

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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February 1, 2013

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-36, lgoldzband@bcdc.ca.gov)
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SUBJECT: **Staff Recommendation on Consistency Determination No. C2011.002; U.S. Army Corps of Engineers; Improvements to and Enhanced Management of Ponds 6, 6A, 7, 7A and 8**
(For Commission consideration on February 7, 2013)

Recommendation Summary

The staff recommends that the Commission approve Consistency Determination No. C2011.002, which, as conditioned, would result in the following:

1. Enhanced management capability of 1,900 acres of “managed pond” habitat by installing water control structures and levee improvements;
2. Slow and safe dilution of bittern over a 7- to 10-year period with gradual release into the Napa River;
3. Improvements to existing, informal public access including widening 14,227 feet (2.7 miles) of levee pathways, installing an ADA-accessible surface to the pathways and placing interpretative signage and seating; and
4. Monitoring to provide information to facilitate adaptive management and track the success of the project relative to target habitat goals.

The project will allow enhanced management of “managed pond” habitat for several species of waterfowl, shorebirds and special-status bird species, reduce the risk of water quality impacts through the safe and controlled dilution of bittern, and improve public access and recreational opportunities.



Making San Francisco Bay Better

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

A. Subject to the conditions stated below the U.S. Army Corps of Engineers is hereby authorized to construct the following improvements associated with the Napa Sonoma Marshes Salt Pond Restoration Project, in former salt ponds 6, 6A, 7, 7A and 8, in the Napa Sonoma Marshes Wildlife Area, just north of Highway 37 and west and east of the Napa River, in Napa and Sonoma Counties:

1. Ponds 6, 6A, 7, 7A and 8

In the Commission's salt pond jurisdiction:

- a. **Ponds 6/6A:** Convert two former salt ponds to managed ponds by doing the following: (1) excavate up to 7,200 cubic yards of material from Ponds 6/6A and place the material on approximately 132,000 square feet (3.03 acres) of the existing embankment separating Pond 6 from Pond 6A to strengthen it; (2) place a total of 4,000 cubic yards of rip rap over 40,000 square feet (0.92 acre) of the embankment separating Pond 6A from Napa Slough; (3) install, use and maintain a total of six 36-inch-in-diameter outfalls with gates, six 36-inch-in-diameter culverts with gates, and six 36-inch-in-diameter inlets with gates; (4) demolish the existing siphon that hydrologically connects Pond 6A with Pond 7A; (5) breach the "donut" (the circular, earthen bermed small pond with multiple intakes used to distribute water through the canal and siphon system) connecting Pond 6A and the Pond 6A canal and install a new water control structure north of the Pond 6 donut to provide flow from the Pond 6/6A canal into Pond 6; (6) use and maintain the existing Pond 6 "donut" and install a new 48-inch-in-diameter intake, and (7) install, use and maintain up to 2,300 square feet of walkways that would allow access to and maintenance of water control structures.
- b. **Ponds 7/7A:** Convert two former salt ponds to managed ponds by doing the following: (1) excavate up to 10,000 cubic yards of material from the mixing chamber and the Pond 6A/7 siphon basin and place the material on approximately 200,000 square feet (4.59 acres) of existing embankments primarily between Ponds 7 and 7A, raising these structures to heights varying from 7 feet NAVD to 9 feet NAVD, and creating 3:1 side slopes; (2) excavate a total up to 8,000 cubic yards of material from Ponds 7/7A and use the material to widen portions of the existing internal embankment that bisects Ponds 7 and 7A, creating approximately 90,000 square feet (2.07 acres) of nesting and cover habitat for the special-status Western snowy plover and the California least tern; (3) excavate the existing channel along the eastern side of Pond 7 lowering the invert (bottom) elevation from 2 to 0 feet NAVD 88; (4) replace, use and maintain all existing water control structures (two culverts, two outfalls and two inlets (all gated)) with appropriately sized structures; (5) improve the existing "donut" by grading the donut, installing an air bubbler system with a 114-foot-long sheetpile baffle that will cover 1,030 square feet; (6) install, use and maintain 1,105 square feet of walkways that will allow access to and maintenance of water control structures; (7) install, use and maintain a 120-square-foot precast, concrete maintenance building that will house control systems for the bubbler system; and (8) improve, use and maintain a 10-foot wide, 5,654 foot long (56,540 square feet) public access path with an ADA-accessible gravel surface along the eastern perimeter of Ponds 7A/7;

- c. **Pond 8:** Convert a former salt pond to managed pond by doing the following: (1) excavate up to 13,000 cubic yards of material from the Pond 8 borrow ditch and/or pond bottom and place the material on approximately 235,000 square feet (5.39 acres) of Pond 8, raising the embankment from 5 feet to 8 feet NAVD with a top width of 10 feet and 3:1 side slopes and maintaining the improved embankment; and (2) improve, use, and maintain a 10-foot-wide, 6,110-foot-long (61,110 square foot) public access path with an ADA-accessible gravel surface around the northern and eastern perimeter of Pond 8.

This authority is generally pursuant to and limited by the request for consistency review dated April 22, 2011, including all accompanying and subsequently submitted correspondence, documents, and exhibits, but subject to the modifications required by conditions hereto.

- B. Work authorized in this consistency determination must commence prior to August 31, 2013, or this authority will lapse and become null and void. Such work must also be diligently pursued to completion and completed by August 31, 2018, unless an extension of time is granted by amendment of this consistency determination. The Pond 7/7A public access improvements must be installed no later than December 31, 2016, or within four years of commencement, whichever is earlier, unless an extension of time is granted by amendment of this agreement. The Pond 8 public access improvements must be installed no later than August 31, 2018, or within five years of project commencement, whichever is earlier, unless an extension of time is granted by amendment of this agreement.
- C. The project includes excavating approximately 40,000 cubic yards of material from pond borrow ditches and former dredged areas and placing the material over 600,000 square feet (13.77 acres) of embankments in the Commission's salt pond jurisdiction. Fill will be placed in the salt ponds to strengthen embankments, raise the heights of the embankments to 100-year-flood elevations, and to reduce the risk of possible unplanned bittern releases. In addition, fill will be placed to construct maintenance walkways (2,000 cubic yards over 1,951 square feet), rock rip-rap along Pond 6A (4,000 cubic yards over 40,000 square feet) and water control structures (18,000 square feet).

Following implementation of Phase 3, a total of 1,900 acres of managed pond habitat will be created. Coupled with the implementation of the earlier phases of restoration of the Napa Sonoma Marshes Project Area (Ponds 1 through 5, the Napa Plant site and Ponds 6, 6A, 7, 7A and 8) a total of 4,586 acres of tidal marsh habitat, 3,582 acres of managed pond habitat, 99 acres of tidal channels, and 42 acres of transitional habitat will have been created, though it will be many years before the tidal marsh habitat is fully developed.

Public access provided with the Phase 3 project (Ponds 6, 6A, 7, 7A and 8) consists of a total of 14,227 linear feet (2.7 miles) of improved, barrier-free public access consisting of a 10-foot wide pathway with an ADA-accessible gravel surface, as well as interpretative signage and seating.

II. Special Conditions

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

A. Specific Plans and Plan Review

- 1. **Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, public access, engineering, restoration and grading 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.

- a. **Site Plans.** The site plans submitted pursuant to this agreement shall include the location of all public access improvements, water control structures, maintenance walkways and all fill placed pursuant to this agreement.
- b. **Engineering Plans.** Engineering plans shall include a complete set of contract drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:
 - (1) Evidence that the design complies with all applicable codes; and
 - (2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.

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

- (a) completeness and accuracy of the plans in showing the features required above, particularly the shoreline (Mean High Water Line or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if tidal marsh is present), property lines, and the line 100-feet inland of the shoreline, and any other criteria required by this authorization;
- (b) consistency of the plans with the terms and conditions of this authorization;
- (c) the provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization, but limited to ensuring: (1) the public's use and enjoyment of the access area; (2) public safety; (3) accessibility for persons with disabilities; (4) sufficient durability and maintenance of materials and structures; and (5) that the access is clear and continuous and encourages public use;
- (d) consistency with legal instruments reserving public access and open space areas;
- (e) assuring that any fill in the Bay does not exceed this authorization and will consist of appropriate shoreline protection materials as determined by or on behalf of the Commission; and
- (f) consistency of the plans with the recommendations of the Design Review Board.

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

2. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final

plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.

3. **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 permittee is 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.
4. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the permittee or any other interested party to the Design Review Board or, if necessary, subsequently to the Commission. Such appeals must be submitted to the Executive Director within 30 days of the plan review action and must include the specific reasons for appeal. The Design Review Board shall hold a public hearing and act on the appeal within 60 days of the receipt of the appeal. If subsequently appealed to the Commission, the Commission shall hold a public hearing and act on the appeal within 90 days of the receipt of the subsequent appeal.

B. Marsh Restoration

1. **Marsh Monitoring Plans.** Prior to commencing earth moving activities in Ponds 6, 6A, 7, 7A and 8, the permittee shall submit and receive approval by or on behalf of the Commission, pursuant to Special Condition II-A, of a marsh monitoring plan. The monitoring plan shall generally conform to the "Habitat Monitoring Plan for Ponds 6, 6A, 7, 7A and 8-Napa River Salt Marsh Restoration Project, Napa, Sonoma and Solano Counties", prepared by CDFW.

The monitoring reports submitted pursuant to this authorization shall include the following:

- a. **Site Conditions and Modifications.** A topographic map of the site at two-foot contour intervals showing the proposed modifications. All elevations shall be relative to National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD). The map shall include typical cross-sections showing the proposed elevations of the pond bottoms after fill placement, the height and slope of repaired embankments, any channels, and any high spots. The map shall show: (1) figures for the ratios of typical horizontal to vertical slopes for proposed marsh surface, channels, and sloughs, particularly for areas where either grading, excavation, or fill will take place; (2) the elevation of adjacent surrounding levees; and (3) estimated Mean Higher High Water, Mean High Water, Mean Lower Low Water, Mean Sea Level, the maximum predicted tide, and the 100-year tide. To promote positive drainage, constructed elevations shall grade gently toward constructed channels and breaches.
- b. **Earth Moving Schedule.** A schedule indicating when excavation, fill and/or grading will occur.
- c. **Water Quality.** A water-quality monitoring program that shall comply with the requirements set forth in the NPDES permit and the RWQCB Order issued for the project.
- d. **Bird Surveys.** Avian surveys shall be conducted twice a year, during years 1 through 5 post-construction, and once every other year (e.g., Years 5, 7, 9, 11, 13, 15), until 15 years post construction.

- e. **Fish Literature Review.** The first three monitoring reports shall briefly summarize existing literature on fish species present in the Lower Napa River, and any anecdotal information (i.e., talking with fishermen) on fish found within the restored ponds.
 - f. **Invasive Plant Control.** Monitoring reports submitted to the Commission pursuant to the approved monitoring plan shall report on all eradication efforts conducted on the site for invasive plant species such as non-native *Spartina*, broom and thistle as well as any efforts to control other invasive plant species on site. The project team shall work with the San Francisco Estuary Invasive *Spartina* Project to monitor and control introduced and invasive *Spartina*, in order to ensure regional coordination. The permittee shall completely control nonnative *spartina* species, and reasonably control (average of less than 5% of the levees) during the 15-year monitoring period such undesirable nonnative species as star thistle and broom. Reasonable efforts shall be made to eradicate and/or control invasive species such as pampas grass, giant reed, and various species of broom for the duration of the monitoring period where feasible. Other invasive species of concern, such as *Lepidium*, wild radish, etc., shall be monitored and, should funding become available and if the eradication and/or control attempts are deemed appropriate, eradication and/or control attempts shall be implemented over the course of the monitoring period.
 - g. **Monitoring Reports.** Monitoring reports describing the data collected pursuant to the approved restoration and monitoring plans shall be submitted biennially (every two years) beginning on December 1st, post-construction (years 2, 4, 6, 8, 10, 12 and 14).
- 2. **Relevant Monitoring Data.** The permittee shall provide all monitoring information and data from other studies conducted on the site including but not limited to any U.S. Geological Surveys (USGS), CalFed, U.S. Army Corps of Engineers (Corps), Ducks Unlimited, Wildlife Conservation Board-funded studies.
 - 3. **Control of Invasive Plant Species.** The permittee shall develop and implement an invasive plant control plan for undesirable plant species such as invasive *Spartina* species, broom and star thistle over the 15-year monitoring period that shall be subject to approval by or on behalf of the Commission pursuant to Special Condition II-A, above. The plan shall include provisions for complete eradication of all non-native *Spartina* species.
- C. **Public Access.** The following public access improvements, as generally shown on Exhibit A, shall be provided in accord with the following schedule:
- 1. By December 31, 2016, or within three years of project commencement, whichever is earlier, improve and use the following public access:
 - a. **Ponds 7 and 7A:** (i) grade and level the roadway on top of the eastern Pond 7 and Pond 7A embankment creating an even, level surface and improve a 5,564-foot-long (1.05 mile) public access path along the eastern embankment by providing a pathway with a minimum width of 10 feet and applying an ADA-accessible gravel surface; (ii) install a minimum of 4 interpretive signs that describe the history and ecology of the area; and (iii) provide rustic seating at the southern end of the pathway.

2. By August 31, 2018, or within five years of project commencement, whichever is earlier, improve and use the following public access:
 - a. **Pond 8:** (i) import fill, grade and level the top of the eastern and northern embankment to an even, level surface and provide a 6,110-foot-long (1.16 mile) public access path on the top of the raised eastern and northern embankment with a pathway with a minimum width of 10 feet and applying an ADA-accessible gravel surface; and (ii) provide 1 interpretative sign that describes the ecology and/or the history of the area and seating.
3. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access facilities authorized herein 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 permittee has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
4. **Maintenance.** The areas and improvements within the public access facilities authorized herein shall be permanently maintained by and at the expense of the Corps or its assignees. Such maintenance shall include, but is not limited to, repairs to all paths, parking lot surfaces and portage facilities, restrooms, furniture, repairs or replacement as needed of any public access amenities such as signs, periodic cleanup of litter and other materials deposited within access areas, removal of any encroachments into access areas, and assuring that the public access signs remain in place and visible; and repairs to any public access areas or improvements that are damaged by future flooding, including and subject to approval by or on behalf of the Commission, including raising land elevations or redesigning public access features to protect and ensure the usability of the public access areas and improvements, where appropriate. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site.
5. **Climate Change.** If the public access required herein becomes flooded or damaged as a result of sea level rise and climate change, the permittee shall work with the Commission and other stakeholders to replace lost access along the inland edge of the ponds, if possible, or provide alternative public access inland.

D. Marsh Protection

1. **Best Management Practices.** All construction operations shall be performed to prevent construction materials from falling, washing, or blowing into the Bay except as described in the restoration plan. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, except as described in the restoration plans approved by or on behalf of the Commission, the permittee shall immediately retrieve and remove such material at its expense. The permittee shall also employ best management practices, such as placing drip pans below engines during fueling and storage etc., to assure that material placed for any purposes authorized herein will not erode into the Bay shortly after placement.
2. **Marsh and Upland Plant Protection During Construction.** The work authorized by this amended permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any existing tidal marsh, other sensitive wetland resources, and existing native upland vegetation. If any unforeseen adverse impacts occur to any such area(s) as a result of the activities

- authorized herein, the permittee shall restore the area(s) to its previous condition, including returning the disturbed area to its original elevation and soil composition and, if the area does not re-vegetate to its former condition within one year, the permittee shall seed all disturbed areas with appropriate vegetation consistent with plans approved by or on behalf of the Commission, pursuant to Special Condition II-A. The permittee shall employ mitigation measures to minimize impacts to wetland areas, such as: minimizing all traffic in marsh/mudflat areas; and carefully removing, storing, and replacing wetland vegetation that has been removed or "peeled back" from construction areas as soon as possible following construction.
3. **Removal of Excavated Material.** All dredged and excavated material must be used to raise and stabilize levees. Any material not used for these purposes must be removed from the project site for proper disposal outside of the Commission's jurisdiction.
 4. **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 marsh, waterways or ponds. 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 permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days it has been notified by the Executive Director of such placement.
- E. **Protection of Special-Status Fish and Wildlife Species.** The Corps shall take all precautions to avoid adverse impacts to special-status species such as the California clapper rail, delta smelt, Sacramento splittail and western snowy plover. The permittee shall implement the measures described in the U.S. Fish and Wildlife Service's (USFWS) Biological Opinion for the project dated October 31, 2012, to ensure that impacts to special-status species are minimized. Such measures shall include:
1. **Delta smelt and Sacramento splittail.** To minimize the effects on the Sacramento splittail and delta smelt resulting from the loss of existing habitat, the permittee shall avoid construction activities in slough areas having emerged or submersed plants to the maximum extent possible;
 2. **California clapper rail.** The Corps shall conduct pre-construction surveys following USFWS' January 21, 2000 draft survey protocol at individual work sites, and avoid potential clapper rail habitat during construction to the maximum extent feasible. A qualified biologist shall be present to monitor construction activities in and near areas known to be occupied by clapper rail, and shall have the authority to install or require additional wildlife protective measures such as fencing and noise buffers, as well as having stop work authority. Construction activities shall not occur during the nesting period for clapper rails, February 1 through August 1. If construction activities need to occur during the nesting period, a qualified biologist shall conduct pre-construction surveys up to 72 hours before construction begins, using survey methods approved by the USFWS. If individuals and/or nests are not located within 250 feet of the construction area, then construction may proceed. If individuals and/or nests are located within 250 feet of the construction area, the USFWS shall be contacted and consultation shall be reinitiated.

3. **Salt Marsh Harvest Mouse.** Salt marsh harvest mouse exclusion fencing shall be installed in key locations as determined by the biological monitor around the work area(s) to minimize the potential for harvest mice entering the work area(s) during construction activities. The exclusion fencing shall be maintained by the contractor under the direction of the biological monitor. A full-time qualified biologist shall monitor construction work within non-tidal seasonal wetland habitat potentially occupied by harvest mice during the most active portion of the breeding season of this species typically from August 1 to November 1.
 4. **Western snowy plover and the California least tern.** To protect and enhance nesting areas of the Western snowy plover and the California least tern, the Corps shall either avoid working on the levee that bisects Ponds 7 and 7A where the birds currently nest, or enhance this levee by keeping it free of vegetation and/or applying a layer of oyster shells or pea gravel.
- F. **Mitigation Measures.** To minimize potential adverse effects associated with the project, the permittee shall implement the mitigation measures described in the "*Napa River Salt Marsh Restoration Project EIS/EIR*" and the Habitat Mitigation Monitoring Plan for Ponds 6, 6A, 7, 7A and 8. Such measures shall include: ensuring that Best Management Practices (BMPs) are implemented during construction activities; coordinating with the Napa County Mosquito Abatement district to minimize mosquito production; and educating construction crews regarding special-status fish and wildlife.
- G. **Water Quality.** The permittee shall comply with the Regional Water Quality Control Board Order No. R2-2004-0063, CIWQS Place No. 654284 and the National Pollutant Discharge Elimination System (NPDES) Permit No. CA 0030101 to ensure that potential water quality impacts of the project are minimized.
- H. **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.
- I. **Prevention of Flooding.** The permittee shall assure that the project meets the requirements of the Public Works Directors or the Flood Control Districts, whichever has jurisdiction over the site and surrounding area and is responsible for assuming adequate flood protection for the surrounding communities. The permittee shall provide a letter to the Commission indicating that the review has been done and that inland areas will not flood as a result of the work shown on the plan. The Commission makes no warrants as to the adequacy of the flood protection provided by the project and is not responsible for any flooding that may result.
- J. **In-Kind Repairs and Maintenance.** Any in-kind repairs and maintenance of the facilities authorized herein shall only use construction material that is approved for use in San Francisco Bay. Construction shall only occur during current approved months during the year to avoid potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions.
- K. **Riprap**
1. **Riprap Material.** Riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured

- perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited.
2. **Riprap Placement.** Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site.
 3. **Riprap Plans**
 - a. **Design.** Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design of the shoreline protection improvements authorized herein.
 - b. **Plan Review.** No work whatsoever shall be commenced on the shoreline protection improvements authorized herein until final riprap plans have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The plans shall consist of appropriate diagrams and cross-sections that (1) show and clearly label the 5-foot (NGVD or NAVD) contour line (the mean high tide line), property lines, grading limits, and details showing the location, types, and dimensions of all materials to be used, (2) indicate the source of all materials to be used, and (3) indicate who designed the proposed shoreline protection improvements and their background in coastal engineering and familiarity with the Commission's concerns. Approval or disapproval of the plans shall be based upon (1) completeness and accuracy of the plans in showing the features required above, (2) consistency of the plans with the terms and conditions of this amended permit, (3) assuring that the proposed fill material does not exceed this amended permit, (4) the appropriateness of the types of fill material and their proposed manner of placement, and (5) the preparation of the plans by professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes. All improvements constructed pursuant to this amended permit shall conform to the final approved plans. No changes shall be made thereafter to any final plans or to the constructed shoreline protection improvements without first obtaining written approval of the change(s) by or on behalf of the Commission.
 4. **Maintenance.** The shoreline protection improvements authorized herein shall be regularly maintained by and at the expense of the permittee, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Within 30 days after notification by the staff of the Commission, the permittee or any successor or assignee shall correct any maintenance deficiency noted by the staff.
 - L. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein, have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

- M. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, 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 amended permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.
- N. **Hold Harmless and Indemnify.** The permittee shall hold harmless and indemnify the Commission, all Commission members, Commission employees, and agents of the Commission from any and all claims, demands, losses, lawsuits, and judgments accruing or resulting to any person, firm, corporation, governmental entity, or other entity who alleges injuries or damages caused by work performed in accordance with the terms and conditions of this amended permit. This condition shall also apply to any damage caused by flooding of or damage to property that is alleged to be caused as a result of some action or lack of action by the Commission growing out of the processing of and issuance of this amended permit.
- O. **Notifying NOAA to update Nautical Charts.** Within 30 days of the completion of the project authorized by this amended permit, the permittee shall provide written verification to the Commission that it has submitted to the Nautical Data Branch of the National Oceanic and Atmospheric Administration (NOAA) the following: (1) (a) as-built drawings, blueprints or other plans that correctly depict the completed development or, if the project involves the removal of an existing development; (b) a list of the existing development(s) that have been removed and a statement from a qualified engineer or professional salvage company certifying which portions of the development have been removed; (2) the geographic coordinates of the project using a differential geographic positioning system (DGPS) unit or other comparable equipment suitable for providing location on a Nautical Chart; and (3) the permittee's name and contact information (such as a mailing address, telephone number, fax number and /or e-mail address).

III. Findings and Declarations

This consistency concurrence 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*, the California Environmental Quality Act, and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- A. **Fill.** The project would result in fill within the Commission's salt pond jurisdiction. The Commission may allow fill in its salt pond jurisdiction only when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act that state, in part: (a) the fill should be the minimum amount necessary to achieve the purpose of the fill; and (b) the nature, location, and extent of any fill should minimize harmful effects to the Bay including the volume, circulation, and quality of water, fish and wildlife resources, and marsh fertility. The purpose of the fill placed for the project is to strengthen and raise existing embankments, to install water control structures and maintenance walkways to allow access to these control structures for management and maintenance purposes, and to provide public access.
1. **Minimum Amount Necessary.** Approximately 43,076 cubic-yards of fill material will be needed to provide for the long-term stability of embankments, reduce the likelihood that the embankments will be overtopped which might lead to the uncontrolled release of bittern which could adversely affect both fish and wildlife. The size of the water control structures are the minimum necessary to allow for the slow and controlled dilution and release of bittern from Pond 7 and to allow for the long-term management of all ponds as open water pond habitat for wildlife. The fill

will minimize harmful effects to the Bay by strengthening levees around Pond 7, preventing the release of deleterious bittern into the Napa River and adjacent sloughs. By enhancing the ability to manage for wildlife and fish habitat, the project will allow the California Department of Fish and Wildlife, the project partner and property owner, greater ability to manage the ponds to create diverse conditions favoring fish and wildlife.

For all these reasons, the Commission finds that the fill placed as part of the restoration is the minimum amount necessary to construct the project.

2. **Minimizing Impacts on the Bay.** All fill placed on the embankments of Ponds 6, 6A, 7, 7A, and 8 will occur only within the Commission's salt pond jurisdiction. The fill to raise and strengthen embankments and replace water control structures has been designed and will be managed to increase water exchange between the ponds and the Bay, to safely eliminate bittern, and to improve the ability to manage the ponds for specific habitat and species. Such management will benefit the Bay's water circulation and volume, and is expected to enhance fish and wildlife populations and marsh fertility. A Habitat Mitigation and Monitoring Plan for the project has been developed to address the project's potential impacts to natural resources and ways to minimize and avoid such adverse impacts through using protective measures.

For these reasons, the Commission finds that the fill placed with the project, has been designed and will be constructed to minimize impacts on the Bay and its resources.

- B. **Maximum Public Access.** Section 66602 of the McAteer-Petris Act states that existing public access to the shoreline and waters of San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided. Regarding salt ponds, Section 66602.1 of the Act states, in part, that "...if any such areas are authorized to be developed and used for other purposes, the development should provide maximum public access to the bay consistent with the proposed project...."

The Bay Plan policies on public access state that, "...[P]ublic access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife are sensitive to human intrusion. For this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided...." The policies go on to state, "...Public access should be sited, designed and managed to prevent significant adverse effects on wildlife..." and "...[P]ublic access improvements provided as a condition of any approval should be consistent with the project and the physical environment, including protection of Bay natural resources, such as aquatic life, wildlife and plant communities, and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for the physically handicapped to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs...."

In determining whether a project provides maximum feasible public access, consistent with the project, the Commission and its staff use several variables in evaluating the adequacy of the public access. These variables include site constraints and opportunities, expected level of use of the public access areas, existing access in the area, past experience with public access provided by other similar projects, public access provided with the entire project if the project is constructed in phases, project cost, and possible

impacts to adjoining wildlife and habitat. Over the years, the Commission has approved numerous restoration projects, nearly all providing some public access improvements. Some recent examples of similarly-sized restoration projects include:

1. **U.S. Fish and Wildlife Service's Cullinan Ranch (CN 5-04).** In September 2010, the Commission concurred with the U.S. Fish and Wildlife Service that the Cullinan Ranch Project (Amendment No. One to Consistency Determination No. CN 5-04), located adjacent to Highway 37, in Napa and Solano Counties was consistent with the Coastal Zone Management Act. This \$8 million project will result in the restoration of 1,549 acres of tidal marsh and 26 acres of transitional habitat. The Service will provide public access consisting of 2,360 feet of trails and associated improvements, of which 1,760 feet will be new trail, roadway improvements to improve the safety of vehicular egress and ingress between an existing parking lot and Highway 37, two viewing platforms, two wooden fishing piers, a kayak launch pier and interpretative signage.
2. **U.S. Fish and Wildlife Service's South Bay Salt Pond Restoration (CN 10-03).** In September 2008, the Commission concurred with the Consistency Determination of the U.S. Fish and Wildlife Service that Phase One of the South Bay Salt Ponds Restoration Project (Consistency Determination No. 10-03) was consistent with the Coastal Zone Management Act. This \$10 million project, proposed in San Mateo and Santa Clara Counties, reconfigures former salt pond systems to create 330 acres of tidal marsh, 1,400 acres of muted tidal marsh and 479 acres of managed ponds. Public access associated with this phase of the South Bay Salt Ponds project consists of 13,200 linear feet (2.50 miles) of new trails, improvements to over 3,960 linear feet (0.75 mile) of existing trail, three viewing platforms, a restroom facility and interpretative signage.
3. **California Dept. of Fish and Wildlife's Eden Landing, Phase One (BCDC Permit No. 7-03).** In September 2008, the Commission authorized Phase One of CDFW's Eden Landing Ecological Reserve Project, in the City of Hayward, Alameda County. The \$10 million project resulted in the conversion of 860 acres of former salt ponds to 630 acres of tidal marsh and 230 acres of managed ponds. The restoration area is adjacent to an urban area and associated public access includes 3.8 miles of new trail, much of which will be ADA-accessible (1.5 miles of this trail will be seasonally closed for nesting birds), an interpretive station/overlook and watercraft launch area with vehicular access, an ADA-accessible raised viewing platform and interpretive station, two at grade viewing areas, and benches and interpretive signs.
4. **California Dept. of Fish and Wildlife's North Bay Salt Pond Restoration Project (BCDC Permit No. 8-04, Phases I and II).** The earlier authorizations for Phases One and Two of the project that is the subject of this determination illustrate how the Commission weighs various factors in determining what constitutes "the maximum feasible public access consistent, with the project". Phase One involved converting former salt ponds (Ponds 1, 1A, 2, 2A, 3, 4 and 5) to 3,426 acres of tidal wetlands and 1,682 acres of managed ponds. The vast majority of this acreage involved island ponds accessible only by boat. Only two of the ponds (Ponds 1 and 1A) were along a road, State Highway 37, and only one of those ponds had sufficient upland to accommodate vehicles. The public access for this phase of the restoration was concentrated entirely on the one pond accessible by road and consisted of improvements and expansion of an eight car parking lot, one large kayak launch to facilitate boat access, 8,850 feet of embankment improvements to facilitate trail use and the development of a public access plan, in conjunction with the State Coastal Conservancy and San Francisco Bay Trails, to provide CDFW and the Commission with current and future

public access opportunities in the North Bay. This last condition was included to assure that future restoration projects in the north Bay would provide adequate and meaningful public access that was capable of being designed to be compatible with wildlife preservation.

Phase Two involved converting 1,460 acres of the former north Bay crystallizers and plant site to 1,259 acres of tidal marsh, and 200 acres of upland, transitional, and seasonal pond habitat at an estimated cost of \$20 million. Phase 2 was concentrated at the former Saltworks which had roads and is adjacent to secondary roads, housing, and commercial development. Phase 2 public access consists of 6.2 miles of trails, a non-motorized watercraft launch area, a public restroom, and various park furniture such as benches and trash containers.

This consistency determination solely concerns Phase 3, a \$22 million project that will convert 1,900 acres of former salt and bittern pond(s) (Ponds 6, 6A, 7, 7A and 8) to managed ponds. Ponds 6 and 6A are the largest ponds and are considered island ponds accessible only by boat. No access is proposed at these ponds. Ponds 7 and 7A are accessed from a public parking lot at the end of Buchli Station Road in a very rural area of Napa County. Approximately 5,564 feet (1.05 miles) of the maintenance road on top of the eastern embankment of Ponds 7 and 7A is already open to the public, but will be graded, leveled, and improved with ADA-accessible gravel as part of the Phase 3 project. This trail appears to be minimally used. Pond 8 is adjacent to Milton Road, the primary road for a low-density housing development along the Napa River. A 1- to 2-foot-wide informal footpath encompasses Pond 8. Phase 3 will improve the northern and eastern embankments of Pond 8 and provide approximately 6,110 feet (1.16 miles) of 10-foot-wide trails on the improved embankments. This trail will include ADA-accessible gravel, interpretative signage and seating.

The original consistency request for Phase 3 improvements also proposed providing a seasonal trail on the embankment separating Ponds 7 and 7A, an embankment that has been used by least terns and snowy plovers, two special status species, for nesting. However, the Biological Opinion (BO) issued for the project and information provided by the project proponents strongly discourage even seasonal use of this embankment by the public because of the great sensitivity of the area to potential human disturbance.

While the project cost is relatively high (approximately \$22 million) in comparison to the projects listed above, Phase 3 improvements are largely comprised of earth moving to raise and strengthen existing embankments, an inherently more expensive activity than breaching levees and installing water control structures, major components of the tidal restoration efforts cited above.

When the Phase 3 public access improvements are viewed in context with the public access provided for the entire project (Phases 1 through 3), the overall project will restore a total of 4,685 acres of tidal marsh, 3,582 acres of managed ponds and 42 acres of transitional habitat. The public access provided with all three project phases consists of improvements to 55,813 linear feet (10.57 miles) of trails, two new public access parking lots, two new kayak/boat launches, a new ADA-accessible restroom, improvements to an existing public access parking lot and amenities (e.g., signage, benches, trash containers, etc.).

For the reasons outlined above and taken in totality with the public access provided with the entire Napa Sonoma Marshes Restoration project, the Commission finds that the public access provided is the maximum feasible, consistent with the project.

- C. **Salt Pond Policies.** The Bay Plan policies on salt ponds state, in part, that “[t]he use and maintenance of salt ponds for salt production should be encouraged.... property tax policy should assure that rising property taxes do not force conversion of the ponds and other wetlands to urban development.” The salt pond policies also state that, “[i]f the owner of any salt ponds withdraws any of the ponds from their present uses, the public should make every effort to buy these lands, and restore, enhance, or convert, these areas to subtidal or wetland habitat. This type of purchase should have a high priority for any public funds available, because opening ponds to the Bay represents a substantial opportunity to enlarge the Bay...and can increase public access....”

In a letter dated March 2, 2005, Cargill Salt Division (the former site owner) states that the Napa Plant Site processed and distributed raw, bulk salt sold directly from the salt stack. Changes in the business climate leading up to the 1990s resulted in a reduced demand for the bulk salt produced at the Napa Plant site. Such changes related to factors such as market demand for Napa salt, the economics of salt production in Napa and the increased environmental regulation of both Cargill and its customers. Thus, Cargill states that the mid 1990s, Cargill determined that it was time to divest the Napa salt production lands. In 1994, Cargill Salt sold the Napa ponds to the State of California, which, in turn, assigned ownership and management of the ponds to the CDFW. Cargill’s letter further states that since the Napa salt production system operated separate from Cargill’s South Bay operations, the Napa divestiture did not negatively impact the continued viability of Cargill’s other operations.

The restoration of the overall project area has long been a vision for local resource agencies, conservationists and planners. It is one of the largest tidal restoration projects on the west coast of the United States. Implementation of this last phase of the project will result in substantial enlargement of the Bay. This project will provide 1,900 acres of “managed pond” habitat. This, in combination with managed pond habitat and tidal marsh habitat provided in the previous restoration efforts in the Napa Sonoma Marshes project area, will provide a total of 4,586 acres of tidal marsh and 3,582 acres of managed ponds or muted tidal/shallow water ponds.

Because these ponds will continue to be managed for wildlife purposes as envisioned in the Bay Plan’s salt pond policies, the Commission finds that the project is consistent with the Commission’s policies on salt ponds.

- D. **Bay Plan Policies on Natural Resources.** The Bay Plan policies on Fish, Other Aquatic Organisms and Wildlife state in part: “[T]o assure the benefits of fish, other aquatic organisms and wildlife for future generations...the Bay’s tidal marshes, tidal flats, and subtidal habitat should be conserved, restored, and increased.”(Policy No. 1.) These policies also state that “[t]he Commission should consult with the California Department of Fish and Wildlife 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...(and) give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat.”(Policy No. 2.) The policies further state that “[t]he Commission may permit a minor amount of fill or dredging in wildlife refuges, shown on the Plan Maps, necessary to enhance fish, other aquatic organisms and wildlife habitat or to provide public facilities for wildlife observation, interpretation, and education”(Policy No. 5).

1. **Fish, Other Aquatic Organisms and Wildlife.** Historically, the project site was predominantly tidal marsh in the Napa River floodplain with complex drainage networks. Around the turn of the century, embankments were constructed to facilitate agriculture. Commercial salt production by solar and wind evaporation began in the

early 1950's and continued into the early 1990's. In 1994, the property was conveyed to CDFW and has been managed for wildlife and habitat purposes since that time. The project site provides habitat for several special-status species and is designated as "critical habitat" for the Western Snowy plover. In fact, the levee that bisects Ponds 7/7A is a known nesting location for the Western snowy plover and the California least tern.

The project will enhance open-water habitat over approximately 1,900 acres and allow for the continued maintenance of the ponds in the future. The project will also decrease and ultimately remove brine from Pond 7, a deleterious substance to fish and wildlife, and will strengthen and raise the embankments separating the ponds from other nearby water bodies. With project implementation the ponds will be managed for different species such that Ponds 6/6A and 7/A will be converted to shallow-water managed ponds for shorebirds, and Pond 8 will remain a deep water pond for waterfowl.

The Corps has completed consultation with the U.S. Fish and Wildlife Service's (USFWS) Endangered Species Branch (ESB). The Biological Opinion dated October 31, 2012, represents the USFWS opinion on the effects of the project on the threatened delta smelt (*Hypomesus transpacificus*) (smelt), endangered salt marsh harvest mouse (*Reithrodontomys raviventris*) (harvest mouse), endangered California clapper rail (*Rallus longirostris obsoletus*) (clapper rail), threatened western snowy plover (*Charadrius alexandrinus nivosus*) (plover), and the endangered California least tern (*Sternula antillarum browni*) (tern). The USFWS concurs that the project is not likely to adversely affect any of these species.

Measures contained in the Biological Opinion will be implemented to reduce impacts to special-status species. One such measure includes increasing the available nesting habitat for the California least tern and the Western snowy plover along the embankments that separates Ponds 7 and 7A. This enhancement will result in an increase of 2.5 acres of potential nesting habitat for these species. In addition, fish screens will be used on the Pond 7A intake structure to prevent the entrainment of juvenile and adult delta smelt.

A habitat-monitoring plan has been developed and will be implemented with the project. The plan includes performance criteria that encompass a 15-year period. The monitoring plan will measure use of the site by birds and small mammals, and colonization by invasive plant species, including non-native cordgrass.

For the reasons outlined above, the Commission finds that the project is consistent with its policies regarding Fish, Other Aquatic Organisms, and Wildlife.

- E. **Water Quality Policies.** The Bay Plan policies on water quality state in part, that "[b]ay water pollution should be prevented to the greatest extent feasible. The Bay's tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality. Fresh water inflow into the Bay should be maintained at a level adequate to protect Bay resources and beneficial uses...." The policies also state 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 Plan, San Francisco Bay Basin* 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." Finally, the policies also state that "[n]ew projects should be sited, designed, constructed, and maintained to prevent or, if

prevention is infeasible, to minimize the discharge of pollutants into the Bay by: (a) controlling pollutant sources at the project site; (b) using construction materials that contain nonpolluting materials; and (c) applying appropriate, accepted, and effective best management practices, especially where water dispersion is poor and near shellfish beds and other significant biotic resources.”

The salinity in Pond 8 is similar to the salinity found in nearby sloughs and the Napa River. Salinities in Ponds 6, 6A, and 7A are elevated slightly compared to conditions in adjacent natural waterways, and are expected to achieve ambient salinity within one to two months of completion of construction. Because discharge will be regulated through water control structures, and because salinity within the ponds and the receiving waters will be monitored as a condition of the RWQCB permit, discharge from the ponds can be reduced or stopped, should any unexpected increases in salinity be identified.

Conditions in Pond 7 differ greatly from those found in the other ponds since it was historically used to store bittern. Bittern, a by-product of the salt-making process and consisting of all the other salts found in sea water, has a different ion balance than that which is found in seawater. Due to this ionic imbalance, concentrated bittern is deleterious to aquatic organisms and wildlife. In addition, the brine contained in Pond 7 is characterized by concentrations of priority pollutant metals such as copper and nickel that, due to the high concentration of the brine, exceed Regional Water Quality Control Board objectives.

The Regional Water Quality Control Board issued Order No. R2-2004-0063 for the restoration of and management of Ponds 1 through 6. On June 8, 2011, the RWQCB issued an additional certification (CIWQS Place No. 654284) to address ponds 7, 7A, and 8. In addition to these orders, the RWQCB issued a separate NPDES permit (CA 0030101) to ensure that the discharge of diluted bittern from Pond 7 complied with water quality limits.

The Phase 3 project, as described and conditioned above, is consistent with the RWQCB’s permits. For these reasons, the Commission finds that the project, as conditioned, is consistent with the Bay Plan policies on water quality.

- F. **Methylmercury Concerns.** Methylmercury is a natural byproduct and occurs within wetlands and could cause a potential impact to aquatic organisms at Ponds 1 through 5 and the Napa Plant site where wetlands will be exposed to increased wetting and drying episodes, conditions strongly suspected of leading to methylation of mercury. Because Ponds 6, 6A, 7, 7A and 8 will be managed as “managed ponds”, these ponds will not be exposed to such episodes of wetting and drying and mercury is not expected to methylate.
- G. **Priority Use Designation.** The project site is identified as a salt pond/managed wetland and is designated as a wildlife refuge on Bay Plan Map No. 2. The project is consistent with the priority use designation of the site because the site will continue to be managed and will be improved for wildlife, fish and plants. The fundamental project goal is to enhance the area for a variety of species while limiting the amount of management needed to sustain the system.

For these reasons, the Commission finds that the project is consistent with the priority use designation for the site.

- H. **Climate Change.** The Bay Plan policies on “Climate Change” state that, “[u]ntil a regional sea level adaptation strategy can be completed, the Commission should evaluate each project proposed in vulnerable areas on a case-by-case basis to determine the project’s public benefits, resilience to flooding, and capacity to adapt to climate change impacts.

The following specific types of projects have regional benefits, advance regional goals, and should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding...(d) a natural resource restoration or environmental enhancement project....”

The Bay Plan policies on “Public Access” state that, “Public access should be site, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding....”

The public benefits of the proposed project are numerous. Project improvements will enhance the ability to manage the site for wildlife and fish purposes, will protect and enhance areas that currently provide habitat for several species, some of which are federally-endangered, and will provide interesting and unique public access opportunities to a remote area of the Bay.

The project will result in raising and strengthening existing embankments. The specifications for the embankment improvements were generated using 100-year flood FEMA maps, a wave run-up analysis and the 100-year storm event stage volume to determine the appropriate heights and slopes for the embankments. Over time, if sea level rises such that it becomes too difficult and costly to maintain the embankments to prevent intrusion of tidal waters and the embankments are overtopped or breached, the site will continue to provide valuable wildlife and fish habitat as tidal habitat. ,

It is uncertain but probably unlikely that the public access that is currently proposed could withstand the effects of future sea level rise. Special Condition II-C-4 has been included in this amended authorization to ensure that public access to the site will be provided in the event that the proposed access is damaged due to the effects of sea level rise by requiring that California Department of Fish and Wildlife, the property owner and manager of the restored north Bay ponds, work with the Commission and other stakeholders to replace lost access, preferably along the inland edge of the ponds, if possible, or provide alternative public access inland should future sea level rise eliminate or diminish the public access required in this authorization.

For these reasons, the Commission finds that the project is consistent with the Bay Plan policies on Climate Change.

- I. **Engineering Criteria Review Board (ECRB) and the Design Review Board (DRB).** The project was not reviewed by the ECRB because it did not raise engineering issues of significant concern.

The Commission’s Design Review Board (DRB) reviewed public access associated with the project on August 9, 2010. The DRB commented that the public access was in keeping with the natural setting of the site and appeared to be consistent with the anticipated use of the site. The Board recommended that rustic seating be installed at the southern tip of the Pond 7/7A public access trail. The project proponents have complied with this recommendation and plan to install such seating at this location.

- J. **National Environmental Protection Act and the California Environmental Quality.** On May 3, 2004, the CDFW, the CEQA lead agency for the original project (Ponds 1-5), certified the EIR component of the *Napa River Salt Marsh Restoration Project EIS/EIR*. The Corps, the NEPA lead agency for the project, issued a Record of Decision for the project on December 22, 2004.

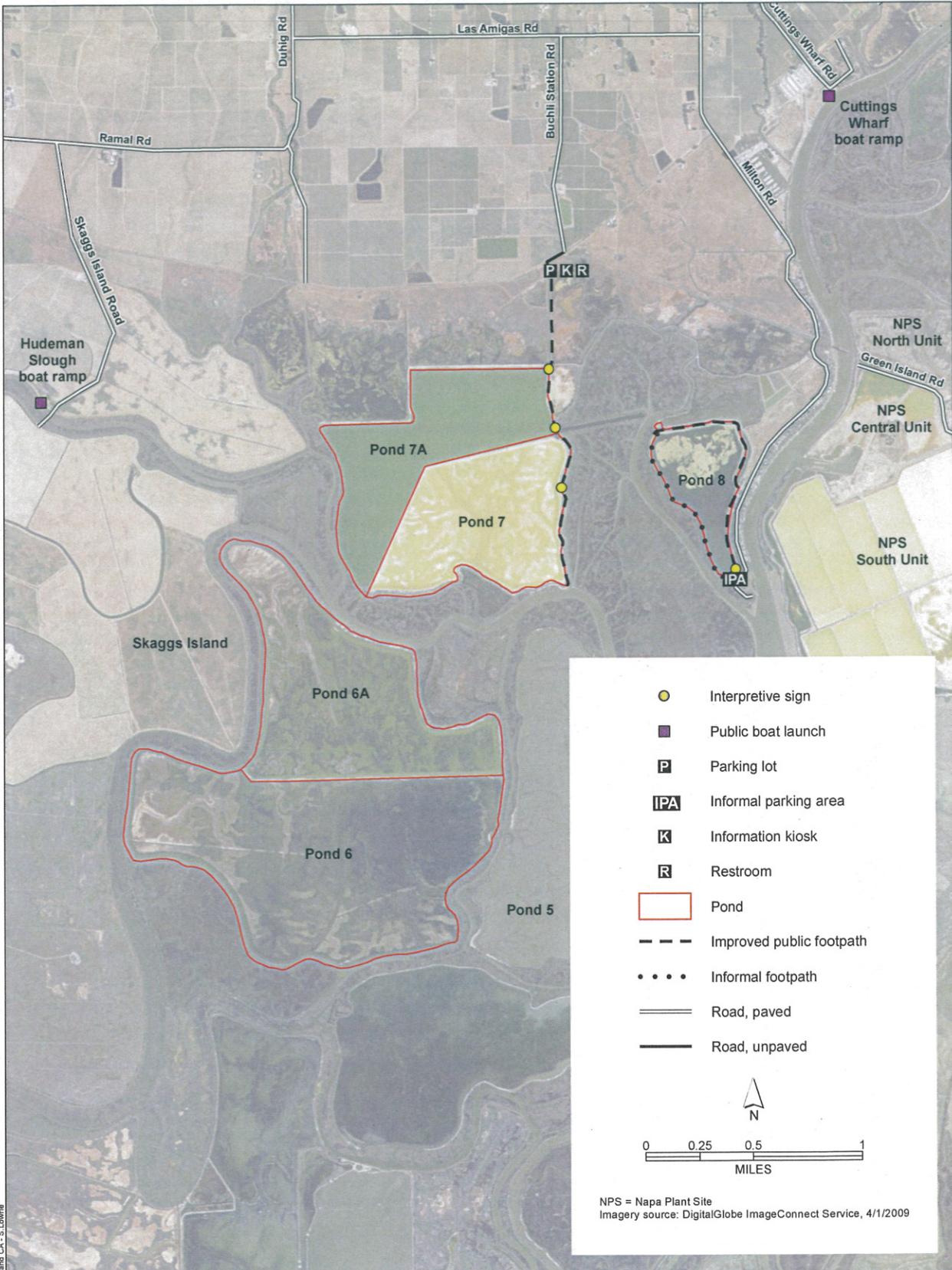
- K. **Conclusion.** For all of the above reasons the Commission finds, declares and certifies that subject to the Special Conditions stated herein, the project authorized herein is consistent with the *San Francisco Bay Plan*, the McAteer-Petris Act, the Commission's Regulations, the California Environmental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

IV. Standard Conditions

- A. **Consistency Determination Execution.** This consistency determination shall not take effect unless the permittee executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. **Consistency Determination Assignment.** The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the permit and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.
- D. **Consistency Determination Runs With the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not

subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

- I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.
- J. **Violation of Consistency Determination May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or its assignee if the permit has been assigned.
- K. **Should Consistency Determination Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee or its assignee if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- L. **Permission to Conduct Site Visit.** The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.



URS Corp - Oakland, CA - S. Lowrie



California Department of Fish and Game
 Napa-Sonoma Marshes Wildlife Area

DRAFT

Public access at project site

EXHIBIT A