San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

June 10, 2016

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Ethan Lavine, Coastal Program Analyst (415/352-3618; ethan.lavine@bcdc.ca.gov)

SUBJECT: Staff Recommendation for Proposed Split of BCDC Permit No. 1983.005.11 into BCDC Permit No. 1983.005.15A for Encinal Marina Limited and 1983.005.15B for Grand Marina Village Owners' Association
(For Commission consideration on June 16, 2016)

Recommendation Summary

The staff believes that the proposed permit amendment presents a threshold issue for the Commission to consider: whether to materially amend this, or any, major permit jointly held based on an application submitted by only one of the co-permittees, and over the objection of the other co-permittee(s). The staff recommends that the Commission consider the application for the amendment to BCDC Permit No. 1983.005.11 because the staff believes that in a situation such as this, where two co-permittees are involved in a long-running dispute regarding their respective obligations under a permit, one co-permittee should not be able, simply by refusing to sign a request to amend the permit made by the other co-permittee, to prevent the Commission from considering the request.

If the Commission decides to consider this matter, the staff recommends the approval of the amendment, which would result in the split of BCDC Permit No. 1983.005.11. If approved, the resulting BCDC Permit No. 1983.005.15A would be issued to Encinal Marina Limited (Encinal), and BCDC Permit No. 1983.005.15B would be issued to the Grand Marina Village Owners' Association (HOA).*

* Amendment No. Eleven was the last amendment issued to BCDC Permit No. 1983.005.00. Approval of BCDC Permit No. 1983.005.15A and BCDC Permit No. 1983.005.15B would thus be exclusive of Amendments No. Twelve, Thirteen and Fourteen. Amendments No. Twelve and Fourteen were withdrawn by the applicant. Amendment No. Thirteen was never attached to a permit application because of a bookkeeping error.

BCDC's administrative regulations require that an application for a material amendment be signed by all co-permittees. 14 C.C.R Sections 10824, 10310(a), 10311 and Appendix D (BCDC Application Form). However, in this unusual case, the requested amendment is based on the stated inability of the co-permittees to agree on whether, or how, the permit should be split. The effect of rejecting the application on the basis of Encinal's refusal to sign the application would be to prevent the Commission from considering the HOA's otherwise legitimate and reasonable request to amend the permit. While at present the rights, duties, and obligations of the existing amended permit are jointly and equally the responsibility of both co-permittees, from a permit administration standpoint there is no reason why these responsibilities could not be divided clearly between the co-permittees based on property ownership and/or control, as proposed by the HOA. Additionally, splitting the permit now would clearly define the permittees' maintenance obligations before public use and enjoyment of the shoreline is adversely affected should deferred maintenance or permit violations occur in the future. The proposed text of the divided permits is provided in the resolution sections below.

As the proposed amendment would not authorize any physical changes to the project previously approved by the Commission under Amendment No. Eleven, it would not in any way result in the loss or diminishment of the public access area and improvements previously provided for and required of the co-permittees. If the permit were amended as proposed, each permittee would remain responsible for the provision and maintenance of a portion of the required public access areas. Of the existing 90,534 square feet of public access provided at this location,[†] the proposed split would allocate 58,877 square feet to the permit held by Encinal and 31,657 square feet to the permit held by the HOA. For Encinal, this would result in an obligation to provide for and maintain a smaller public access area—approximately 2,907 square feet less—than it did prior to Amendment No. Eleven, when Warmington Homes California

[†] The text of Amendment No. Eleven required and authorized 88,210 square feet of public access improvements jointly of the co-permittees. The applicant has submitted surveys of the area that revealed that the public access area provided for under Amendment No. Eleven is actually 90,534 square feet.

joined as a co-permittee.[‡] It is the case, however, that Amendment No. Eleven resulted in the addition of certain public access improvements on property owned or controlled by Encinal (e.g., lighting, benches, seating, signage, landscaping features), the maintenance of which would fall to Encinal if the permit were split as proposed. On the whole, staff believes that the public access area and improvements would be the maximum feasible public access consistent with the each permittee's project as described in the authorization section of each resulting permit.

Finally, the staff initially had concerns that the division of the permit as proposed might lead to confusion regarding the on-the-ground boundaries of the areas under the control of each permittee, and that such confusion might result in the failure of the parties to adequately maintain public access areas where the responsibilities were unclear. In response to this concern, the HOA submitted a photographic supplement to its application to demonstrate to the staff's satisfaction that boundaries of the split permit fall along easily identifiable landmarks, such as the edges of sidewalks and landscape features, such that there is little room for confusion about the areas for which each permittee would have maintenance obligations. Therefore, all public access areas and improvements would continue to be maintained consistent with the ongoing maintenance requirement provided for under the existing permit.

Staff Note

Because the proposed permit split involves an amendment to an existing permit, the format of the recommendations for BCDC Permit No. 1983.005.15A and 1983.005.15B is different than recommendations for new permit applications. The recommendations include the language of the existing permit as well as the changes proposed by the amendment. Language to be deleted from the original permit has been ~~struck through~~ and language to be added to the amended permit has been <u>underlined</u>. Language that has neither been ~~struck through~~ nor <u>underlined</u> is language of the existing permit that will remain unchanged with the adoption of BCDC Permit Nos. 1983.005.15A and 1983.005.15B.

[‡] The text of Amendment No. Ten required Encinal to improve and use a total of approximately 63,495 square feet of unfenced area for public access. However, subsequent surveys of the area submitted by the applicant revealed this calculation of the area to be in error, and that the actual public access area authorized and required was 61,784 square feet.

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

June 10, 2016

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Ethan Lavine, Coastal Program Analyst (415/352-3618; ethan.lavine@bcdc.ca.gov)

SUBJECT: Staff Recommendation for Proposed Split of BCDC Permit No. 1983.005.11 into BCDC Permit No. 1983.005.15A for Encinal Marina Limited
(For Commission consideration on June 16, 2016)

Staff Recommendation: BCDC Permit No. 1983.005.15A

The staff recommends that the Commission adopt the following resolution:

I. Authorization

A. **Authorized Project.** Subject to the conditions stated below, the permittee~~s are~~ is granted permission to do the following at Grand Harbor, located on the south side of the Oakland Estuary between Marina Cove Waterfront Park on the west and Grand Street on the east, in the City of Alameda, Alameda County.

1. **In the Bay:**

a. **Dredging.** Dredge approximately 13,000 cubic yards of material to create a basin for the marina addition. The spoil will be deposited at an upland location partially within the Commission's jurisdiction, with no run-off entering the Bay, and at a Corps of Engineers authorized disposal site or outside of the Commission's jurisdiction.

b. **Fill Removal.** Remove approximately 37,650 square feet (.86 acres) of deteriorated piles and wharving from Berth 6 and the existing fuel dock. An additional 3,940 square feet of fill consisting of a dilapidated structure built over the water will be removed from the Bay near Grand Street, for a total fill removal of 41,590 square feet (.95 acres) from the Commission's jurisdiction.

c. **New Bay Fill.** Place and use new Bay fill for the following purposes:

(1) Pile-supported and floating fill for a 389 berth marina – 83,461 square feet;

(2) Pile-supported and floating fill for floats for a yacht sales facility – 4,700 square feet;

(3) Pile-supported and floating fill for docks for a yacht repair facility – 7,150 square feet; and

(4) Riprap materials along approximately 930 linear feet of shoreline facing the marina berthing for shoreline protection – 24,750 square feet (4,583 cubic yards).

d. **Live-Aboard Boats.** Use up to ten percent of the total berths (37 berths) for live-aboard boats. The berths shall be located throughout the marina as shown on Exhibit B (attached) to afford maximum security (Amendment No. Six).

2. **Within the 100-foot Shoreline Band:**

a. **Fuel Dock Building.** Construct and use a two-story building for a harbormaster office, snack shop, public restroom, and offices for an existing fuel operation over an approximately 1,200-square-foot portion of the existing fuel dock. (No new fill is authorized for this purposes) (Amendment No. Ten).

b. **Yacht Repair Facility.** Establish a yacht repair facility with a boat hoist at the southwest end of the site.

c. **Warehouse Conversion.** Convert the existing 24,000-square-foot warehouse building at Berth 6 (known as the Alaska Packer's Building), into smaller industrial storage and manufacturing units by partitioning the interior and otherwise remodeling the building.

d. **Driveways and Parking.** Reconfigure and repave driveways and parking areas as generally shown on Exhibit A (Amendment No. Eleven).

e. **Public Access.** Improve and use a total of approximately ~~66,882~~ 58,877 square feet of public access including: (1) approximately ~~50,083~~ 55,854 square feet of shoreline park consisting of walkways, plazas, and landscaping along the shoreline, ~~approximately 12,400 square feet of~~ access on existing piers and platforms over the water including the fuel dock and pier, ~~and~~ the wharf deck adjacent to the Alaska Packer's Building, ~~approximately 2,074 square feet~~ area along the inland side of the Alaska Packer's Building, and ~~approximately 2,325 square feet of~~ pedestrian pathway connecting the wharf along the Alaska Packer's Building to Marina Cove Waterfront Park to the southwest; and (2) 3,032 square feet of sidewalk and pathways between the two triangle parks and the parking lot (Amendment No. Eleven and Amendment No. Fifteen)~~; and~~.

~~f. Construct 40 single-family homes, five, or 7,800 square feet, of which are in the Commission's jurisdiction, within the area previously authorized for the interim boat sales display area and the restaurant/commercial building, as generally shown on Exhibit A (Amendment No. Eleven).~~

B. **Application Dates.** This amended authority is generally pursuant to and limited by your original application filed August 21, 1983, your letters dated December 17, 1984 and December 19, 1984, requesting Amendment No. One, your letters of May 17, 1985 and June 14, 1985, requesting Amendment No. Two, your application for Amendment No. Three received August 23, 1985, your letters dated August 26, 1985, September 12, 1985, November 14, 1985, and your letter received September 27, 1985, including all accompanying and subsequent exhibits, and your letters dated May 20, 1986, July 28, 1986, and August 20, 1986, requesting Amendment No. Four, your letter dated January 23, 1987 requesting Amendment No. Five, your letter dated May 8, 1987, requesting Amendment No. Seven, your letter dated February 24, 1988, requesting Amendment No. Eight, your letters dated February 24, 1987 and March 28, 1988, requesting Amendment No. Six, inclusive of Amendment Nos. Seven and Eight, including Exhibit B attached, your letter dated November 29, 1988, requesting Amendment No. Nine, your letter dated May 17, 1990, requesting Amendment No. Ten, ~~and~~ your letters dated August 6, 2007 and March 3, 2008, requesting Amendment No. Eleven, and the letter on behalf of the Grand Marina Village Owners' Association dated September 1, 2015 as revised through April 28, 2016, requesting Amendment No. Fifteen, but subject to the modifications required by conditions herein.

C. **Permit Expiration Dates.** Work authorized through Amendment No. ~~Ten~~ Eleven has been completed. ~~Work authorized by Amendment No. Eleven to this amended permit must commence prior to June 30, 2009, or this amended permit will lapse and become null and void. The work authorized herein must also be diligently pursued to completion and must be completed by June 30, 2012, unless a time extension is granted by further amendment of this amended permit prior to its expiration.~~

D. **Project Summary.** This project will result in a total of 120,061 square feet of fill. The fill includes approximately 95,311 square feet of pile-supported and floating Bay fill and 24,750 square feet of solid riprap. The fill will be offset by the removal of 41,590 square feet of fill resulting in a net Bay fill of 78,471 square feet. Approximately 58,877 ~~66,882~~ square feet of public access will be provided ~~along the shoreline, in the Commission's jurisdiction and an additional 21,328 square feet of public access will be provided near the shoreline, outside the Commission's jurisdiction~~.

II. Special Conditions

The amended authorization made herein is 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 construction or use whatsoever shall be made of any facility authorized herein, until final precise site, engineering, grading, architectural, and landscaping plans, and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required and the need for advisory board review depend upon the type of project as determined by the staff. To ensure timely compliance with the amended permit's requirements, preliminary drawings should be submitted and approved prior to the submittal of final drawings.

   a. **Site, Architectural, and Landscaping Plans**. Site, architectural, and landscaping plans shall include grading, details showing the location, types, dimensions, and materials to be used for all structures, seating, parking, signs, lighting, fences, paths, trash containers and other proposed improvements.

   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.

   c. **Grading Plans**. Grading plans shall show the location of the dredge spoils disposal area in the shoreline band and shall show proposed elevations of the site.

   Plans submitted for review 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 of the plans in showing the features required above, and any other criteria required by this amended permit; (b) consistency of the plan's criteria and information with the terms and conditions of this amended permit; (c) consistency with the recommendations if any of the Design Review Board and the Engineering Criteria

Review Board; (d) maximizing the amount and quality of the public access area to and along the shoreline; (e) minimizing adverse effects on the Bay; and (f) appropriate safety and stability of the fill. In each instance, plan review shall be completed, by or on behalf of the Commission, within 45 days after receipt of the plans to be reviewed, and signified by a letter specifically referring to the submitted plans that indicates whether the plans have been approved or disapproved.

2. **Changes to Approved Plans**. After final plans have been approved pursuant to Special Condition II-A-1, no changes shall be made to such approved plans without first obtaining written approval of the proposed changes by or on behalf of the Commission. Approval or disapproval shall be made within 30 days after the proposed changes in plans have been submitted for approval and shall be based on a finding that the changes are authorized by this amended permit and would not detrimentally affect public access, landscaping, open space, open water, or other public benefits.

3. **Conformity with Approved Plans**. All leases, contract specifications, and all structures and improvements at the project site shall conform to the final plans approved pursuant to Special Condition II-A. No structures shall be placed nor any improvement undertaken that is not clearly shown and indicated on the approved final plans. After construction, no noticeable changes to the exterior of any structure shall be made, no additional structures shall be built, nor shall park, open space, open water, landscaping, or public access areas be altered without first obtaining written approval by or on behalf of the Commission pursuant to Special Condition II-A-2.

B. **Public Access (Amendment No. ~~Eleven~~ Fifteen A)**

1. **Areas.** Prior to ~~the final occupancy of the single-family homes, or by December 1, 2010, whichever is sooner,~~ or by November 1, 2016, the permittee~~s~~ shall, by instrument or instruments acceptable to counsel for BCDC, dedicate to a public agency or otherwise permanently guarantee rights for the public for access for walking, sitting, viewing, bicycling, fishing, and other related purposes the following public access areas:

   a. **Shoreline Park Between Grand Street and Berth 6**. An approximately ~~66,882~~ 58,877-square-foot area between Grand Street on the east and Berth 6 on the west as shown in Exhibit A that includes approximately ~~50,083~~ 40,185 square feet of walkways, plazas and landscaping along the shoreline, approximately 12,400 square feet of access on the existing fuel dock and pier, and the wharf deck adjacent to the Alaska Packer's Building, approximately 2,074 square feet along the inland side of the Alaska Packer's Building, ~~and~~ approximately 2,325 square feet of

pedestrian pathway across the boat repair yard, connecting the wharf adjacent to the Alaska Packer's Building to Marina Cove Waterfront Park to the southwest, and 3,032 square feet of sidewalk and pathways between the two triangle parks and the parking lot (Amendment No. Fifteen).

~~b. **East and West Triangle Parks.** Two triangle parks, approximately 21,328 square feet in size, located across the parking lot from the shoreline park.~~

2. **Instruments.** Instruments submitted to counsel for BCDC approval pursuant to Special Condition II-B-1 shall create permanent rights in favor of the public for the purposes indicated, include a descriptive map that shows the property lines of such areas, include a metes and bounds description of the area, and be in form suitable for recording in the county where the property is located. Approval or disapproval of the instruments shall occur within 30 days after submittal for approval and shall be based upon the sufficiency of the instruments to create the rights and duties indicated in the condition. Within 60 days after approval, the permittee~~s~~ shall record the instruments and shall provide evidence of recording to the Commission.

3. **Notice to Lessees.** Prior to entering into any agreement to lease the warehouse or yacht repair area to any third party, the permittee~~s~~ shall provide the party with a copy of this amended permit and shall call his or her attention especially to the provisions regarding public access and the need to provide access shoreward of these facilities. The permittee~~s~~ shall also provide to all current and future lessees, notice of the automobile access restrictions along the wharf adjacent to the Alaska Packer's Building and its termination, pursuant to Special Condition II-B-5 (Amendment No. Eleven).

4. **Public Access Improvements.** The installation of public access improvements shall be linked to the construction and use of adjacent improvements. All public access improvements shall be constructed in accordance with final plans approved pursuant to Special Condition II-A.

   a. **Phase I—Boat Berths**. Prior to the use of the boat berths, the permittee shall provide appropriate decks, at least 10-foot-wide gravel walkways and plazas, lighting, benches, trash receptacles, public restrooms in the Harbor Master Building, and other public access improvements as generally shown on Exhibit A.

   b. **Shoreline Landscaping**. Prior to October 1, 1989, the permittee shall install irrigation and landscaping, according to final plans approved pursuant to Special Condition II-A (Amendment No. Nine).

c. **Warehouse Building**. Prior to occupancy of the redeveloped warehouse building for commercial and/or commercial recreation uses, the permittee shall provide public restrooms and railings, benches and other appropriate public access amenities along both sides of the warehouse building, as shown on Exhibit A (Amendment No. Nine).

d. **Improvements for the Construction of the Single-Family Homes (Amendment No. Eleven).** Prior to the final occupancy of the single-family homes, but in no case later than December 1, 2010, the permittee~~s~~ shall install the following public access improvements, according to final plans approved pursuant to Special Condition II-A and generally in accordance with the plans entitled, "BCDC Jurisdiction Area, Grand Marina Village" dated March 18, 2008, and prepared by Milani and Associates:

i. New pathways, benches, lighting, seating, trash receptacles, landscaping, barbecue areas, and signage along the shoreline park.

ii. At least eight new benches, appropriate lighting, and signage along the wharf adjacent to the Alaska Packer's building.

iii. A striped and marked pedestrian pathway, at least 12 feet in width connecting the wharf adjacent to the Alaska Packer's Building to Marina Cove Waterfront Park to the southwest.

~~iv. New pathways, benches, lighting, seating and signage within the west and east triangle parks.~~

5. **Restricted Vehicle Access on the Alaska Packer's Building Wharf (Amendment No. Eleven).** Vehicle access on the wharf deck adjacent to the Alaska Packer's Building shall be restricted to two-hour loading and unloading by current tenants of the Alaska Packer's Building, subject to the following conditions:

a. **Vehicle Access Area, Striping and Signage.** Vehicle loading and unloading shall be restricted to no more than 11 parallel spaces adjacent to the Alaska Packer's Building, located within nine feet from the edge of the building and for a maximum two-hour time limit. The permittee~~s~~ shall paint or otherwise adequately demarcate the boundaries of the loading/unloading areas, and provide adequate signage indicating the two-hour time limit, according to final plans approved pursuant to Special Condition II-A.

b. **Termination Date.** All vehicle access on the wharf shall terminate within five years from the date of this permit, or by June 30, 2013, whichever is soonest. In advance of this termination date, the permittee~~s~~ shall notify current and any future tenants of the Alaska Packer's Building of this termination date. At the end of the five-year period, the permittee~~s~~ shall

remove the loading/unloading striping and signage along the wharf and shall install a sufficient number of bollards at the northeastern corner of the Alaska Packer's Building to restrict vehicle access on the wharf.

6. **Parking.** No fewer than ten (10) limited-term parking spaces shall be provided for members of the general public in the parking area adjacent to the portion of the public access area that fronts onto the marina berthing. The precise location of such spaces shall be determined pursuant to Special Condition II-A.

7. **Signs.** The permittee~~s~~ shall place ~~not less than six (6)~~ "public access" signs of a size, design, and color and at locations approved pursuant to Special Condition II-A.

8. **Public Restrooms.** The permittee~~s~~ shall provide and maintain public restrooms at two locations: The Harbor Master Building and in the Alaska Packer's Building. The restroom facilities shall be free of charge and open to the public. The permittee may impose reasonable rules and regulations on their use provided such rules are previously approved by or on behalf of the Commission.

9. **Maintenance.** The areas and improvements required by Special Condition II-B <u>and located on property owned or controlled by the permittee</u> shall be permanently maintained by, and at the expense of, the permittee~~s~~. Such maintenance shall include, but is not limited to, irrigation of landscaping and repairs to all path surfaces, replacement of any plant material that dies or becomes unkempt, periodic clean-up of litter and other materials deposited within the access or open space areas, removal of any encroachments into the access or open space areas and assuring that the public access signs remain in place and visible.

C. **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 permittee~~s~~, or any assignee(s) 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 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. The assignment shall be accompanied by evidence that the transferee owns or controls the property that is the subject of the permit, and that any person signing on behalf of an entity has the authority to bind the entity to his or her signature.

3. **Assignment of Public Access Maintenance Responsibility.** Prior to assigning any portion of this permit, the permittee~~s~~ 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, improvements, and landscaping. 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, improvements, and landscaping required herein.

~~4. **Homeowners' Association; Approval of Covenants, Conditions and Restrictions (CC&Rs).** If the permittees propose to establish an entity that has a membership, such as a homeowners' association (HOA), the permittees shall submit to the Commission, prior to the sale of the first residence, a copy of the CC&Rs governing the homeowners' association for final review and approval. The CC&Rs shall: (1) refer to and clearly identify the BCDC permit, include the public access and open space conditions, and indicate that the permit and any subsequent amendments thereto, binds the HOA and all successors and assigns in perpetuity to all conditions including the public access and open space conditions; (2) establish the authority of the HOA to impose charges on its members to assure that the HOA has sufficient financial resources to maintain all of the public access improvements and landscaping; (3) provide that the HOA has the legal authority to take any and all actions necessary to maintain all of the public access improvements and landscaping as required by the BCDC permit; (4) state that the owners, by taking fee title to a lot in the project, agree that the HOA will be the sole representative for the owners to BCDC for permit violations or for future permit amendments and that the HOA can accept letters from BCDC and other communications such as violation reports on behalf of the owners; (5) state that, if the HOA owns or controls property such as "common areas" that are subject to the BCDC permit, the HOA can be held liable for violations of the permit but that the HOA will only be responsible for areas over which it has legal control; (6) state that the HOA is responsible to correct any violations of the BCDC permit including payment of penalties, collection of fees needed to fix landscaping and pathways, etc., and to reconstruct the project to be in compliance with the permit; and (7) provide that the HOA can collect fees sufficient to undertake the actions identified in this paragraph.~~

D. **Marina Facilities**

1. **Construction.** All construction activity shall be performed to minimize turbidity and to prevent debris from drifting and presenting a pollution or navigation hazard.

2. **Waste Facilities.** Prior to the use of any berth, the permittee~~s~~ shall install on-shore restrooms for boaters, live-aboard tenants, and the public, a suitable facility for receiving and disposing of bilge water and oily wastes, and a facility for pumping out vessel holding tanks and receiving wastes from portable toilets with connections to on-shore waste treatment facilities. Such facilities shall be constructed to all applicable codes and standards and shall be maintained by the permittee in a safe and sanitary manner. The pump-out facilities shall be made available during normal boating hours for use by the general boating public. Fees may be charged for the use of the pump-out facilities but only if they are reasonably related to the cost of its operation.

3. **Houseboats.** No houseboats or floating structure used for residential purposes shall be moored at the marina.

4. **Sales or Long-Term Rental of Berths.** All berths shall be rented to the general public without discrimination, and no right to use any berth other than those berths used in conjunction with yacht sales and yacht repair shall be granted or otherwise transferred that exceeds one-year in duration.

E. **Riprap**

1. **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.

2. **Material.** Riprap material shall be either quarry rock or concrete pieces 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 size of material shall be limited to two feet measured in any dimension. 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, exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited.

F. **Certification of Contractor Review (Amendment No. Eleven).** 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 permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.

G. **Certificate of Occupancy or Use (Amendment No. Eleven)**. Prior to occupancy or use of any of the improvements authorized herein, the permittee~~s~~ shall submit the Notice of Completion and Compliance required herein and request in writing an inspection of the project site by the Commission staff. Within 30 days of receipt of the written request for an inspection, the Commission's staff will: (1) review all permit conditions; (2) inspect the project site; and (3) provide the permittee~~s~~ with written notification of all outstanding permit compliance problems, if any. The permittee~~s~~ shall not occupy or make use of any improvements authorized herein until the staff has confirmed that the identified permittee's~~'~~ compliance problems have been satisfactorily resolved and has provided the permittee~~s~~ with a Certificate of Occupancy or Use. Failure by the staff to perform such review and inspection and notify the permittee~~s~~ of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the permit, but the permittee~~s~~ may occupy and use the improvements authorized herein.

~~H. **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.~~

~~I. **Debris.** Except as otherwise authorized herein, all debris shall be removed to a location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittees shall remove such material, at its expense, within ten (10) days after having been notified by the Executive Director of such placement.~~

~~J. **Abandonment**. If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two (2) 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 assigns or successors in interest, or by the owner of the improvements, within sixty (60) days, or such other reasonable time as the Commission may direct.~~

~~K.~~ H. **Commission Jurisdiction Over Fill Area.** Notice is hereby given that, under the McAteer-Petris Act, the area of the approved project that is within the Commission's jurisdiction under Section 66610(a) remains within that jurisdiction even after fill or substantial change in use, authorized by the Commission, may have changed the character of an area; so that the permittee~~s~~ or ~~their~~ its successors in interest will require further action by or on behalf of the Commission prior to any further change of use or work within areas filled pursuant to this amended permit.

~~L.~~ I. **Permit Recording**. The permittee~~s~~ shall record this amended permit or a notice referring to this amended permit with Alameda County within thirty (30) days after ~~execution~~ issuance of this amended permit by the Executive Director and shall provide evidence of recording to the Commission.

~~M.~~ J. **Spoils Disposal**. The permittee~~s~~ shall dispose of all dredge spoils in a manner approved by the Regional Water Quality Control Board and Corps of Engineers. No run-off shall enter the Bay from any dredge spoils deposited in the shoreline band or other inland portions of the site.

~~N.~~ K. **Live-Aboard Boats (Amendment No. Six)**

1. Live-aboard boats authorized to be moored in the marina pursuant to paragraph I-A-1-d shall be those boats designed and used for active navigation but are distinguished from other navigable boats in that they are also used as a primary place of residence. No houseboats shall be moored in the marina.
2. Convenient and adequate parking, restrooms, showers, garbage disposal facilities and sewage pumpout stations shall be provided and maintained for use by occupants of the live-aboard boats.
3. The number of live-aboard boats shall at no time exceed ten percent of the number of authorized berths in the marina and shall be moored at locations shown on Exhibit B attached.

L. **Permit Effective Date.** This amended permit shall be issued and effective on the date the Executive Director signs and mails the amended permit to the permittee (Amendment No. Fifteen).

III. Findings and Declarations

This amended authorization is given on the basis of the Commission's findings and declarations that the work and uses authorized herein, as conditioned, are consistent with the McAteer-Petris Act, the San Francisco Bay Plan, the Commission's Amended Management Program for San Francisco Bay, and the California Environmental Quality Act for the following reasons:

A. **Permit History.** The original permit for this project was issued in 1983 to Encinal Marina, and was subsequently amended on 10 occasions through 1990. In 2008, Warmington Homes California joined the original permittee, Encinal Marina Limited, in applying for Amendment No. Eleven of Permit 1983.005.00 to seek approval for work on property then owned or leased by Encinal Marina Limited. In May 2008, Amendment No. Eleven was issued jointly to Warmington Homes California and Encinal Marina Limited. Subsequently, Warmington Homes California purchased certain property from Encinal Marina Limited, and later transferred a portion of this property to the Grand Marina Village Owners' Association for maintenance as public access property. The private homes authorized by Amendment No. Eleven were sold to individual purchasers. Encinal Marina Limited remains the property owner for the remainder of the site covered by Amendment No. Eleven. In 2015, the HOA applied for Amendment No. Fifteen to Permit 1983.005.00 to divide the permit into two separate permits: (1) 1983.005.15A, issued to Encinal Marina Limited authorizing dredging, fill removal, new Bay fill, live-aboard boats, a fuel dock building, a yacht repair facility, a warehouse conversion, driveways, parking, and public access improvements on its property; and

(2) 1983.005.15B, issued to Grand Marina Village Owners' Association authorizing 40 single-family homes, driveways, parking, and public access improvements (Amendment No. Fifteen).

The findings and declarations for Amendment No. Eleven to BCDC Permit 1983.005.00 included an analysis of the entire project authorized by the original permit and the eleven amendments thereto in accordance with the Commission's laws and policies. Those findings remain in their entirety through Amendment No. Eleven of Permit 1983.005.00, issued in May 2008. Included below for the record are the findings for the original permit and all subsequent amendments, as well as those applicable to the division of the permit authorized by Amendment No. Fifteen of Permit 1983.005.00. Because portions of the findings relate to the single-family home development project authorized by Amendment No. Eleven, some of the findings below do not pertain directly to the work authorized under Permit No. 1983.005.15A (Amendment No. Fifteen).

~~A.~~ B. **Fill.** The proposed project, as revised by Amendment No. Four, includes the placement of a total of approximately 120,061 square feet of new Bay fill, an increase of approximately 14,151 square feet over what Amendment No. Three to the permit previously authorized. The fill includes approximately 83,461 square feet for marina berths, 4,700 square feet for yacht sales floats, 7,150 square feet for floats in the yacht repair facility, and 24,750 square feet of solid riprap. The revised proposed project includes the removal of a total of approximately 41,590 square feet of existing wharves, an increase of approximately 12,650 square feet over what the permit previously authorized. The Commission finds that the fill is for water-oriented uses for which some fill can be authorized. Furthermore, given the nature of the uses of the proposed fill, there are no alternative upland locations for these uses. Moreover, given that the revised marina design increases substantially the number of marina berths without appreciably extending the berthing further out into the Bay and that the rest of the proposed fill covers a relatively small amount of Bay surface area, the Commission finds that the project has been designed to minimize the fill required.

If riprap materials are improperly placed along the shoreline edge or if inappropriate materials are used, the shoreline revetment could fail. As a result, additional fill could be required to repair the shoreline revetment. Special Condition II-D, by requiring that the revetment be constructed according to certain engineering standard should reduce the possibility of revetment failure and thereby increase the permanence of the shoreline and reduce the need for additional filling of the Bay in the future.

The Commission's fill policies state that fill should be constructed in accordance with sound safety standards which will protect against unstable geologic conditions and other natural hazards. The requirements of Special Condition II-A for BCDC review of engineering plans and criteria for the project are needed to ensure that the project is designed to meet such safety standards.

~~B.~~ C. **Dredging.** The Commission finds that the proposed dredging and excavation is in accord with Bay Plan policies because Special Condition II-I will ensure that the spoils will be deposited outside of the Commission's jurisdiction at an upland location or in a portion of the shoreline band in a manner approved by the Regional Water Quality Control Board and the Corps of Engineers. No run-off from spoils deposited in the shoreline band shall run-off into the Bay.

~~C.~~ D. **Use.** The proposed location of the project is not designated as a priority use area or a marine terminal site. Therefore, it may be used for purposes such as marinas and commercial uses, if the uses are otherwise consistent with Bay Plan and McAteer-Petris Act policies. The original permit authorized reconstruction of a building on the fuel dock for office and other uses associated with the marina and fuel dock. Amendment No. Four authorizes a modest increase in size of the structure due to the needs of the tenants, with no loss of public access. At the public hearing on the original permit application, a question was raised concerning the appropriateness of a marina adjacent to the liquid bulk uses near Berth 6 and whether conflicts would take place. The permittee retained a maritime consultant, however, whose report (transmitted separately) indicates that safety problems are not likely. In addition, the permittee forecast that within the next several years, the liquid bulk uses near Berth 6 will likely cease to be profitable and will be phased out. At this time, the permittee is proposing to convert the warehouse adjacent to the berth to smaller industrial uses. The permittee has indicated that these units will likely be occupied by tenants with marine-related services, such as marine cabinet makers, who might serve boaters at the new marina and boat repair yard and would likely be compatible with the Marina. The Commission, therefore, finds that the new marina and other uses, including uses on the fuel dock, are not likely to conflict with the use of Berth 6.

~~D.~~ E. **Public Access.** The permittee is proposing a total of approximately 63,495 square feet of public access, consisting of approximately 49,450 square feet of walkways plazas and landscaping, and 12,565 square feet of access on existing piers and platforms over the water, and approximately 1,500 square feet along the inland side of the warehouse. The main feature of the public access is a large palm-lined entry area at the southeastern end of the project off of Grand Street. From the northwest end of the entry area, public access would extend out onto the fuel dock and continue along a shoreline strip between the parking lot and the marina berths. The landscaped strip would average approximately 50 feet in width. Where the strip meets the existing Alaska Packer's Building, the access would extend out onto a deck on the bayside of the building and continue around both sides of the building. This new public access is required to offset the additional density of use associated with the addition of more than 40 new boat berths.

As a result of Amendment No. Fifteen, all of the public access area and improvements under the ownership or control of Encinal Marina Limited is included within this permit, and all of the public access area under the ownership or control of Grand Marina Village Owners' Association is included within BCDC Permit

No. 1983.005.15B. Each permittee is responsible for permanently maintaining the public access area on land under its legal control (as shown generally on Exhibit A) and authorized and required pursuant to its respective permit as required in Special Condition II-B.

~~E.~~ F. **Amendments**

1. **Amendment No. Four.** As a result of Amendment No. Four, the proposed public access is very similar to the access previously required in the permit, however, there are some differences. The additions and modifications to the commercial uses in the shoreline band change the configuration of some portions of the public access. In addition, access is proposed on the fuel dock and is proposed to extend all the way around the deck adjacent to the existing warehouse. These changes result in an increase in public access of approximately 5,400 square feet over what the permit previously required.

   The permittee proposes to terminate the public access in the vicinity of the existing warehouse building rather than continuing the access to the western property line through the existing yacht repair area. The Commission's public access policies indicate that continuous public access should be provided through every new development on the Bay or shoreline except in cases where public access is clearly inconsistent with the project because of public safety considerations or significant use conflicts. The permittee has testified that public access through the yacht repair area would pose unavoidable conflicts with the yacht repair operation and that the public's safety could not be guaranteed. In addition, they have pointed out that even if public access were provided through the yacht repair area to the end of the shoreline band within their ownership or control, the access would be a "dead-end" and would not connect with any existing public access. The adjacent property, the Fore Terminal, presently has no shoreline public access.

   The Commission notes that public access has been required within yacht repair facilities the Commission has authorized around the Bay and no evidence has been presented to suggest that these repair yards are suffering serious safety problems. However, continuous public access cannot be provided along the shoreline at this time and the Design Review Board recommended that public access improvements be confined to the shoreline where the marina and commercial uses will be constructed. However, the Board did state public access should be continuous at such time as the warehouse or shoreline or water areas at the west end of the site are upgraded.

   The Commission finds that the public access should be continued to the property line should any additional development occur on the site or the adjacent site be developed allowing continuous shoreline access to occur. The requirements of Special Conditions II-B-1-b and II-B-3 should ensure that continuous access will be considered if and when this area of the shoreline is

redeveloped. Special Condition II-B-3 should ensure that lessees within the project authorized herein will be aware of possible future public access requirements.

The additional private development that Amendment No. Four authorizes includes 10,461 square feet of floating fill for 43 additional marina berths, 3,680 square feet of floating fill for yacht sales and yacht repair operations. In exchange, approximately 5,400 square feet of additional public access is proposed. Therefore, the Commission finds that the proposed improvement of the quantity and quality of public access is commensurate with the proposed increase in private development and that maximum feasible public access consistent with the project will be provided.

2. **Amendment No. Five.** As a result of Amendment No. Five, the public access on the dock is the same size but changed in configuration. The change does not affect the quality of the public access.

   The Commission's public access policies state, among other things, that whenever public access to the Bay is provided as a condition of development, the access should (1) be permanently guaranteed through dedication of fee title or similar property restrictions, (2) provide for the public's safety and convenience, (3) be identified with appropriate signs, (4) be designed and built to encourage movement to and along the shoreline and provide barrier free access for the physically handicapped, and (5) include an ongoing maintenance program. The public access and plan review special conditions contained herein are necessary to ensure that the project will be consistent with these policies. Special Conditions II-B-1, II-B-2, and II-B-3 require the creation of legal instruments that will permanently guarantee the public access. Special Condition II-B-4 requires that the public access areas will be improved with benches, landscaping, walkways, and similar improvements to provide for the public's safety and convenience and encourage movement to and along the shoreline.

3. **Amendment No. Eight.** Amendment No. Eight requires the access improvements to be in place prior to use of the boat berths. Special Condition II-B-5 requiring public access parking and Special Condition II-B-7 requiring the installation of public restrooms also are needed to provide for the public's safety and convenience. Special Condition II-B-6 requires the installation of five public access signs to sufficiently identify the access area to the public and encourage greater public use. Special Condition II-1 which requires plan review prior to construction will help ensure that the needed improvements are property designed to serve their purposes. Finally, Special Condition II-B-8 provides for an ongoing maintenance program.

4. **Amendment No. Nine.** Amendment No. Nine corrects the figure for public access and modifies the overall site layout of the shoreline portions of the project with no diminishment in the amount of public access. The figures for public access, submitted by the permittee for Amendment No. Three were correct, but were totaled incorrectly. This error was carried forward in subsequent versions of the permit. The correct amount of total public access is 63,555 square feet. The public access required in Amendment No. Nine is 64,870 square feet, so there is a modest increase in public access of 1,315 square feet. The layout of the public access is modified so the project now includes a more public and prominent entry from Grand Street and wider access along the entire shoreline.

5. **Amendment No. Ten.** Amendment No. Ten defines the location of the public restrooms to the Harbor Master Building, and the Warehouse Building. The square footage of the restroom structure serving marina tenants has been subtracted from the public access area.

6. **Amendment No. Eleven.** Amendment No. Eleven authorizes the construction of 40 single-family homes (five, or 7,800 square feet of which lie within BCDC's shoreline band jurisdiction), reconfiguration of the existing marina parking lot to accommodate the new homes and new public streets, and changes and additions to the existing public access trail along the shoreline, as part of the "Grand Marina Village" project. Amendment No. Eleven also includes corrections to the public access numbers, and modifications and additions to the public access areas and improvements. The previous permit amendment included a total public access area of 63,495 square feet. The total public access area was later determined to be 61,711 square feet, with the 1,784-square-foot difference possibly covering the private bathroom area, which may not have been removed from the overall total when the previous amendment was issued.

   Amendment No. Eleven authorizes an additional 29,035 square feet of new public access (7,707 square feet of which is in the Commission's jurisdiction), and the removal of approximately 2,536 square feet of public access, for a total net gain of 26,499 square feet of new public access. The new public access includes new pathways and landscaping along the southeastern edge of the shoreline park near Grand and Hibbard Streets; two new triangle parks outside the Commission's jurisdiction with pathways and connections to the shoreline park; and a connection along the wharf adjacent to the Alaska Packer's Building that connects the wharf to Marina Cove Waterfront Park to the southwest, as required in Amendment No. Four to this permit. Amendment No. Four required the connection from the wharf to the south to be completed if any additional development on the site should occur or if the site to the south is developed allowing continuous shoreline access to occur. With the construction of Grand Marina Village at the site and the develop-

ment of Marina Cove to the south, this required connection is now being fulfilled. The new connection will provide continuous shoreline access along the wharf to Marina Cove to the south, through the existing boat repair yard. In order to provide additional parking for the Grand Marina Village project, approximately 120 linear feet of the public access pathway located on the east side of the Alaska Packer's Building will be reduced from 20 feet to six feet. This pathway abuts the existing parking lot and was required in order to provide a north-south connection. With the new preferred shoreline connection along the wharf, the six-foot-wide pathway could still serve as a secondary route inland. Therefore, the reduction in width along this edge will not affect the north-south public access connection.

With the changes in public access, the total public access provided in the amended permit is 88,210 square feet. Conditions have been included in the amended permit for public access improvements such as benches, lighting, seating, signage and overall landscaping to connect and unify the public access area, pursuant to final plan review. Exhibit A to the amended permit has also been revised to reflect the public access areas and changes.

Amendment No. Eleven to the permit also provides for limited loading and unloading of vehicles on the wharf adjacent to the Alaska Packer's Building, to accommodate the needs of existing tenants in the warehouse. Conditions have been included in the amended permit to limit loading/unloading to two hours and to an area adjacent to the warehouse that is appropriately striped and signed. Currently, tenants of the warehouse building park their vehicles on the wharf to load/unload heavy equipment and have assumed the right to do so under their current leases. In order to accommodate the anticipated need for public access on the wharf as the Grand Marina Village project is constructed, yet still respect the leases of the existing tenants, all vehicle access on the wharf will terminate after five years from the date of the permit, or by June 30, 2013, whichever is soonest. Conditions have been included in the amended permit requiring all striping and signage for loading/unloading on the wharf to be removed and bollards to be installed restricting access on the wharf, after the five-year period. The permittee~~s are~~ is also required to inform existing and future tenants of the five-year termination date to provide adequate notice of the future wharf restrictions.

The project authorized by Amendment No. Eleven does not result in a material alteration of the originally authorized project, and is similar to a "minor repair or improvement" involving the placement of small amounts of inert inorganic fill, the extraction of small amounts of materials, or a substantial change in use of any area that does not have a significant adverse effect on present or possible future maximum feasible public access to the Bay consistent with the project, on present or possible future use for a designated priority water-related use, and on the environment, as defined in Regulation

Section 10601(b)(1), for which the Executive Director may issue a non-material amendment to an existing permit, pursuant to Government Code Section 66632(f) and Regulation Section 10822.

7. **Amendments No. Twelve, Thirteen, and Fourteen.** These amendments were never issued, and Amendment No. Fifteen is issued exclusive of these amendments. Amendments No. Twelve and Fourteen were withdrawn by the applicant. Amendment No. Thirteen was never attached to a permit application because of a bookkeeping error.

8. **Amendment No. Fifteen.** As described above, Amendment No. Fifteen to BCDC Permit No. 1983.005.00 results in dividing the permit as amended through Amendment No. Eleven into two separate permits. Amendment No. Fifteen does not change the public access area authorized by and constructed pursuant to Amendment No. Eleven to the permit. All completed and dedicated public access associated with the permit, as amended through Amendment No. Eleven, is divided between the respective permittees.

~~F.~~ G. **Water Quality.** The Commission's Bay Plan marina policies state that no marina should be approved unless water quality and circulation will be adequately protected, and if possible, improved. Several special conditions have been included herein to ensure that the proposed marina and related construction will not adversely affect water quality. Discharges of sewage and bilge water from vessels can degrade water quality, especially in enclosed marina basins. To effectively reduce the number of such discharges, alternative disposal methods must be made available to boaters. Special Condition II-C-2 requires the installation of restrooms, a suitable facility for receiving and disposing of bilge water, and appropriate pump-out facilities to provide such alternative disposal methods. The special condition requires that the pump-out facilities be made available during normal boating h ours, and be provided at reasonable cost to encourage the greatest use of those facilities and to meet Bay Plan marina policies with regard to water quality. Special Conditions II-I and II-C-1 should ensure that construction debris from the project will not degrade Bay waters. Special Condition II-M ensures that no run-off from dredge spoils deposited in the shoreline band will enter the Bay.

~~G.~~ H. **Environmental Impact.** The City of Alameda, certified an Environmental Impact Report for the original project on February 15, 1983. The Commission is the lead agency for Amendment No. Three. On December 5, 1985, the Commission adopted a negative declaration for the project. Amendment No. Four authorizes a small increase in the number of marina berths. Amendment No. Five authorizes an increase in the size of the building on the fuel dock. Amendment No. Seven authorizes deposition of dredge spoils in the shoreline band in such a way as to have no impact on Bay waters. Amendment No. Eight requires the access improvements to be in place prior to use of the boat berths. Pursuant to Regulation Section 11501, the work authorized in Amendment No. Nine and Amendment No. Ten is categorically exempt from the requirement to prepare an environmental impact report. On January 16, 2007, the City of Alameda

adopted a Mitigated Negative Declaration and Mitigation and Monitoring Reporting Program, pursuant to City of Alameda Resolution No. 14061, for the work authorized under Amendment No. Eleven to this amended permit.

~~H.~~ I. **Prior BCDC Permits.** Site preparation work for the Grand Marina Village project authorized in Amendment No. Eleven to this amended permit, was authorized under BCDC Permit No. M2006.026.00 ~~M06-26~~. BCDC Permit No. M2013.015.00 authorized a café at the Harbormaster's Building and landscape improvements to public access areas.

~~I.~~ J. **Public Trust.** By this amended permit, the Commission determines that the proposed project is consistent with public trust needs.

~~J.~~ K. **Live-Aboard Boats.** Bay Plan Policies on Recreation state that live-aboard boats should be allowed only in marinas and only if the criteria outlined on page 21 of the Bay Plan are met. The permittee's~~'~~ site plan, entitled "Grand Harbor," received on March 30, 1988, shows that the facilities outlined in Bay Plan policies are sufficient and conveniently located. The site map further shows that the live-aboard boats are dispersed throughout the marina to provide a degree of security. Special Condition II-N ensures that the number of live-aboard berths authorized does not exceed ten percent of the number of authorized berths in the marina. For these reasons, the Commission finds that the live-aboard boat berths authorized are consistent with Bay Plan policies (Amendment No. Six).

~~K.~~ L. **Conclusion.** For all of the above reasons, the public benefits from the ~~proposed~~ project authorized and constructed pursuant to Amendment No. Eleven, as split from Permit 1983.005.15B and as described in the Section I to this permit, exceeds any public detriment. The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

IV. Standard Conditions

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

~~B. 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. The rights, duties, and obligations contained in this amended permit are assignable. When the permittees transfer any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittees/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director (*call for a copy of the form or download it from our website*). An assignment shall not be effective until the assignee executes and the Executive Director~~

~~receives an acknowledgment that the assignee has read and understands the amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.~~

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

~~E. Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or, if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If an amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittees or its their assignees upon receiving written notification by or on behalf of the Commission to remove the fill.~~

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

~~G. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.~~

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

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

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

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

~~L. This amended 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.~~

~~M. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittees or their assignees if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittees or their assignees if the amended permit has been assigned.~~

~~N. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittees or their assignees if the amended 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.~~

~~O. 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.~~

A. **Permit Assignment**. The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) 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 amended permit, the permittee(s)/transferor(s) and the transferee(s) 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(s) execute and the Executive Director receives an acknowledgment that the assignee(s) have read and understand

the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

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

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

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

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

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

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

H. **Violation of Permit May Lead to Permit Revocation**. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public

hearing held on reasonable notice to the permittee(s) or their assignees if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee(s) or their assignee(s) if the amended permit has been assigned.

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

J. **Permission to Conduct Site Visit**. The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

K. **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(s), its assignee(s) or successor(s) in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

L. **Best Management Practices**

1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee(s), its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.

2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee(s) shall immediately retrieve and remove such material at its expense.

M. **In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.

San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

June 10, 2016

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Ethan Lavine, Coastal Program Analyst (415/352-3618; ethan.lavine@bcdc.ca.gov)

SUBJECT: Staff Recommendation for Proposed Split of BCDC Permit No. 1983.005.11 into 1983.005.15B for Grand Marina Village Owners' Association
(For Commission consideration on June 16, 2016)

Staff Recommendation: BCDC Permit No. 1983.005.15B

The staff recommends that the Commission adopt the following resolution:

I. Authorization

A. **Authorized Project.** Subject to the conditions stated below, the permittee~~s are~~ is granted permission to do the following at Grand Harbor, located on the south side of the Oakland Estuary between Marina Cove Waterfront Park on the west and Grand Street on the east, in the City of Alameda, Alameda County.

~~1. **In the Bay:**~~

~~a. **Dredging.** Dredge approximately 13,000 cubic yards of material to create a basin for the marina addition. The spoil will be deposited at an upland location partially within the Commission's jurisdiction, with no run-off entering the Bay, and at a Corps of Engineers authorized disposal site or outside of the Commission's jurisdiction.~~

~~b. **Fill Removal.** Remove approximately 37,650 square feet (.86 acres) of deteriorated piles and wharving from Berth 6 and the existing fuel dock. An additional 3,940 square feet of fill consisting of a dilapidated structure built over the water will be removed from the Bay near Grand Street, for a total fill removal of 41,590 square feet (.95 acres) from the Commission's jurisdiction.~~

~~c. **New Bay Fill.** Place and use new Bay fill for the following purposes:~~

~~(1) Pile-supported and floating fill for a 389 berth marina – 83,461 square feet;~~

~~(2) Pile-supported and floating fill for floats for a yacht sales facility – 4,700 square feet;~~

~~(3) Pile-supported and floating fill for docks for a yacht repair facility – 7,150 square feet; and~~

~~(4) Riprap materials along approximately 930 linear feet of shoreline facing the marina berthing for shoreline protection – 24,750 square feet (4,583 cubic yards).~~

~~d. **Live-Aboard Boats.** Use up to ten percent of the total berths (37 berths) for live-aboard boats. The berths shall be located throughout the marina as shown on Exhibit B (attached) to afford maximum security (Amendment No. Six).~~

~~2.~~ 1. **Within the 100-foot Shoreline Band:**

~~a. **Fuel Dock Building.** Construct and use a two-story building for a harbormaster office, snack shop, public restroom, and offices for an existing fuel operation over an approximately 1,200-square-foot portion of the existing fuel dock. (No new fill is authorized for this purposes) (Amendment No. Ten).~~

~~b. **Yacht Repair Facility.** Establish a yacht repair facility with a boat hoist at the southwest end of the site.~~

~~c. **Warehouse Conversion.** Convert the existing 24,000-square-foot warehouse building at Berth 6 (known as the Alaska Packer's Building), into smaller industrial storage and manufacturing units by partitioning the interior and otherwise remodeling the building.~~

~~d.~~ a. **Driveways ~~and Parking~~.** Reconfigure and repave driveways ~~and parking areas~~ as generally shown on Exhibit A (Amendment No. Eleven).

~~e.~~ b. **Public Access.** Improve and use a total of approximately 31,657 ~~66,882~~ square feet of public access including approximately 13,362 ~~50,083~~ square feet of walkways~~, plazas,~~ and landscaping ~~along the shoreline~~ within the shoreline park, ~~approximately 12,400 square feet of access on existing piers and platforms over the water including the fuel dock and pier, and the wharf deck adjacent to the Alaska Packer's Building, approximately 2,074 square feet along the inland side of the Alaska Packer's Building, and approximately 2,325 square feet of pedestrian pathway connecting the wharf along the Alaska Packer's Building to Marina Cove Waterfront Park to the southwest~~ and outside the Commission's jurisdiction approximately 6,873 square feet of walkways, benches, and landscaping within the East Triangle Park, and approximately 11,422 square feet of walkways, benches, and landscaping within the West Triangle Park (Amendment No. Eleven and Amendment No. Fifteen); and

~~f.~~ c. Construct 40 single-family homes, five, or 7,800 square feet, of which are in the Commission's jurisdiction~~, within the area previously authorized for the interim boat sales display area and the restaurant/commercial building,~~ as generally shown on Exhibit A (Amendment No. Eleven).

B. **Application Dates.** This amended authority is generally pursuant to and limited by ~~your~~ the original application filed August 21, 1983, ~~your~~ letters dated December 17, 1984 and December 19, 1984, requesting Amendment No. One, ~~your~~ letters of May 17, 1985 and June 14, 1985, requesting Amendment No. Two, ~~your~~ the application for Amendment No. Three received August 23, 1985, ~~your~~ letters dated August 26, 1985, September 12, 1985, November 14, 1985, and ~~your~~ the letter received September 27, 1985, including all accompanying and subsequent exhibits, and ~~your~~ letters dated May 20, 1986, July 28, 1986, and August 20, 1986, requesting Amendment No. Four, ~~your~~ the letter dated January 23, 1987 requesting Amendment No. Five, ~~your~~ the letter dated May 8, 1987, requesting Amendment No. Seven, ~~your~~ the letter dated February 24, 1988, requesting Amendment No. Eight, ~~your~~ letters dated February 24, 1987 and March 28, 1988, requesting Amendment No. Six, inclusive of Amendment Nos. Seven and Eight, ~~including Exhibit B attached~~, ~~your~~ the letter dated November 29, 1988, requesting Amendment No. Nine, ~~your~~ the letter dated May 17, 1990, requesting Amendment No. Ten, ~~and~~ ~~your~~ letters dated August 6, 2007 and March 3, 2008, requesting Amendment No. Eleven, and your letter dated September 1, 2015 as revised through April 28, 2016, requesting Amendment No. Fifteen, but subject to the modifications required by conditions herein.

C. **Permit Expiration Dates.** Work authorized through Amendment No. ~~Ten~~ Eleven has been completed. ~~Work authorized by Amendment No. Eleven to this amended permit must commence prior to June 30, 2009, or this amended permit will lapse and become null and void. The work authorized herein must also be diligently pursued to completion and must be completed by June 30, 2012, unless a time extension is granted by further amendment of this amended permit prior to its expiration.~~

D. **Project Summary.** This project will ~~result in a total of 120,061 square feet of fill. The fill includes approximately 95,311 square feet of pile-supported and floating Bay fill and 24,750 square feet of solid riprap. The fill will be offset by the removal of 41,590 square feet of fill resulting in a net Bay fill of 78,471 square feet.~~ provide ~~A~~approximately ~~66,882~~ 13,362 square feet of public access ~~will be provided along~~ within the shoreline park, in the Commission's jurisdiction and an additional ~~21,328~~ 18,295 square feet of public access will be provided near the shoreline, outside the Commission's jurisdiction.

II. Special Conditions

The amended authorization made herein is 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 construction or use whatsoever shall be made of any facility authorized herein, until final precise site, engineering, grading, architectural, and landscaping plans, and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required and the need for advisory board review depend upon the type of project as determined by the staff. To ensure timely compliance with the amended permit's requirements, preliminary drawings should be submitted and approved prior to the submittal of final drawings.

   a. **Site, Architectural, and Landscaping Plans**. Site, architectural, and landscaping plans shall include grading, details showing the location, types, dimensions, and materials to be used for all structures, seating, parking, signs, lighting, fences, paths, trash containers and other proposed improvements.

   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.

   ~~c. **Grading Plans**. Grading plans shall show the location of the dredge spoils disposal area in the shoreline band and shall show proposed elevations of the site.~~

   ~~Plans submitted for review 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 of the plans in showing the features required above, and any other criteria required by this amended permit; (b) consistency of the plan's criteria and information with the terms and conditions of this amended permit; (c) consistency with the recommendations if any of the Design Review Board and the Engineering Criteria~~

~~Review Board; (d) maximizing the amount and quality of the public access area to and along the shoreline; (e) minimizing adverse effects on the Bay; and (f) appropriate safety and stability of the fill. In each instance, plan review shall be completed, by or on behalf of the Commission, within 45 days after receipt of the plans to be reviewed, and signified by a letter specifically referring to the submitted plans that indicates whether the plans have been approved or disapproved.~~

2. **Changes to Approved Plans**. After final plans have been approved pursuant to Special Condition II-A-1, no changes shall be made to such approved plans without first obtaining written approval of the proposed changes by or on behalf of the Commission. Approval or disapproval shall be made within 30 days after the proposed changes in plans have been submitted for approval and shall be based on a finding that the changes are authorized by this amended permit and would not detrimentally affect public access, landscaping, open space, open water, or other public benefits.

3. **Conformity with Approved Plans**. All leases, contract specifications, and all structures and improvements at the project site shall conform to the final plans approved pursuant to Special Condition II-A. No structures shall be placed nor any improvement undertaken that is not clearly shown and indicated on the approved final plans. After construction, no noticeable changes to the exterior of any structure shall be made, no additional structures shall be built, nor shall park, open space, open water, landscaping, or public access areas be altered without first obtaining written approval by or on behalf of the Commission pursuant to Special Condition II-A-2.

B. **Public Access (Amendment No. ~~Eleven~~ Fifteen B)**

1. **Areas.** Prior to ~~the final occupancy of the single-family homes, or by December 1, 2010, whichever is sooner,~~ November 1, 2016, the permittee~~s~~ shall, by instrument or instruments acceptable to counsel for BCDC, dedicate to a public agency or otherwise permanently guarantee rights for the public for access for walking, sitting, viewing, bicycling, fishing, and other related purposes the following public access areas:

   a. **Shoreline Park Between Grand Street and ~~Berth 6~~ Hibbard Street**. An approximately ~~66,882~~ 12,223-square-foot area between Grand Street on the east and ~~Berth 6~~ Hibbard Street on the west as bounded generally by private homes on the south and the property line near the shoreline pathway on the north, as generally shown in Exhibit A that includes ~~approximately 50,083 square feet of~~ walkways~~, plazas~~ and landscaping ~~along~~ within the shoreline park~~, approximately 12,400 square feet of access on the existing fuel dock and pier, and the wharf deck adjacent to the Alaska Packer's Building, approximately 2,074 square feet along the inland side of the Alaska Packer's Building, and approximately 2,325~~

~~square feet of pedestrian pathway across the boat repair yard, connecting the wharf adjacent to the Alaska Packer's Building to Marina Cove Waterfront Park to the southwest~~ (Amendment No. Fifteen).

b. **East and West Triangle Parks.** Two triangle parks, approximately ~~21,328~~ 15,013 square feet in size, located across the parking lot from the shore line park. Approximately 3,288 square feet of the West Triangle Park is on property already owned by the City of Alameda (Amendment No. Fifteen).

2. **Instruments.** Instruments submitted to counsel for BCDC approval pursuant to Special Condition II-B-1 shall create permanent rights in favor of the public for the purposes indicated, include a descriptive map that shows the property lines of such areas, include a metes and bounds description of the area, and be in form suitable for recording in the county where the property is located. Approval or disapproval of the instruments shall occur within 30 days after submittal for approval and shall be based upon the sufficiency of the instruments to create the rights and duties indicated in the condition. Within 60 days after approval, the permittee~~s~~ shall record the instruments and shall provide evidence of recording to the Commission.

~~3. **Notice to Lessees.** Prior to entering into any agreement to lease the warehouse or yacht repair area to any third party, the permittees shall provide the party with a copy of this amended permit and shall call his or her attention especially to the provisions regarding public access and the need to provide access shoreward of these facilities. The permittees shall also provide to all current and future lessees, notice of the automobile access restrictions along the wharf adjacent to the Alaska Packer's Building and its termination, pursuant to Special Condition II-B-5 (Amendment No. Eleven).~~

~~4.~~ 3. **Public Access Improvements.** The installation of public access improvements shall be linked to the construction and use of ~~adjacent improvements~~ the single-family home residential development. All public access improvements shall be constructed in accordance with final plans approved pursuant to Special Condition II-A.

~~a. **Phase I—Boat Berths**. Prior to the use of the boat berths, the permittee shall provide appropriate decks, at least 10-foot-wide gravel walkways and plazas, lighting, benches, trash receptacles, public restrooms in the Harbor Master Building, and other public access improvements as generally shown on Exhibit A.~~

~~b. **Shoreline Landscaping**. Prior to October 1, 1989, the permittee shall install irrigation and landscaping, according to final plans approved pursuant to Special Condition II-A (Amendment No. Nine).~~

~~c.~~ ~~**Warehouse Building**. Prior to occupancy of the redeveloped warehouse building for commercial and/or commercial recreation uses, the permittee shall provide public restrooms and railings, benches and other appropriate public access amenities along both sides of the warehouse building, as shown on Exhibit A (Amendment No. Nine).~~

~~d.~~ a. **Improvements for the Construction of the Single-Family Homes (Amendment No. Eleven).** Prior to the final occupancy of the single-family homes, but in no case later than December 1, 2010, the permittee~~s~~ shall install the following public access improvements, according to final plans approved pursuant to Special Condition II-A and generally in accordance with the plans entitled, "BCDC Jurisdiction Area, Grand Marina Village" dated March 18, 2008, and prepared by Milani and Associates:

i. New pathways, benches, lighting, seating, trash receptacles, landscaping, barbecue areas, and signage ~~along~~ within the shoreline park.

~~ii. At least eight new benches, appropriate lighting, and signage along the wharf adjacent to the Alaska Packer's building.~~

~~iii. A striped and marked pedestrian pathway, at least 12 feet in width connecting the wharf adjacent to the Alaska Packer's Building to Marina Cove Waterfront Park to the southwest.~~

~~iv~~ii. New pathways, benches, lighting, seating and signage within the west and east triangle parks.

~~5. **Restricted Vehicle Access on the Alaska Packer's Building Wharf (Amendment No. Eleven).** Vehicle access on the wharf deck adjacent to the Alaska Packer's Building shall be restricted to two-hour loading and unloading by current tenants of the Alaska Packer's Building, subject to the following conditions:~~

~~a. **Vehicle Access Area, Striping and Signage.** Vehicle loading and unloading shall be restricted to no more than 11 parallel spaces adjacent to the Alaska Packer's Building, located within nine feet from the edge of the building and for a maximum two-hour time limit. The permittees shall paint or otherwise adequately demarcate the boundaries of the loading/unloading areas, and provide adequate signage indicating the two-hour time limit, according to final plans approved pursuant to Special Condition II-A.~~

~~b. **Termination Date.** All vehicle access on the wharf shall terminate within five years from the date of this permit, or by June 30, 2013, whichever is soonest. In advance of this termination date, the permittees shall notify current and any future tenants of the Alaska Packer's Building of this~~

~~termination date. At the end of the five-year period, the permittees shall remove the loading/unloading striping and signage along the wharf and shall install a sufficient number of bollards at the northeastern corner of the Alaska Packer's Building to restrict vehicle access on the wharf.~~

~~6. **Parking.** No fewer than ten (10) limited-term parking spaces shall be provided for members of the general public in the parking area adjacent to the portion of the public access area that fronts onto the marina berthing. The precise location of such spaces shall be determined pursuant to Special Condition II-A.~~

~~7.~~ 4. **Signs.** The permittee~~s~~ shall place ~~not less than six (6)~~ "public access" signs of a size, design, and color and at locations approved pursuant to Special Condition II-A.

~~8. **Public Restrooms.** The permittees shall provide and maintain public restrooms at two locations: The Harbor Master Building and in the Alaska Packer's Building. The restroom facilities shall be free of charge and open to the public. The permittee may impose reasonable rules and regulations on their use provided such rules are previously approved by or on behalf of the Commission.~~

~~9.~~ 5. **Maintenance.** The areas and improvements required by Special Condition II-B and located on property owned or controlled by the permittee as generally shown on Exhibit A shall be permanently maintained by, and at the expense of, the permittee~~s~~. Such maintenance shall include, but is not limited to, irrigation of landscaping and repairs to all path surfaces, replacement of any plant material that dies or becomes unkempt, periodic clean-up of litter and other materials deposited within the access or open space areas, removal of any encroachments into the access or open space areas and assuring that the public access signs remain in place and visible.

C. **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 permittee~~s~~, or any assignee(s) 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)~~ permittee 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~~ permittee and

the transferee that indicates that the ~~transferor~~ permittee 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. The assignment shall be accompanied by evidence that the transferee owns or controls the property that is the subject of the permit, and that any person signing on behalf of an entity has the authority to bind the entity to his or her signature.

3. **Assignment of Public Access Maintenance Responsibility.** Prior to assigning any portion of this permit, the permittee~~s~~ 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, improvements, and landscaping. 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, improvements, and landscaping required herein.

4. **Homeowners' Association; Approval of Covenants, Conditions and Restrictions (CC&Rs).** If the permittee~~s~~ propose~~s~~ to establish an entity that has a membership, such as a homeowners' association (HOA), the permittee~~s~~ shall submit to the Commission, prior to the sale of the first residence, a copy of the CC&Rs governing the homeowners' association for final review and approval. The CC&Rs shall: (1) refer to and clearly identify the BCDC permit, include the public access and open space conditions, and indicate that the permit and any subsequent amendments thereto, binds the HOA and all successors and assigns in perpetuity to all conditions including the public access and open space conditions; (2) establish the authority of the HOA to impose charges on its members to assure that the HOA has sufficient financial resources to maintain all of the public access improvements and landscaping; (3) provide that the HOA has the legal authority to take any and all actions necessary to maintain all of the public access improvements and landscaping as required by the BCDC permit; (4) state that the owners, by taking fee title to a lot in the project, agree that the HOA will be the sole representative for the owners to BCDC for permit violations or for future permit amendments and that the HOA can accept letters from BCDC and other communications such as violation reports on behalf of the owners; (5) state that, if the HOA owns or controls property such as "common areas" that are subject to the BCDC permit, the HOA can be held liable for violations of the permit but that the HOA will only be responsible for areas over which it has legal control; (6) state that the HOA is responsible to correct any violations of the BCDC permit including payment of penalties, collection of fees needed to fix landscaping and pathways, etc., and to reconstruct the

project to be in compliance with the permit; and (7) provide that the HOA can collect fees sufficient to undertake the actions identified in this paragraph.

~~D.~~ ~~**Marina Facilities**~~

1. ~~**Construction.** All construction activity shall be performed to minimize turbidity and to prevent debris from drifting and presenting a pollution or navigation hazard.~~

2. ~~**Waste Facilities.** Prior to the use of any berth, the permittees shall install on-shore restrooms for boaters, live-aboard tenants, and the public, a suitable facility for receiving and disposing of bilge water and oily wastes, and a facility for pumping out vessel holding tanks and receiving wastes from portable toilets with connections to on-shore waste treatment facilities. Such facilities shall be constructed to all applicable codes and standards and shall be maintained by the permittee in a safe and sanitary manner. The pump-out facilities shall be made available during normal boating hours for use by the general boating public. Fees may be charged for the use of the pump-out facilities but only if they are reasonably related to the cost of its operation.~~

3. ~~**Houseboats.** No houseboats or floating structure used for residential purposes shall be moored at the marina.~~

4. ~~**Sales or Long Term Rental of Berths.** All berths shall be rented to the general public without discrimination, and no right to use any berth other than those berths used in conjunction with yacht sales and yacht repair shall be granted or otherwise transferred that exceeds one-year in duration.~~

~~E.~~ ~~**Riprap**~~

1. ~~**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.~~

2. ~~**Material.** Riprap material shall be either quarry rock or concrete pieces 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 size of material shall be limited to two feet measured in any dimension. 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, exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited.~~

~~F.~~ D. **Certification of Contractor Review (Amendment No. Eleven).** 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 permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.

~~G.~~ E. **Certificate of Occupancy or Use (Amendment No. Eleven)**. Prior to occupancy or use of any of the improvements authorized herein, the permittee~~s~~ shall submit the Notice of Completion and Compliance required herein and request in writing an inspection of the project site by the Commission staff. Within 30 days of receipt of the written request for an inspection, the Commission's staff will: (1) review all permit conditions; (2) inspect the project site; and (3) provide the permittee~~s~~ with written notification of all outstanding permit compliance problems, if any. The permittee~~s~~ shall not occupy or make use of any improvements authorized herein until the staff has confirmed that the identified permittee's~~'~~ compliance problems have been satisfactorily resolved and has provided the permittees with a Certificate of Occupancy or Use. Failure by the staff to perform such review and inspection and notify the permittee~~s~~ of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the permit, but the permittee~~s~~ may occupy and use the improvements authorized herein.

~~H. **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.~~

~~I. **Debris.** Except as otherwise authorized herein, all debris shall be removed to a location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittees shall remove such material, at its expense, within ten (10) days after having been notified by the Executive Director of such placement.~~

~~J. **Abandonment**. If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two (2) 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 assigns or successors in interest, or by the owner of the improvements, within sixty (60) days, or such other reasonable time as the Commission may direct.~~

~~K. **Commission Jurisdiction Over Fill Area.** Notice is hereby given that, under the McAteer-Petris Act, the area of the approved project that is within the Commission's jurisdiction under Section 66610(a) remains within that jurisdiction even after fill or substantial change in use, authorized by the Commission, may have changed the~~

~~character of an area; so that the permittees or their its successors in interest will require further action by or on behalf of the Commission prior to any further change of use or work within areas filled pursuant to this amended permit.~~

~~L.~~ F. **Permit Recording**. The permittee~~s~~ shall record this amended permit or a notice referring to this amended permit with Alameda County within thirty (30) days after ~~execution~~ issuance of this amended permit by the Executive Director and shall provide evidence of recording to the Commission (Amendment No. Fifteen).

~~M. **Spoils Disposal**. The permittees shall dispose of all dredge spoils in a manner approved by the Regional Water Quality Control Board and Corps of Engineers. No run-off shall enter the Bay from any dredge spoils deposited in the shoreline band or other inland portions of the site.~~

~~N. **Live-Aboard Boats (Amendment No. Six)**~~

~~1. Live-aboard boats authorized to be moored in the marina pursuant to paragraph I-A-1-d shall be those boats designed and used for active navigation but are distinguished from other navigable boats in that they are also used as a primary place of residence. No houseboats shall be moored in the marina.~~

~~2. Convenient and adequate parking, restrooms, showers, garbage disposal facilities and sewage pumpout stations shall be provided and maintained for use by occupants of the live-aboard boats.~~

~~3. The number of live-aboard boats shall at no time exceed ten percent of the number of authorized berths in the marina and shall be moored at locations shown on Exhibit B attached.~~

G. **Permit Effective Date.** This amended permit shall be issued and effective on the date the Executive Director signs and mails the amended permit to the permittee (Amendment No. Fifteen).

III. Findings and Declarations

This amended authorization is given on the basis of the Commission's findings and declarations that the work and uses authorized herein, as conditioned, are consistent with the McAteer-Petris Act, the San Francisco Bay Plan, the Commission's Amended Management Program for San Francisco Bay, and the California Environmental Quality Act for the following reasons:

A. **Permit History.** The original permit for this project was issued in 1983 to Encinal Marina, and was subsequently amended on 10 occasions through 1990. The permittee to this permit was not a permittee for the original permit or the subsequent 10 amendments. In 2008, Warmington Homes California joined the original permittee, Encinal Marina Limited, in applying for Amendment No. Eleven of Permit 1983.005.00 to seek approval for work on property then owned or leased by Encinal Marina Limited. In May 2008, Amendment No. Eleven was issued jointly to Warmington Homes California and Encinal Marina Limited. Subsequently, Warmington Homes California purchased certain

property from Encinal Marina Limited, and later transferred a portion of this property to the Grand Marina Village Owners' Association (HOA) for maintenance as public access property. The private homes authorized by Amendment No. Eleven were sold to individual purchasers. Encinal Marina Limited remains the property owner for the remainder of the site covered by Amendment No. Eleven. In 2015, the HOA applied for Amendment No. Fifteen to Permit 1983.005.00 to divide the permit into two separate permits: (1) 1983.005.15A, issued to Encinal Marina Limited authorizing dredging, fill removal, new Bay fill, live-aboard boats, a fuel dock building, a yacht repair facility, a warehouse conversion, driveways, parking, and public access improvements on its property; and (2) 1983.005.15B, issued to Grand Marina Village Owners' Association authorizing 40 single-family homes, driveways, parking, and public access improvements (Amendment No. Fifteen).

The findings and declarations for Amendment No. Eleven to BCDC Permit 1983.005.00 included an analysis of the entire project authorized by the original permit and the eleven amendments thereto in accordance with the Commission's laws and policies. Those findings remain in their entirety through Amendment No. Eleven of Permit 1983.005.00, issued in May 2008. Included below for the record are the findings for the original permit and all subsequent amendments, as well as those applicable to the division of the permit authorized by Amendment No. Fifteen of Permit 1983.005.00. Because the original permit and portions of the first ten amendments do not pertain to the single-family home development project authorized by Amendment No. Eleven, some of the findings below do not pertain directly to the work authorized under Permit No. 1983.005.15B Amendment No. Fifteen).

~~A.~~ B. **Fill.** The proposed project, as revised by Amendment No. Four, includes the placement of a total of approximately 120,061 square feet of new Bay fill, an increase of approximately 14,151 square feet over what Amendment No. Three to the permit previously authorized. The fill includes approximately 83,461 square feet for marina berths, 4,700 square feet for yacht sales floats, 7,150 square feet for floats in the yacht repair facility, and 24,750 square feet of solid riprap. The revised proposed project includes the removal of a total of approximately 41,590 square feet of existing wharves, an increase of approximately 12,650 square feet over what the permit previously authorized. The Commission finds that the fill is for water-oriented uses for which some fill can be authorized. Furthermore, given the nature of the uses of the proposed fill, there are no alternative upland locations for these uses. Moreover, given that the revised marina design increases substantially the number of marina berths without appreciably extending the berthing further out into the Bay and that the rest of the proposed fill covers a relatively small amount of Bay surface area, the Commission finds that the project has been designed to minimize the fill required.

If riprap materials are improperly placed along the shoreline edge or if inappropriate materials are used, the shoreline revetment could fail. As a result, additional fill could be required to repair the shoreline revetment. Special Condition II-D, by requiring that the revetment be constructed according to certain engineering standard should reduce the possibility of revetment failure and thereby increase the permanence of the shoreline and reduce the need for additional filling of the Bay in the future.

The Commission's fill policies state that fill should be constructed in accordance with sound safety standards which will protect against unstable geologic conditions and other natural hazards. The requirements of Special Condition II-A for BCDC review of engineering plans and criteria for the project are needed to ensure that the project is designed to meet such safety standards.

~~B.~~ C. **Dredging.** The Commission finds that the proposed dredging and excavation is in accord with Bay Plan policies because Special Condition II-I will ensure that the spoils will be deposited outside of the Commission's jurisdiction at an upland location or in a portion of the shoreline band in a manner approved by the Regional Water Quality Control Board and the Corps of Engineers. No run-off from spoils deposited in the shoreline band shall run-off into the Bay.

~~C.~~ D. **Use.** The proposed location of the project is not designated as a priority use area or a marine terminal site. Therefore, it may be used for purposes such as marinas and commercial uses, if the uses are otherwise consistent with Bay Plan and McAteer-Petris Act policies. The original permit authorized reconstruction of a building on the fuel dock for office and other uses associated with the marina and fuel dock. Amendment No. Four authorizes a modest increase in size of the structure due to the needs of the tenants, with no loss of public access. At the public hearing on the original permit application, a question was raised concerning the appropriateness of a marina adjacent to the liquid bulk uses near Berth 6 and whether conflicts would take place. The permittee retained a maritime consultant, however, whose report (transmitted separately) indicates that safety problems are not likely. In addition, the permittee forecast that within the next several years, the liquid bulk uses near Berth 6 will likely cease to be profitable and will be phased out. At this time, the permittee is proposing to convert the warehouse adjacent to the berth to smaller industrial uses. The permittee has indicated that these units will likely be occupied by tenants with marine-related services, such as marine cabinet makers, who might serve boaters at the new marina and boat repair yard and would likely be compatible with the Marina. The Commission, therefore, finds that the new marina and other uses, including uses on the fuel dock, are not likely to conflict with the use of Berth 6.

~~D.~~ E. **Public Access.** The permittee is proposing a total of approximately 63,495 square feet of public access, consisting of approximately 49,450 square feet of walkways plazas and landscaping, and 12,565 square feet of access on existing piers and platforms over the water, and approximately 1,500 square feet along the inland side of the warehouse. The main feature of the public access is a large palm-lined entry area at the southeastern end of the project off of Grand Street. From the northwest end of the entry area,

public access would extend out onto the fuel dock and continue along a shoreline strip between the parking lot and the marina berths. The landscaped strip would average approximately 50 feet in width. Where the strip meets the existing Alaska Packer's Building, the access would extend out onto a deck on the bayside of the building and continue around both sides of the building. This new public access is required to offset the additional density of use associated with the addition of more than 40 new boat berths.

As a result of Amendment No. Fifteen, all of the public access area and improvements under the ownership or control of the Grand Marina Village Owners' Association is included within this permit, and all of the public access area under the ownership or control of Encinal Marina Limited is included within BCDC Permit No. 1983.005.15A. Each permittee is responsible for permanently maintaining the public access area on land under its legal control (as shown generally on Exhibit A) and authorized and required pursuant to its respective permit as required in Special Condition II-B.

~~E.~~ F. **Amendments**

1. **Amendment No. Four.** As a result of Amendment No. Four, the proposed public access is very similar to the access previously required in the permit, however, there are some differences. The additions and modifications to the commercial uses in the shoreline band change the configuration of some portions of the public access. In addition, access is proposed on the fuel dock and is proposed to extend all the way around the deck adjacent to the existing warehouse. These changes result in an increase in public access of approximately 5,400 square feet over what the permit previously required.

   The permittee proposes to terminate the public access in the vicinity of the existing warehouse building rather than continuing the access to the western property line through the existing yacht repair area. The Commission's public access policies indicate that continuous public access should be provided through every new development on the Bay or shoreline except in cases where public access is clearly inconsistent with the project because of public safety considerations or significant use conflicts. The permittee has testified that public access through the yacht repair area would pose unavoidable conflicts with the yacht repair operation and that the public's safety could not be guaranteed. In addition, they have pointed out that even if public access were provided through the yacht repair area to the end of the shoreline band within their ownership or control, the access would be a "dead-end" and would not connect with any existing public access. The adjacent property, the Fore Terminal, presently has no shoreline public access.

   The Commission notes that public access has been required within yacht repair facilities the Commission has authorized around the Bay and no evidence has been presented to suggest that these repair yards are suffering serious safety problems. However, continuous public access cannot be pro-

vided along the shoreline at this time and the Design Review Board recommended that public access improvements be confined to the shoreline where the marina and commercial uses will be constructed. However, the Board did state public access should be continuous at such time as the warehouse or shoreline or water areas at the west end of the site are upgraded.

The Commission finds that the public access should be continued to the property line should any additional development occur on the site or the adjacent site be developed allowing continuous shoreline access to occur. The requirements of Special Conditions II-B-1-b and II-B-3 should ensure that continuous access will be considered if and when this area of the shoreline is redeveloped. Special Condition II-B-3 should ensure that lessees within the project authorized herein will be aware of possible future public access requirements.

The additional private development that Amendment No. Four authorizes includes 10,461 square feet of floating fill for 43 additional marina berths, 3,680 square feet of floating fill for yacht sales and yacht repair operations. In exchange, approximately 5,400 square feet of additional public access is proposed. Therefore, the Commission finds that the proposed improvement of the quantity and quality of public access is commensurate with the proposed increase in private development and that maximum feasible public access consistent with the project will be provided.

2. **Amendment No. Five.** As a result of Amendment No. Five, the public access on the dock is the same size but changed in configuration. The change does not affect the quality of the public access.

   The Commission's public access policies state, among other things, that whenever public access to the Bay is provided as a condition of development, the access should (1) be permanently guaranteed through dedication of fee title or similar property restrictions, (2) provide for the public's safety and convenience, (3) be identified with appropriate signs, (4) be designed and built to encourage movement to and along the shoreline and provide barrier free access for the physically handicapped, and (5) include an ongoing maintenance program. The public access and plan review special conditions contained herein are necessary to ensure that the project will be consistent with these policies. Special Conditions II-B-1, II-B-2, and II-B-3 require the creation of legal instruments that will permanently guarantee the public access. Special Condition II-B-4 requires that the public access areas will be improved with benches, landscaping, walkways, and similar improvements to provide for the public's safety and convenience and encourage movement to and along the shoreline.

3. **Amendment No. Eight.** Amendment No. Eight requires the access improvements to be in place prior to use of the boat berths. Special Condition II-B-5 requiring public access parking and Special Condition II-B-7 requiring the installation of public restrooms also are needed to provide for the public's safety and convenience. Special Condition II-B-6 requires the installation of five public access signs to sufficiently identify the access area to the public and encourage greater public use. Special Condition II-1 which requires plan review prior to construction will help ensure that the needed improvements are property designed to serve their purposes. Finally, Special Condition II-B-8 provides for an ongoing maintenance program.

4. **Amendment No. Nine.** Amendment No. Nine corrects the figure for public access and modifies the overall site layout of the shoreline portions of the project with no diminishment in the amount of public access. The figures for public access, submitted by the permittee for Amendment No. Three were correct, but were totaled incorrectly. This error was carried forward in subsequent versions of the permit. The correct amount of total public access is 63,555 square feet. The public access required in Amendment No. Nine is 64,870 square feet, so there is a modest increase in public access of 1,315 square feet. The layout of the public access is modified so the project now includes a more public and prominent entry from Grand Street and wider access along the entire shoreline.

5. **Amendment No. Ten.** Amendment No. Ten defines the location of the public restrooms to the Harbor Master Building, and the Warehouse Building. The square footage of the restroom structure serving marina tenants has been subtracted from the public access area.

6. **Amendment No. Eleven.** Amendment No. Eleven authorizes the construction of 40 single-family homes (five, or 7,800 square feet of which lie within BCDC's shoreline band jurisdiction), reconfiguration of the existing marina parking lot to accommodate the new homes and new public streets, and changes and additions to the existing public access trail along the shoreline, as part of the "Grand Marina Village" project. Amendment No. Eleven also includes corrections to the public access numbers, and modifications and additions to the public access areas and improvements. The previous permit amendment included a total public access area of 63,495 square feet. The total public access area was later determined to be 61,711 square feet, with the 1,784-square-foot difference possibly covering the private bathroom area, which may not have been removed from the overall total when the previous amendment was issued.

   Amendment No. Eleven authorizes an additional 29,035 square feet of new public access (7,707 square feet of which is in the Commission's jurisdiction), and the removal of approximately 2,536 square feet of public access, for a total net gain of 26,499 square feet of new public access. The new public

access includes new pathways and landscaping along the southeastern edge of the shoreline park near Grand and Hibbard Streets; two new triangle parks outside the Commission's jurisdiction with pathways and connections to the shoreline park; and a connection along the wharf adjacent to the Alaska Packer's Building that connects the wharf to Marina Cove Waterfront Park to the southwest, as required in Amendment No. Four to this permit. Amendment No. Four required the connection from the wharf to the south to be completed if any additional development on the site should occur or if the site to the south is developed allowing continuous shoreline access to occur. With the construction of Grand Marina Village at the site and the development of Marina Cove to the south, this required connection is now being fulfilled. The new connection will provide continuous shoreline access along the wharf to Marina Cove to the south, through the existing boat repair yard. In order to provide additional parking for the Grand Marina Village project, approximately 120 linear feet of the public access pathway located on the east side of the Alaska Packer's Building will be reduced from 20 feet to six feet. This pathway abuts the existing parking lot and was required in order to provide a north-south connection. With the new preferred shoreline connection along the wharf, the six-foot-wide pathway could still serve as a secondary route inland. Therefore, the reduction in width along this edge will not affect the north-south public access connection.

With the changes in public access, the total public access provided in the amended permit is 88,210 square feet. Conditions have been included in the amended permit for public access improvements such as benches, lighting, seating, signage and overall landscaping to connect and unify the public access area, pursuant to final plan review. Exhibit A to the amended permit has also been revised to reflect the public access areas and changes.

Amendment No. Eleven to the permit also provides for limited loading and unloading of vehicles on the wharf adjacent to the Alaska Packer's Building, to accommodate the needs of existing tenants in the warehouse. Conditions have been included in the amended permit to limit loading/unloading to two hours and to an area adjacent to the warehouse that is appropriately striped and signed. Currently, tenants of the warehouse building park their vehicles on the wharf to load/unload heavy equipment and have assumed the right to do so under their current leases. In order to accommodate the anticipated need for public access on the wharf as the Grand Marina Village project is constructed, yet still respect the leases of the existing tenants, all vehicle access on the wharf will terminate after five years from the date of the permit, or by June 30, 2013, whichever is soonest. Conditions have been included in the amended permit requiring all striping and signage for

loading/unloading on the wharf to be removed and bollards to be installed restricting access on the wharf, after the five-year period. The permittee~~s are~~ is also required to inform existing and future tenants of the five-year termination date to provide adequate notice of the future wharf restrictions.

The project authorized by Amendment No. Eleven does not result in a material alteration of the originally authorized project, and is similar to a "minor repair or improvement" involving the placement of small amounts of inert inorganic fill, the extraction of small amounts of materials, or a substantial change in use of any area that does not have a significant adverse effect on present or possible future maximum feasible public access to the Bay consistent with the project, on present or possible future use for a designated priority water-related use, and on the environment, as defined in Regulation Section 10601(b)(1), for which the Executive Director may issue a non-material amendment to an existing permit, pursuant to Government Code Section 66632(f) and Regulation Section 10822.

7. **Amendments No. Twelve, Thirteen, and Fourteen.** These amendments were never issued, and Amendment No. Fifteen is issued exclusive of these amendments. Amendments No. Twelve and Fourteen were withdrawn by the applicant. Amendment No. Thirteen was never attached to a permit application because of a bookkeeping error.

8. **Amendment No. Fifteen.** As described above, Amendment No. Fifteen to BCDC Permit No. 1983.005.00 results in dividing the permit as amended through Amendment No. Eleven into two separate permits. Amendment No. Fifteen does not change the public access area authorized by and constructed pursuant to Amendment No. Eleven to the permit. All completed and dedicated public access associated with the permit, as amended through Amendment No. Eleven, is divided between the respective permittees.

~~F.~~ G. **Water Quality.** The Commission's Bay Plan marina policies state that no marina should be approved unless water quality and circulation will be adequately protected, and if possible, improved. Several special conditions have been included herein to ensure that the proposed marina and related construction will not adversely affect water quality. Discharges of sewage and bilge water from vessels can degrade water quality, especially in enclosed marina basins. To effectively reduce the number of such discharges, alternative disposal methods must be made available to boaters. Special Condition II-C-2 requires the installation of restrooms, a suitable facility for receiving and disposing of bilge water, and appropriate pump-out facilities to provide such alternative disposal methods. The special condition requires that the pump-out facilities be made available during normal boating h ours, and be provided at reasonable cost to encourage the greatest use of those facilities and to meet Bay Plan marina policies with regard to water quality. Special Conditions II-I and II-C-1 should ensure that construction debris from the project will not degrade Bay waters. Special Condition II-M ensures that no run-off from dredge spoils deposited in the shoreline band will enter the Bay.

~~G.~~ H. **Environmental Impact.** The City of Alameda, certified an Environmental Impact Report for the original project on February 15, 1983. The Commission is the lead agency for Amendment No. Three. On December 5, 1985, the Commission adopted a negative declaration for the project. Amendment No. Four authorizes a small increase in the number of marina berths. Amendment No. Five authorizes an increase in the size of the building on the fuel dock. Amendment No. Seven authorizes deposition of dredge spoils in the shoreline band in such a way as to have no impact on Bay waters. Amendment No. Eight requires the access improvements to be in place prior to use of the boat berths. Pursuant to Regulation Section 11501, the work authorized in Amendment No. Nine and Amendment No. Ten is categorically exempt from the requirement to prepare an environmental impact report. On January 16, 2007, the City of Alameda adopted a Mitigated Negative Declaration and Mitigation and Monitoring Reporting Program, pursuant to City of Alameda Resolution No. 14061, for the work authorized under Amendment No. Eleven to this amended permit.

~~H.~~ I. **Prior BCDC Permits.** Site preparation work for the Grand Marina Village project authorized in Amendment No. Eleven to this amended permit, was authorized under BCDC Permit No. M2006.026.00 ~~M06-26~~.

~~I.~~ J. **Public Trust.** By this amended permit, the Commission determines that the proposed project is consistent with public trust needs.

~~J. **Live-Aboard Boats.** Bay Plan Policies on Recreation state that live-aboard boats should be allowed only in marinas and only if the criteria outlined on page 21 of the Bay Plan are met. The permittees' site plan, entitled "Grand Harbor," received on March 30, 1988, shows that the facilities outlined in Bay Plan policies are sufficient and conveniently located. The site map further shows that the live-aboard boats are dispersed throughout the marina to provide a degree of security. Special Condition II-N ensures that the number of live-aboard berths authorized does not exceed ten percent of the number of authorized berths in the marina. For these reasons, the Commission finds that the live-aboard boat berths authorized are consistent with Bay Plan policies (Amendment No. Six).~~

K. **Conclusion.** For all of the above reasons, the public benefits from the ~~proposed~~ project authorized and constructed pursuant to Amendment No. Eleven, as split from Permit 1983.005.15A and as described in the Section I to this permit, exceeds any public detriment. The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

IV. Standard Conditions

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

~~B. 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. The rights, duties, and obligations contained in this amended permit are assignable. When the permittees transfer any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittees/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director (*call for a copy of the form or download it from our website*). An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.~~

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

~~E. Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or, if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If an amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittees or its their assignees upon receiving written notification by or on behalf of the Commission to remove the fill.~~

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

~~G. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.~~

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

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

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

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

~~L. This amended 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.~~

~~M. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittees or their assignees if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittees or their assignees if the amended permit has been assigned.~~

~~N. Unless the Commission directs otherwise, this amended permit shall become null and void if any term, standard condition, or special condition of this amended permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended permit becomes null and void, any fill or structures placed in reliance on this amended permit shall be subject to removal by the permittees or their assignees if the amended 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.~~

~~O. 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.~~

A. **Permit Assignment**. The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) 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 amended permit, the permittee(s)/transferor(s) and the transferee(s) 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(s) execute and the Executive Director receives an acknowledgment that the assignee(s) have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

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

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

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

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

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

G. **Changes to the Commission's Jurisdiction as a Result of Natural Processes**. This amended permit reflects the location of the shoreline of San Francisco Bay when the amended permit was issued. Over time, erosion, avulsion, accretion, subsidence,

relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this amended permit does not guarantee that the Commission's jurisdiction will not change in the future.

H. **Violation of Permit May Lead to Permit Revocation**. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee(s) or their assignee(s) if the amended permit has been assigned.

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

J. **Permission to Conduct Site Visit**. The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

K. **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(s), its assignee(s) or successor(s) in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.

L. **Best Management Practices**

1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee(s), its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.

2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee(s) shall immediately retrieve and remove such material at its expense.

M. **In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.