

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

[DATE]

ATTENTION: _____

**SUBJECT: BCDC Regionwide Permit No. RWP-8
(Notice of Intent to Proceed No. NOIxxxx.xxx.xx)**

Dear _____:

Enclosed please find an original of Regionwide Permit No. RWP-8, stamped "BCDC Original," and a copy, stamped "Permittee's Copy," both executed by the Executive Director. I am issuing this regionwide permit to you for _____ at _____, as requested by your Notice of Intent to Proceed under a regionwide permit dated _____, including its accompanying exhibits, any subsequent additions or changes, and as modified by the conditions of this regionwide permit.

You must (1) **complete** the acknowledgment section of the regionwide permit stamped "BCDC Original," which indicates that you have read and that you agree to all of the terms and conditions of the regionwide permit, and (2) **return** that entire "BCDC Original" regionwide permit to the Commission's offices within 14 days. You should retain the copy stamped "Permittee's Copy" for your records.

Please understand that this permit authorizes you to perform only the work described in your Notice of Intent to Proceed under a regionwide permit, and no more. In addition, **no** work may commence on the project until the regionwide permit stamped "BCDC Original" is executed and returned to the Commission. Until the Commission receives the executed regionwide permit, the _____ does not have the necessary authorization for the work authorized under the permit. The commencement of any work within the Commission's jurisdiction without the necessary authorization from the Commission is a violation of the McAteer-Petris Act and could subject you to substantial fines.

If you have any questions concerning the regionwide permit or the procedure outlined above, please contact me at 415/352-36__ or _____@bcdcc.ca.gov.

Very truly yours,

ANALYST
(Coastal Program Analyst)

Enc.

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



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

**REGIONWIDE PERMIT NO. RWP-8
NOTICE OF INTENT TO PROCEED NO. NOIxxxx.xxx.xx
(As Amended Through December 18, 2008)
(Routine maintenance dredging of existing
navigation channels and berthing areas of no
more than 100,000 cubic yards with disposal at
approved disposal sites)**

[DATE]

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 the original of this regionwide permit. On September 20, 2007, the Commission, by a vote of 15 affirmative, 0 negative, and 0 abstentions, approved the issuance of Amendment No. One. Subsequently, on December 18, 2008, the Commission by a vote of 18 affirmative, 0 negative, and 0 abstentions, approved the issuance of Amendment No. Two to this regionwide permit upon which your authorization is based:

I. Authorization

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

Location: _____

Description: _____

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

C. Work authorized herein must commence within one year of the date of the transmittal of this 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 five years of this regionwide permit to you, 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 nationwide permit shall become null and void.

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

C. **Five-Year Permit for Dredging.** The maintenance dredging authorized by this nationwide permit shall be completed within five years of the date of transmittal of this nationwide 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.

4. Post-Dredging Requirements

- a. Within thirty (30) days of completion of each dredging episode of the maintenance dredging authorized by this 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 MLLW; and (b) the actual areas dredged and depth based on MLLW, and any dredging that occurred outside the area authorized to be dredged or below the authorized depths.
- 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 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.

E. Knockdown Dredging. The knockdown episode proposed in this 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 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 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 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 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.

The work window provided is 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 (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.

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.

I. **Marsh Protection.** The work authorized by this 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.

J. **Long-Term Management Strategy Program.** If, at any time during the effective life of this 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 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.

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 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 regionwide permit.

III. Findings and Declarations

The Commission hereby finds, declares, and certifies that:

A. **Consistency with Commission Regulations.** The projects authorized by this regionwide permit involve routine maintenance dredging and disposal activities, as defined in Regulation Sections 10602(a), 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 a regionwide permit that may be issued by the Commission and approved by the Executive Director, pursuant to Government Code Section 66632(f) and Regulation Sections 11700 and 11713.

B. **Consistency with McAteer-Petris Act and San Francisco** The project authorized by this 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. Consistency with Coastal Zone Management Act. 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. Activity Proposed by the Dredging Community. 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.

E. Consistency with California Environmental Quality Act. California Public Resources Code Section 21084 provides that the California Environmental Quality Act (CEQA) guidelines shall include a list of classes of projects that have been determined not to have a substantial adverse impact on the environment and are therefore exempt from the requirements of CEQA. This list of "categorical exemptions" is located at 14 Cal. Admin. Code Sections 15300 through 15329. Section 15304 (Class 4), subsection (g), exempts maintenance dredging where the dredged sediment is deposited in a disposal site authorized by all applicable state and federal regulatory agencies. This nationwide permit is therefore categorically exempt because it authorizes only routine maintenance dredging of existing navigation channels, marinas and berthing areas of no more than 200,000 cubic yards of material, and the disposal of that material, provided the disposal occurs at a designated upland or ocean disposal site.

F. Commission's Dredging Policies. Nationwide Permit No. RWP-8, as amended, is consistent with the Commission's dredging policies because Special Condition II-A requires that the permittee provide a water quality or wasted 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.

Nationwide Permit No. RWP-8, as amended, 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-8, as amended, 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-8, as amended, 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-8, as amended, is consistent with water quality policies because Special Conditions 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.

Regionwide Permit No. RWP-8, as amended, 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.

G. Listing with the Commission. 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 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.

H. Enforcement Program and Civil Penalties. The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts

materials, or makes any substantial change in use of any water, land or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor.

IV. Standard Conditions

A. Permit Execution. This Regionwide Permit shall not take effect unless the permittee(s) executes the original of this Regionwide Permit and returns it to the Commission within 14 days after the date of the issuance of the Regionwide Permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

B. Permit Assignment. The rights, duties, and obligations contained in this Regionwide Permit are assignable. When the permittee(s) transfers any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this Regionwide Permit, the permittee(s)/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the 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.

C. Permit Runs With the Land. 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.

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

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

F. Life of Authorization. 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.

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

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

I. Violation of Permit May Lead to Permit Revocation. Except as otherwise noted, violation of any of the terms of this Regionwide Permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee(s) or its assignee if the permit has been effectively assigned. If the 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 Regionwide Permit shall be removed by the permittee(s) or its assignee if the Regionwide Permit has been assigned.

J. Should Permit Conditions Be Found to be Illegal or Unenforceable. Unless the Commission directs otherwise, this Regionwide Permit shall become null and void if any term, standard condition, or special condition of this Regionwide Permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this Regionwide Permit becomes null and void, any fill or structures placed in reliance on this Regionwide Permit shall be subject to removal by the permittee(s) or its assignee if the Regionwide Permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

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

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

LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and
Development Commission

LJG/XX

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
City of _____ Planning Department

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____
Permittee

On _____ By: _____

Print Name and Title

