this permit herein is null and void.

For all the reasons listed above, the Commission finds that this project, as conditioned, is consistent with the Bay Plan policies on dredging.

- D. **Water Quality.** Section 66605 of the McAtteer-Petris Act of potential impacts of fill on water quality, the Bay Plan Water Quality Policy 2 states 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 as identified in the San Francisco Bay Regional Water Quality Control Board’s Basin Plan and should be protected from all harmful or potentially harmful pollutants. The 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."

On April 15, 2010, the California Regional Water Quality Control Board (RWQCB) issued a conditional Water Quality Certification (WQC), and found the proposed dredging activities consistent with the provisions of the Clean Water Act.

The sediment to be dredged in the first and second episode was tested and the results were reviewed by the Dredged Material Management Office (DMMO), an inter-agency collaborative body that reviews dredging projects and dredged sediments proposed for aquatic disposal and beneficial reuse. Both the DMMO and the Regional Water Quality Control Board Staff concurred that the dredged material would be suitable for in-Bay disposal and placement at Hamilton. The water quality certificate covers the duration of the ten-year project. However, the Regional Water Quality Control Board required individual certification for each maintenance dredging and disposal episode.

Special Condition II-G-4 and the water quality certificate requires that the permittees dispose of sediments determined by the DMMO to be unsuitable for in-Bay disposal at an appropriate location. This would prevent adverse effects from unsuitable dredged sediment disposal to the water quality in the Bay.

Special Condition II-G-1 requires that the permittees provide water quality certification from the Water Board to the Commission for approval prior to the commencement of future dredging episodes. Special Condition II-G-5 requires that the permittees provide test results from sediment proposed for disposal to the Executive Director 45 days prior to disposal of any dredged sediment and lists the criteria for obtaining Commission approval of dredging and in-Bay disposal. In the event that future sediment sampling results identify elevated levels of contaminants or toxicity, the DMMO will make a determination regarding the appropriate disposal site for the sediment. The Commission will review the sediment test results as part of the DMMO, and will approve future episodes based in part on the DMMO's determination. This provision will prevent future unsuitable sediment from being disposed in-Bay.

For all the reasons listed above, the Commission finds that this project, as conditioned, is consistent with the Bay Plan policies on water quality.

- E. **Priority Use Areas.** The project area does not fall within designated priority use locations. The Commission, therefore, finds that the project is consistent with the Bay Plan's priority use designations.
- F. **Engineering Criteria Review Board and the Design Review Board.** The Commission's Engineering Criteria Review Board did not review the proposed project because no Bay fill would be placed as a result of this project. The Design Review Board did not review the project because of the modest nature of the public access proposal.
- G. **Environmental Review.** The project involves the reuse of Drydocks Two and Three and adjacent areas along the Mare Island Waterfront. The City of Vallejo adopted the Mitigated Negative Declaration on November 2, 2009, based on the requirements of the California Environmental Quality Act (CEQA).
- H. **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 *San Francisco Bay Plan*, the McAteer-Petris Act, the California Environmental Quality Act, the State Mining and Reclamation 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 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 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 assignees 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 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.