

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Agenda Item #9

September 6, 2007

TO: Commissioners, Alternates and Interested Parties

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Brenda Goeden, Coastal Program Analyst III/Dredging/LTMS Specialist
(415/352-3623 brendag@bcdc.ca.gov)

SUBJECT: **Staff Report and Recommendation on Proposed Amendment to Regionwide Permit No. RWP-10**
(For Commission consideration on September 20, 2007)

Staff Recommendation

The staff recommends that the Commission adopt the attached proposed amendment to Regionwide Permit No. RWP-10 to:

1. Increase the authorization period from 30 months to five years;
2. Increase the volume of maintenance dredging from 100,000 cubic yards (cy) over thirty months to 200,000 cy of dredging over five years;
3. Authorize up to 2,500 cy of shoal “knockdowns” within the dredging footprint over five years;
4. Allow disposal of the dredged sediment at authorized upland sites or the San Francisco Deep Ocean Disposal Site, outside of the Commission’s jurisdiction, or if upland or ocean disposal is infeasible, at the state and federally authorized in-Bay disposal sites;
5. Require dredging to occur within the environmental work window for that location or require consultation with the appropriate resource agencies; and
6. Update the special conditions, findings and standard condition sections.

Staff Report

On February 16, 2006, the Commission approved a recommendation to undertake nineteen measures with broad political support to improve the efficiency and effectiveness of the Commission’s Bay Management. This recommendation was developed in response to concerns raised by the Bay Planning Coalition in 2004. Between August 2004 and November 2005, the Commission staff met several times with representatives of the Bay Planning Coalition, the Bay Dredging Action Coalition, and the environmental community to discuss the issues raised, clarify the Commission’s practices, and identify areas of potential improvement in staff communication and practices. These discussions resulted in consensus on nineteen points of action and acceptance of the measures by the Commission.

Item No. Five of the February 3, 2006 recommendation adopted by the Commission included a measure to amend the Commission's regionwide permit for maintenance dredging to expand the period of the regionwide permit from 30 months to five years. The Commission staff has reviewed the existing Regionwide Permit No. RWP-10 and proposes amendments to address the Commission's directions and to update the regionwide permit to make it consistent with other maintenance dredging permits.

The proposed changes are intended to address four main concerns. First, they would lengthen the time and increase the volume authorized for small dredging projects through a regionwide permit, and thus reduce the cost and time required for obtaining a maintenance dredging permit for such work. Second, they would authorize small knockdown episodes, potentially reducing impacts to the environment. Third, they would include the environmental work windows developed through NOAA Fisheries Service (NOAA Fisheries), the U.S. Fish and Wildlife Service (U.S. FWS), and the California Department of Fish and Game's (DFG) programmatic biological opinions for the Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS) Management Plan. Lastly, they would update the special conditions, findings and standard conditions sections of the permit to reflect the Commission's current laws and policies.

The initial request was to extend the regionwide permit from thirty months to five years because most dredging projects authorized in this way were routine maintenance dredging projects with very similar characteristics. The Commission staff reviewed this proposal and concluded that, if the current special conditions for dredging were included, sufficient environmental protections would be in place to extend the regionwide to five years. However, during this review, the staff noted that if the period of the permit were extended, it was likely that the authorized volume should also be increased because the proposed projects may need two or three dredging episodes during the five-year period to maintain the appropriate depths.

"Knockdown" episodes are instances when a project area has developed individual high spots or shoals that impede navigation, but is otherwise at or near project design depth. Knockdowns are considered activities similar to dredging. In these cases, a clamshell or "i-beam" is used to knock down the shoal into a lower spot within the project footprint. In reviewing the existing regionwide permit, staff believes that the authorization of small knockdowns should also be included in a revised regionwide permit. The Commission staff believes that small knockdowns as described above can reduce the need for dredging and may have less environmental impact than an actual dredging episode due to reduced turbidity in the water column and by keeping the sediment in the project area rather than disposing the material at an alternate location.

In 2001, the Commission adopted the LTMS Management Plan, which is supported by the Commission's dredging policies. The LTMS Management Plan sets forth "environmental work windows" for dredging and dredged material disposal. Bay Plan Dredging Policy 2(c) requires protection of Bay fisheries and natural resources through the use of seasonal dredging restrictions. All dredging projects in the Bay are required to work within specific timeframes for specific locations, due to the potential presence of threatened and endangered species and/or species of special concern, or to consult with the appropriate resource agencies and obtain a "take authorization." As a result of this requirement, all current maintenance dredging permits include an environmental work window specific to that project to reduce impacts to these species. The staff proposes to include such work windows in the proposed amended regionwide permit. Proposed Special Condition II – G requires dredging to occur within these windows or requires the permittee to obtain a "take authorization;" thus, impacts to threatened and endangered species and species of special concern would be avoided or minimized pursuant to the recommendations of the resource agencies.

The Commission staff has updated the special conditions and findings for Regionwide Permit No. RWP-10 to reflect current policies and practices. With the inclusion of the dredging special conditions, each dredging project would be required to: (1) be reviewed for both chemical and physical suitability; (2) receive a water quality certificate from the San Francisco Bay Regional Water Quality Control Board; (3) comply with the environmental windows; and (4) either dispose of the dredged sediment outside of the Commission's jurisdiction, at an approved beneficial reuse site, or comply with the disposal targets set forth in the Commission's Regulations. Therefore, effects to the environment would be minimized. In addition, the updated standard conditions for Commission permits were incorporated into this proposed amended permit.

The staff believes that the proposed changes to Regionwide Permit No. RWP-10 are consistent with the Bay Plan's dredging policies because Special Condition II-A would require that the permittee provide a water quality or waste discharge requirement from the Regional Water Quality Control Board. Special Condition II-D would require that the results from the sediment testing be provided to the Commission staff, that the project be disposed outside of the Commission Bay and certain waterways jurisdiction unless those options are infeasible, and that the disposal volume is consistent with the disposal site target volumes.

The staff believes that the proposed changes to Regionwide Permit No. RWP-10 are consistent with the Bay Plan's Tidal Marshes and Tidal Mudflat policies because each dredging project would be analyzed to determine the effects on any tidal marshes or mudflats through the application process, and Special Condition II-I would require that work be performed to prevent any significant impacts to marshes or mudflats within the project site.

The staff believes that the proposed changes to Regionwide Permit No. RWP-10 are consistent with the Bay Plan's Fish, Other Aquatic Organisms and Wildlife policies because Special Condition II-G would limit dredging to the specific environmental work window for that project, or requires consultation with the appropriate resource agency, thereby protecting threatened and endangered species, and species of special concern.

The staff believes that the proposed changes to Regionwide Permit No. RWP-10 are consistent with the Bay Plan's subtidal areas policies because the projects authorized through this permit would be for maintenance dredging of existing facilities only and, therefore, maintenance of these facilities would not affect tidal hydrology or bathymetry and impacts to species living within the dredged areas would be temporary as the site is re-colonized over time.

The staff believes that the proposed changes to Regionwide Permit No. RWP-10 are consistent with the Bay Plan's Water Quality policies because Special Conditions II-D and II-H would require testing of sediment for contaminants and acute toxic effects to benthic organisms, and effluent for water quality parameters. Special Condition II-A would require the project receive a water quality certificate or waste discharge requirements from the Regional Water Quality Control Board prior to issuance of the permit, and for subsequent episodes authorized by the permit.

Therefore, the staff believes that the proposed, revised Regionwide Permit No. RWP-10, as conditioned, is consistent with the Commission's laws and policies including the San Francisco Bay Plan (Bay Plan) policies on Dredging, Tidal Marshes and Tidal Flats, Fish, Other Aquatic Organisms and Wildlife, Subtidal Areas, and Water Quality.

As a result of the proposed changes, it is likely that applicants would request regionwide permits more frequently thereby reducing costs to the permittee and potentially reducing workload for the Commission staff. However, because regionwide permits have a smaller fee, revenue to the State may be reduced as well. The Commission staff is also currently developing new regulations that would authorize administrative dredging permits for up to ten years. Because this option may be more attractive to applicants, they may still bypass the regionwide permit in favor of a ten-year permit.

The staff recommends that the proposed regionwide permit, as amended, be adopted.



Making San Francisco Bay Better

**Attachment for
Agenda Item #9**

**AMENDED REGIONWIDE PERMIT NO. RWP-10
NOTICE OF INTENT TO PROCEED NO. NOI-XX-xx**

[Date]

[Company]
[Address]

ATTENTION: [permittee or Agent]

Ladies and Gentlemen:

On April 18, 1996, the San Francisco Bay Conservation and Development Commission (Commission), by a vote of 17 affirmative, 0 negative, and 0 abstentions, approved the issuance of this amended regionwide permit upon which your authorization is based. On September 20, 2007, the Commission, by a vote of XX affirmative, XX negative, and XX abstentions, approved the issuance of Amendment No. One to this amended regionwide permit upon which your authorization is based:

I. Authorization

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

Location: Anywhere in the Bay and in certain waterways.

- Description:**
- (1) Routine maintenance dredging of existing navigation channels, marinas, and berthing areas of no more than 200,000 100,000 cubic yards (cy) of sediment over five years; bottom material and the disposal of the dredged material so long as:
 - (2) ~~the disposal of the dredged material is at an approved upland disposal site or at the federally designated ocean disposal site if the disposal would not result in any and there are no significant adverse environmental impacts; or~~
 - (3) ~~if there are no feasible upland or ocean sites, the disposal of the dredged material is at a designated in-Bay disposal site, and provided the disposal would meet the target volumes of the particular disposal site, there are no feasible upland or ocean disposal alternative, and provided the disposal would not result in any there is no significant adverse environmental impacts.~~
 - (4) any knockdown(s) totaling no more than 2,500 cy of sediment over five years that removes shoaled

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sediment from high spots and places the sediment in low area within the maintenance dredging footprint;

B. This authority is generally pursuant to and limited by your notice of intent to proceed under an amended regionwide permit dated [XX], as revised and resubmitted on [XX], including its accompanying exhibits, any subsequent additions or modifications, and all conditions of this amended regionwide permit.

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

II. Special Conditions

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

A. **Water Quality Approval.** At least 45 days prior to the commencement of any dredging episode authorized herein, the permittee shall submit to the Executive Director water quality certification, waste discharge requirements, or any other required approvals from the California Regional Water Quality Control Board, San Francisco Bay Region. Failure to obtain such certification prior to the commencement of any dredging episode shall terminate the Commission's authorization for that episode. The Executive Director may, upon review of the Regional Board approval, either: (1) approve the dredging episode consistent with this authorization; or (2) amend this authorization, as necessary, related to water quality issues. Unless the permittee agrees to amend this authorization in a manner specified by or on behalf of the Commission, this amended regionwide permit shall become null and void.

~~At least 20 days prior to the commencement of any disposal episode authorized herein, the permittee shall submit to the Executive Director water quality certification or waiver of water quality certification from the California Regional Water Quality Control Board, San Francisco Bay Region, for that episode. Failure to obtain such certification or waiver of certification prior to the commencement of the dredging episode shall terminate the Commission's authorization for that dredging episode.~~

B. **Limits on Dredging.** This amended regionwide permit authorizes maintenance dredging only. No new dredging is authorized. The amended regionwide permit authorizes dredging within area(s) as shown on the exhibits submitted with the permittee's notice of intent to proceed under this amended regionwide permit. No dredging in other areas is authorized.

C. **Five-Year Permit for Dredging.** The maintenance dredging authorized by this amended regionwide permit shall be completed within five years of the date of transmittal of this amended regionwide permit. No further dredging is authorized.

D. Dredging and Disposal Activity

1. **Pre-Dredging and Disposal Report and Notice.** At least 45 days before the commencement of any dredging and disposal episode authorized herein, the permittee shall submit to the Commission's Executive Director:
 - a. a current bathymetric map showing the location of all areas authorized to be dredged, the authorized depth including over-dredge depth based on Mean Lower Low Water (MLLW), the volume of material proposed to be dredged, and the approximate date of project commencement.
 - b. a written statement to the Executive Director that contains: (1) the proposed disposal site and quantity of material to be disposed, and dates within which the disposal episode is proposed; (2) if applicable, a discussion as to how the volume proposed for disposal is consistent with in-Bay disposal allocations and disposal site limits; (3) the results of chemical and biological testing of sediment proposed for disposal; and (4) an alternatives analysis to explain why ocean disposal, upland disposal or beneficial reuse of dredged material is infeasible. If the permittee qualifies as a small dredger and has a current, signed "Small Dredger Programmatic Alternative Disposal Site Analysis" on file with the Commission, Special Condition II – D (1)(b)(4) is satisfied.
2. **Authorization for Disposal.** The authorization for the proposed in-Bay disposal shall become effective only if the Executive Director: (1) informs the permittee in writing that the episode is consistent with the authorization provided herein, alternative disposal and beneficial reuse options are infeasible, the volume proposed for disposal is consistent with both in-Bay disposal allocations, if applicable, and the disposal site limits, and the material is suitable for in-Bay disposal; or (2) does not respond to the permittee's pre-disposal report within 30 days of its receipt.

If the Executive Director determines that: (a) ocean disposal, upland disposal, or beneficial reuse of the material is feasible; (b) the material proposed for disposal is unsuitable for the Bay; or (c) the proposed disposal is inconsistent with in-Bay allocations and disposal site limits, the Commission's authorization for in-Bay disposal shall be terminated.
3. At least two weeks prior to the scheduled date of commencement of any dredging episode, the permittee shall notify the Commission staff of the commence date by telephone or in writing. If the date of commencement changes, provide an updated schedule to the Commission staff.

F. In-Bay Disposal. As part of the notice of intent to proceed under this regionwide amended regionwide permit for the initial dredging and disposal episode, and at least 45 days prior to the commencement of any subsequent in-Bay disposal episode authorized herein, the permittee shall submit a written

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statement to the Executive Director that contains all of the following: (1) the dates within which the dredging and disposal episode is proposed; (2) the total volume of material proposed to be dredged and location of the proposed disposal in the Bay; (3) an explanation as to why ocean or upland disposal of the material is infeasible; and (4) results of chemical and biological testing of material proposed for dredging and disposal. The authorization for the dredging and disposal episode shall become effective only when either: (1) the Executive Director informs the permittee in writing that he or she has determined that the episode is consistent with the authorization provided herein, that there is no feasible upland alternative available for the dredged material, that sufficient capacity exists at the disposal site consistent with the long term management of the disposal site, and that the material is suitable for in-Bay disposal; or (2) the Executive Director does not respond to the permittee's written statement within 30 days of its receipt. If the Executive Director: (1) determines that ocean or upland disposal of the material is feasible; (2) determines that the material is unsuitable for in-Bay disposal; or (3) is informed by the U.S. Army Corps of Engineers that the proposed disposal would unacceptably reduce disposal site capacity, then such determination shall terminate the Commission's authorization for in-Bay disposal as part of that dredging episode.

34. Post-Dredging Requirements

- a. ~~2. Dredging Report.~~ Within thirty (30) days of completion of each dredging episode of the maintenance dredging authorized by this amended regionwide permit, the permittee shall submit to the Commission a report which contains: (1) a bathymetric map showing (a) the location of all areas authorized to be dredged and to what depth based on Mean Lower Low Water (MLLW); and (b) the actual areas dredged and to what depth based on MLLW, and any dredging that occurred outside the area authorized to be dredged or below the authorized depths.; (2) a vicinity map showing the disposal site; and (3) the actual volume of the material dredged and disposed. The Commission reserves the right to have such report inspected by a reliable third party familiar with bathymetric mapping in order to verify the contents of the report. If a third party selected by or on behalf of the Commission indicates that the report is inaccurate, the Commission reserves the right to require the permittee to submit a revised report that meets the requirements of this condition. If the Commission determines that the contents of the dredging report indicate that work has occurred beyond that authorized by the regionwide permit, such violation may result in the initiation of enforcement action by or on behalf of the Commission.
- b. If a dredging episode stops for longer than six consecutive months, the permittee must submit, before the dredging episode resumes, notification to the Commission that dredging will begin again. If a dredging episode is suspended for more than six months, the Commission may require the permittee to complete: (1) new sediment characterization, (2) a re-survey of the dredge area, and /or (3) a revised alternative disposal option analysis.

- c. If the dredging episode continues longer than one year, whether dredging is continual throughout the year or is fragmented within the episode, the permittee must provide the Commission with the following dredging report: (1) the actual areas and the depth dredged based on MLLW, and any dredging that occurred outside the area dredged; (2) the actual volume of the material dredged; and (3) the volume and location of the material disposed. The dredging report must be submitted no later than one year after the commencement of the episode, and must be submitted every six months thereafter throughout the life of the amended regionwide permit or until the episode is complete. The Commission may require additional sediment characterization, bathymetric surveys, and/or alternative disposal analyses at the commencement of the next episode. Within 30 days of the completion of the episode, the permittee must submit a dredging report as described in Special Condition 3a.

C. Dredging Report

1. ~~**Prior Notice of Episode.** The permittee shall notify the staff by telephone or in writing at least seven (7) days prior to undertaking any dredging episode. The permittee shall permit the Commission staff or representatives of other state or federal agencies to come aboard the dredge or barge associated with the dredging or disposal episode and observe the operation to ensure that the dredging or disposal activity is consistent with the dredging report required herein and the other terms and conditions of this regionwide regionwide permit.~~

E. Knockdown Dredging. The knockdown episode proposed in this amended regionwide permit must meet the following conditions; (1) the shoal(s) must be located within the maintenance dredging footprint for the berth, marina or channel; (2) the depression into which the shoal(s) will be knocked must be located within the maintenance dredging footprint of the authorized project; (3) the shoal(s) to be knocked down must total no more than 2,500 cy; (4) permittee must use either a clamshell or towed "I-beam" to knock down the shoal into the depression; (5) each knockdown episode must be conducted to minimize the re-suspension of sediment; (6) the knockdown material must meet chemical and biological criteria specified by the Regional Water Board and/or BCDC before being knocked down; and (7) the permittee must meet the knockdown dredging episode notification requirements in Special Condition II - F (below).

F. Knockdown Dredging Episode Notification

1. **Prior Notice of Knockdown Episode.** The permittee shall notify the staff by telephone or in writing at least seven (7) days prior to undertaking any knockdown dredging episode. At this time, the permittee must also confer with BCDC and the Regional Water Board as to whether any testing for this knockdown material is required, and must submit a description of the project and a pre-dredge hydrosurvey of the knockdown area. The permittee shall permit the Commission staff or representatives of other state or federal agencies

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to come aboard the dredge or barge associated with the knockdown dredging episode and observe the operation to ensure that the knockdown dredging activity is consistent with the dredging report required herein and the other terms and conditions of this amended regionwide permit.

2. **Approval of Knockdown Episode.** Approval (by letter or email) from the Commission's staff authorizing each individual knockdown episode will be required before a knockdown episode may commence. Please be advised that consultation and subsequent approval may be required from appropriate resource agencies before a knockdown episode may commence if the knockdown episode falls within a LTMS restricted period for the area.
3. **Knockdown Dredging Report.** Within thirty days of completion of each knockdown dredging episode authorized by this amended regionwide permit, the permittee shall submit to the Commission a report which contains: (1) a post-dredge hydrographic survey showing (a) the location of all areas authorized to be knocked-down and the authorized depth based on MLLW; and (b) the actual areas, and the depth after completion of the knockdown episode based on MLLW, and any knockdown activity that occurred outside the area authorized to be knocked-down or below the authorized depths; and (2) the actual volume of the material relocated in the knockdown episode.

G. Seasonal Limitations. Except as provided below, all dredging and disposal activities shall be confined to the work window provided in the transmittal letter for this amended regionwide permit to minimize disturbance to endangered and special status species, or have approval to dredge and dispose outside of the work window as described below.

Work window provided are consistent with Tables F-1 and F-2 of Appendix F, Figures 3.2 and 3.3 titled "Dredging Work Windows by Area" and "Summary of Disposal Work Window," respectively, of the Long-Term Management Strategy (LTMS) Management Plan 2001, as amended by the U.S. Fish and Wildlife letter dated May 28, 2004. Work proposed outside of the temporal and geographic work windows contained in the transmittal letter may be conducted only with the approval of the Executive Director, provided that such approval may only be issued after (1) consultation between the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service and/or NOAA Fisheries Service has occurred; and (2) the Executive Director has determined that dredging and disposal outside of the work window will be consistent with the Commission's laws and policies.

To protect the herring fishery, no dredging shall occur in areas of historic herring spawning grounds (Exhibit A), between December 1st and February 28th of any year without the written approval of the Executive Director, provided that such approval may only be issued: (1) after the permittee's representative requests from the California Department of Fish and Game that they be allowed to dredge outside of the work window; (2) discussions between permittee's representative and the Department of Fish and Game have occurred; (3) the outcome of those discussions have been provided to the Commission staff; and

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(4) the Executive Director has determined that dredging and disposal outside of the work window will be consistent with the Commission's laws and policies.

~~D. **Timing.** No dredging shall occur pursuant to this amended regionwide permit in areas of San Francisco Bay that have been identified by the California Department of Fish and Game as necessary to protect important fisheries or migrating anadromous fish species between December 1 and March 1 of any year during the duration of this amended regionwide permit unless written approval of dredging during this period is provided by or on behalf of the Commission prior to the commencement of the dredging during the closure period. Approval of any dredging activities between December 1 and March 1 of any year shall be made by or on behalf of the Commission only upon the finding that: (1) a dredging or disposal operation which was begun prior to December 1 of any year could not be completed by the December 1 deadline due to unforeseen delays; (2) a professional biologist, or other individual sufficiently competent to identify herring spawning activity, is at the project site during all dredging operations; and (3) if herring spawning is detected at or within 200 meters of the dredging operations by the permittee's on-site biologist or qualified staff person, Department of Fish and Game personnel, or the Commission staff, all dredging will cease for a minimum of 14 days or until it can be determined that the herring hatch has been completed and larval herring concentrations have left the site. To facilitate rapid and efficient communication under these circumstances, the permittee shall provide the Commission staff and Department of Fish and Game personnel with all necessary telephone, FAX, and pager numbers. Dredging may be resumed thereafter at the sole discretion of the permittee and the Commission staff, but shall be terminated no later than December 31 of that year, or if further spawning takes place at the site.~~

~~E. **H. Barge Overflow Sampling and Testing.** Results of any effluent water quality or other testing required by the San Francisco Bay Regional Water Quality Control Board shall be submitted in writing to the Commission's office at the same time that such testing is submitted to the Regional Board.~~

~~G. **I. Marsh Protection.** The work authorized by this amended regionwide permit shall be performed so as to prevent any significant adverse impact on any tidal marsh or other sensitive wetland resources. If any unforeseen adverse impacts occur to any such area as a result of the activities authorized herein, the permittee shall restore the area to or improve the area above its previous condition, including returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, seeding all disturbed areas with appropriate marsh vegetation.~~

I. **Long-Term Management Strategy Program.** If, at any time during the effective life of this amended regionwide permit, the Commission's laws, Bay Plan policies, or regulations are changed and are in effect regarding dredging, dredged material disposal, and beneficial reuse consistent with the multi-agency Long-Term Management Strategy Program (LTMS), this amended regionwide permit shall become null and void unless the permittee agrees to amend this authorization to meet the new laws, policies, or regulations in a manner specified by or on behalf of the Commission.

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K. **Monitoring and Enforcement.** The permittee shall allow the Commission staff or representatives of other state or federal agencies to come aboard the dredge or barge associated with any dredging or disposal episode and observe the operation(s) to ensure that these activities are consistent with pre-dredging reports required herein and other terms and conditions of this amended regionwide permit. Further, the Commission reserves the right to have post-dredging reports inspected by a reliable third party familiar with bathymetric mapping in order to verify the contents of these reports. If a third party selected by or on behalf of the Commission indicates that a post-dredging report is inaccurate, the permittee shall submit a revised report that meets the conditions of this amended regionwide permit.

III. Findings and Declarations

The Commission hereby finds, declares, and certifies that:

A. The projects authorized by this amended regionwide permit involve routine maintenance dredging and disposal activities, as defined in Regulation Sections 10602(a), 10602 (c) and 10602(e), or activities similar to those described above, as defined in Regulation Section 10601(e)(2), and thus are equivalent to a "minor repair and improvement" and qualify for authorization under an amended regionwide permit that may be issued by the Commission and approved by the Executive Director, pursuant to Government Code Section 66632(f) and Regulation Sections 11700 and 11713.

B. The project authorized by this amended regionwide permit is consistent with the McAteer-Petris Act and with the San Francisco Bay Plan in that it will not adversely affect the Bay nor public access to and enjoyment of the Bay.

C. The activities authorized herein are consistent with the Commission's Amended Coastal Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

D. Knockdown dredging, or underwater grading of shoals, is an activity proposed by the dredging community to remedy high spots within a berth, channel or marina without the mobilization of a full dredging and disposal episode. Because this process does not remove sediment up through the water column, but rather "moves" the shoal from a high location to a lower location within the dredging footprint, it is considered to have less environmental impacts than a full dredging episode where sediment is removed up through the water column, loaded on to a barge and disposed of at another, often aquatic disposal site. The sediment remains in the dredging footprint and is removed at a later date when a full dredging episode is necessary.

~~D~~ E. California Public Resources Code Section 21084 provides that the California Environmental Quality Act (CEQA) guidelines shall include a list of classes of projects that have been determined not to have a substantial adverse impact on the environment and are therefore exempt from the requirements of CEQA. This list of "categorical exemptions" is located at 14 Cal. Admin. Code Sections 15300 through 15329. Section 15304 (Class 4), subsection (g), exempts maintenance dredging where the dredged sediment ~~spoil~~ is deposited in a disposal site ~~a spoil area~~ authorized by all applicable state and federal regulatory agencies. ~~The Commission's own regulations provide that the Commission need~~

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not prepare an environmental assessment before it issues a permit for a project that falls within the list of categorically exempt activities (14 Cal. Admin. Code Section 11501). This amended regionwide permit is therefore categorically exempt because it authorizes only routine maintenance dredging of existing navigation channels, marinas and berthing areas of no more than 100,000 cubic yards of material, and the disposal of that material, provided the disposal occurs at a designated upland or ocean disposal site, ~~or a designated in-Bay disposal site where the disposal meets the target volumes of that site, and where there are no significant adverse environmental impacts.~~

F. Regionwide Permit No. RWP-10 is consistent with the Commission's dredging policies because Special Condition II-A requires that the permittee provide a water quality or waste discharge requirement from the Regional Water Quality Control Board. Special Condition II-D requires that the results from the sediment testing be provided to the Commission staff, that the project be disposed outside of the Commission Bay and certain waterways jurisdiction unless those options are infeasible, and that the disposal volume is consistent with the disposal site target volumes.

Regionwide Permit No. RWP-10 is consistent with the Bay Plan Tidal Marshes and Tidal Flat policies because each dredging project would be analyzed to determine the effects on any tidal marshes or mudflats through the application process, and Special Condition II-I requires that work be performed to prevent any significant impacts to marshes or mudflats within the project site.

Regionwide Permit No. RWP-10 is consistent with the Bay Plan Fish, Other Aquatic Organisms and Wildlife Policies because Special Condition II-G limits dredging to the specific environmental work window for that project, or requires consultation with the appropriate resource agency, thereby protecting threatened and endangered species, and species of special concern.

Regionwide Permit No. RWP-10 is consistent with the Bay Plan Subtidal Areas Policies because the projects authorized through this amended regionwide permit are for maintenance dredging of existing facilities only, and therefore, maintenance of these facilities would not affect tidal hydrology or bathymetry and impacts to species living within these dredged areas would be temporary as the site is re-colonized over time.

Regionwide Permit No. RWP-10 is consistent with water quality policies because Special Condition II-D and H require testing of sediment for contaminants and acute toxic effects to benthic organisms, water quality parameters. Special Condition II-A requires the project receive a water quality certificate or waste discharge requirements from the Regional Water Quality Control Board prior to issuance of this amended regionwide permit, and for subsequent episodes authorized by this amended regionwide permit.

Therefore, Regionwide Permit No. RWP-10 as conditioned, is consistent with the Commission's laws and policies including San Francisco Bay Plan policies on Dredging, Tidal Marshes and Tidal Flats, Fish, Other Aquatic Organisms and Wildlife, Subtidal Areas, and Water Quality.

E. G. The Commission staff will prepare a description and indicate the location, disposal site, and environmental work window of any project authorized under this amended regionwide permit, along with the name and address of the

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permittee, and attach such information to the listing of administrative regionwide permits, marsh development permits, and federal consistency actions that is sent to the Commission, immediately following the Executive Director's approval of the project under this amended regionwide permit.

IV. Standard Conditions

A. The authorization under this amended regionwide permit shall not take effect unless the permittee executes the original of this authorization and returns it to the Commission within ten days after the date of the transmittal of the amended regionwide permit to you. 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 regionwide permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended regionwide permit, the permittee/transferor and the transferee 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 regionwide permit and agrees to be bound by the terms and conditions of the amended regionwide permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended regionwide permit.

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

E. Unless otherwise provided in this amended regionwide permit, any work authorized herein shall be completed within the time limits specified in this amended regionwide permit, or, if no time limits are specified in the amended regionwide permit, within five years. If the work is not completed by the date specified in the amended regionwide permit, or, if no date is specified, within five years from the date of the amended regionwide permit, the amended regionwide permit shall become null and void. If a amended regionwide permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended regionwide permit shall be removed by the permittee or its assignee 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

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be performed, whenever any of these may be required. This amended regionwide permit does not relieve the permittee 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 notice of intent to proceed under an amended regionwide permit, as such may have been modified by the terms of the amended regionwide permit, and any plans approved in writing by or on behalf of the Commission.

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 permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.

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

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 authorization is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this amended regionwide permit.

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

L. This amended regionwide permit reflects the location of the shoreline of San Francisco Bay when the authorization 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 authorization 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 regionwide permit shall be grounds for revocation of the authorization provided to you by this amended regionwide permit. The Commission may revoke any authorization of this amended regionwide permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the amended regionwide permit has been effectively assigned. If any authorization under this amended regionwide permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended regionwide permit shall be removed by the permittee or its assignee if the amended regionwide permit has been assigned.

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N. Unless the Commission directs otherwise, the authorization provided by this amended regionwide permit shall become null and void if any term, standard condition, or special condition of this amended regionwide permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this amended regionwide permit becomes null and void, any fill or structures placed in reliance on this amended regionwide permit shall be subject to removal by the permittee or its assignee if the amended regionwide permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

~~A.—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 regionwide permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.~~

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

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

~~D.—The rights, duties, and obligations contained in this regionwide permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this regionwide permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the regionwide permit and agrees to be bound by the terms and conditions of the regionwide permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the regionwide permit.~~

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

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

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

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

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

WILL TRAVIS
Executive Director
San Francisco Bay Conservation and
Development Commission

WT

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
Environmental Protection Agency
State Lands Commission
NOAA Fisheries Service
U.S. Fish and Wildlife Service
California Department of Fish and Game

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[Date]

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* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____
Applicant

On _____
By: _____
Title

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • FAX: (415) 352-3606 • <http://www.bcdc.ca.gov>

September 7, 2007

TO: Interested Parties

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Ellen Sampson, Staff Counsel (415/352-3610 ellens@bcdc.ca.gov)

SUBJECT: Notice of Proposed Amendments to BCDC Permit Application and Related Regulations
(For Commission consideration on September 20, 2007)

On September 20, 2007, the Commission will hold a public hearing to consider amendments to the permit application form and related regulations. The application form and related regulations set out the requirements for filing a complete permit application with the Commission. The text and the initial statement of reasons for the proposed changes are posted on the Commission's web site at www.bcdc.ca.gov or can be obtained by contacting Ellen Sampson of the Commission staff.



Making San Francisco Bay Better