

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Agenda Item #10

April 12, 2013

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director
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Ming Yeung, Coastal Program Analyst (415/352-3616, mingy@bcdc.ca.gov)

SUBJECT: **Staff Recommendation on Material Amendment No. Eight to BCDC Permit No. 1994.013; Bay Ship & Yacht Company and Alameda Gateway, Ltd.; Proposed New Dry Dock**
(For Commission consideration on April 18, 2013)

Recommendation Summary

The staff recommends that the Commission approve Material Amendment No. Eight to BCDC Permit No. 1994.013, which, as conditioned, would result in the following:

1. The construction and mooring of a 32,770-square-foot (0.75 acre) dry dock at Pier 5 in Alameda for the repair of large ships and vessels;
2. The creation of an approximately 63,838-square-foot (1.56 acre) open space area and 970-foot-long new segment of the Bay Trail; and
3. Contribution of \$75,000 to CalRecycle for the removal of a derelict dock, two vessels and marine debris within the Oakland Estuary.

Staff Note

Because the project involves a material amendment to an existing permit, the format of the recommendation is different than recommendations for new permit applications. The recommendation includes the language of the existing permit as well as the changes proposed by the amendment. Language to be deleted from the permit has been ~~struck through~~ and language to be added to the amended permit has been underlined. Language that has neither been ~~struck through~~ nor underlined is language of the existing permit that will remain unchanged with the adoption of Amendment No. Eight.



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Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

A. Subject to the conditions stated below, the permittees, Alameda Gateway, Ltd., ~~and~~ Bay Ship and Yacht Company and the City of Alameda, are granted permission to do the following:

1. In the Bay:

- a. Moor, operate, and maintain a floating, 32,700-square-foot (0.75 acre) dry dock ~~at pier 5 (the AFDL-38) (Amendment No. Five) and moor, convert, operate and maintain an additional approximately 32,770-square-foot (0.75 acres) floating dry dock (the HMB-1) both at Pier 5 by installing flooding and crossover valves, de-ballasting pumps and valves, tank venting and appropriate, resource agency approved fish screens (Amendment No. Eight);~~
- b. Remove to an authorized location outside the Commission's jurisdiction, a floating, 8,960-square-foot dry dock (Amendment No. Four);
- c. Install, maintain and use an approximately 11,256-square-foot, pile-supported ship lift including the following: (1) a 7,000-square-foot platform; (2) eight pile caps measuring 15 feet by 22 feet (2,640 square feet); (3) six walkways measuring 17 feet by 8 feet (totaling 816 square feet); and (4) an 800-square-foot cantilever for transitioning ships from the ship lift to an upland rail system (Amendment No. Four);
- d. Remove 5,590 square feet of concrete work floats to an authorized location outside the Commission's jurisdiction and replace and maintain them with 10,425 square feet of concrete work floats (Amendment Nos. Four and Five);
- e. Install and maintain approximately thirteen, 18-square-inch piles (totaling 20 square feet) for mooring work floats (Amendment Nos. Four and Five);
- f. In order to control storm water run-off, install and maintain a curb along the top of a new bulkhead constructed by the U.S. Army Corps of Engineers (Amendment Nos. Four and Five);
- g. Construct and maintain an additional 190 feet of sheet-pile bulkhead along the Inner Harbor to connect with the Corps-constructed bulkhead (Amendment Nos. Four and Five);
- h. Seismically retrofit and maintain the remaining deck of Pier 2 and install a guardrail so that the remaining pier can be used by Bay Ship and Yacht (Amendment Nos. Four and Five);
- i. Construct, use and maintain a 3,500-square-foot expansion of an existing service road at an area that has previously been filled per BCDC Permit/Consistency Determination No. 14-00 (Amendment No. Five); and
- j. Place up to 954 cubic yards of riprap resulting in approximately 9,990 square feet of Bay fill coverage, along approximately 340 linear feet of the shoreline near and under the Pier 5 causeway (Amendment No. Six).

2. Within the 100-foot shoreline band:

- a. Install, maintain and use approximately five single-story, approximately 532-square-foot, temporary buildings for use as office and storage space, for a total area of 2,660 square feet of new building space (Amendment No. Four);

- b. Place up to 8 construction storage containers on pier 5;
 - c. Install, use and maintain a 1,200-square-foot portion of a new administration building on the west side of the Bay Ship and Yacht lease area (Amendment No. Four);
 - d. Install approximately 50 linear feet of chain link fence from the western edge of the Saw Tooth building to the top of bank at the shoreline;
 - e. Repave the entire shipyard and install a stormwater collection system (Amendment No. Four);
 - f. Install, use, and maintain portions of a rail system that will transport ships from the ship lift to any of three upland berths and anchor the rail system by driving approximately 66 piles near the shoreline (Amendment No. Four);
 - g. Create and maintain approximately 17,337 square feet of public access that extends 270 feet along the shoreline and measures 60 feet in width from the top of bank (top of the riprap) to the administration building and from the top of bank to the fence, including a 947-square-foot entry plaza, an eight-foot-wide pathway, a twenty-foot-in-diameter circular viewing area, a minimum of two benches and two trash receptacles, and landscaping on both sides of the pathway (Original Permit and Amendment No. Four);
 - h. Demolish an approximately 847-square-foot lunch room, and a 1,882-square-foot repair shop and remove all demolition debris to an authorized location outside the Commission's jurisdiction (Amendment No. Five);
 - i. Construct, use and maintain a 758-square-foot portion of a new 17,104-square-foot Refit Bay facility (Amendment No. Five);
 - j. Construct, use and maintain a 3,194-square-foot portion of a 4,490-square-foot new Combined Use building (Amendment No. Five);
 - k. Relocate, use and maintain a 2,000-square-foot blast booth facility and a 4,800-square-foot water treatment facility (Amendment No. Five); and
 - l. Place up to 477 cubic yards of riprap resulting in approximately 5,310 square feet of shoreline band coverage, along approximately 340 linear feet of the shoreline near and under the Pier 5 causeway (Amendment No. Six).
- B. This authority is generally pursuant to and limited by the permittees' original application received November 21, 1994, the permittees' letter dated December 20, 1999 requesting Amendment No. One, the permittees' letter dated July 17, 2000 requesting Amendment No. Two, the permittees' letter dated January 30, 2001 requesting Amendment No. Three, the permittees' letter dated October 7, 2003, as amended through October 6, 2004, requesting Amendment No. Four, the permittees' letter received August 26, 2005 requesting Amendment No. Five, ~~and~~ the permittees' application received February 8, 2007 requesting Amendment No. Six, the permittees' letter dated January 8, 2008, requesting Amendment No. Seven and the permittees' application dated July 12, 2012, requesting Amendment No. Eight, including all accompanying and subsequently submitted exhibits and correspondence, but subject to the modifications required by the conditions herein.
- C. The work authorized herein by the original permit and the work authorized by Amendment No. One of this amended permit, ~~was were~~ to have commenced by October 15, 2000, and ~~was were~~ to have been diligently pursued to completion and completed by January 31, 2001. The work authorized herein by Amendment No. Four of this amended permit was to commence by November 15, 2005, and was to be diligently pursued to completion and be completed by November 15, 2010, unless the

terms of this authorization are changed by further amendment of this amended permit. The work authorized herein by Amendment No. Five of this amended permit must commence by March 1, 2009, and must be diligently pursued to completion within one year of commencement or by March 1, 2010, whichever is earlier, unless the terms of this authorization are changed by further amendment of this amended permit. The work authorized herein by Amendment No. Six of this amended permit must commence by June 30, 2007 and must be diligently pursued to completion within one year of commencement or by June 30, 2008, whichever is earlier, unless the terms of this authorization are changed by further amendment of this amended permit. Amendment No. Seven granted a time extension for commencement time, until March 1, 2012 and completion time, until March 1, 2013. The work authorized by Amendment No. Eight to this amended permit must commence by January 1, 2014 and must be diligently pursued to completion within one year of commencement or by June 30, 2014, whichever is earlier, unless the terms of this authorization are changed by further amendment of this amended permit.

- D. The project includes a 32,700-square-foot dry dock (after-the-fact authorized in the original permit), an 11,256-square-foot ship lift (Amendment No. Four), 4,835 square feet of new work floats (Amendment No. Four), 20 square feet of new piles (Amendment No. Four), ~~and~~ 9,990 square feet of riprap (Amendment No. Six) and an additional 32,770-square-foot dry dock (Amendment No. Eight). The total amount of fill is ~~58,801~~ 91,571 square feet (~~37,535~~ 70,305 square feet of floating fill, 11,276 square feet of pile-supported fill, including the piles and 9,990 square feet of solid fill). Out of the total ~~58,801~~ 91,571 square feet of fill, the net gain in fill authorized in Amendment No. Four is 7,151 square feet. The net gain in fill authorized by Amendment No. Six is 9,990 square feet and the net gain in fill authorized by Amendment No. Eight is 32,770 square feet. This net gain does not factor the creation of 6,086 square feet of new water area by the Army Corps as part of the “-50 Foot Project.” The removal/excavation of 6,086 square feet of shoreline for the Corps’ -50 Foot Project, is the reason for Bay Ship & Yacht’s amendment request. Counting the creation of new Bay at the site as a result of the Corps project, the net gain in Bay fill is 11,055 square feet. The 3,500-square-foot area, which was previously in the Commission’s bay jurisdiction and which is the location of a service road to be expanded per Amendment No. Five of this amended permit, was authorized and accounted for in BCDC permit/Consistency Determination No. 14-00 for the U. S. Army Corps of Engineers’ Inner Harbor Turning Basin construction project. The total net gain also does not factor the creation of new Bay and open water from the removal of a derelict dock, two abandoned vessels and marine debris that will occur with the funding of \$75,000 to CalRecycle to mitigate for the addition of the new dry dock authorized in Amendment No. Eight. Because much of the debris is submerged and dilapidated, it is difficult to precisely quantify how much fill the debris totals, but it is estimated to be approximately 6,100 square feet in size.

Bay Fill for Amendment No. Eight

Type of Fill (sf)	Removed (sf)	New (sf)	Total Net Fill (sf)
Floating		32,770	32,770
Marine Debris (All Types)	6,100		(6,100)
Total	6,100	32,770	26,670

E. The project also through Amendment No. Seven provides 17,337 square feet of public access along 270 linear feet of shoreline, including a shoreline pathway, elevated viewing area, landscaping, amenities, and signage.

The public access for the project authorized in Amendment No. Eight includes an approximately 63,838-square-foot (1.56 acre) open space area that would include: (1) a 970-foot-long, ten-foot-wide asphalt trail with a single four-foot-wide, decomposed granite multi-use shoulder; (2) approximately five overlooks with seating, signage, and a minimum of one marine/nautical salvaged item at each overlook; (3) landscaping on both sides of the pathway with native drought tolerant and low-maintenance plantings and at least two Bay Trail/public access signs and two interpretive signs (Exhibits B and C).

Public Access for Amendment No. Eight

<u>Type of Public Access</u>	<u>Square Feet</u>	<u>Acres</u>	<u>Shoreline Length (miles)</u>
On-Site (new)	63,838	1.56	0.183
<u>Total</u>	<u>63,838</u>	<u>1.56</u>	<u>0.183</u>

II. Special Conditions

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

A. Specific Plans and Plan Review

1. **Plan Review and Approval.** No work whatsoever shall commence pursuant to this authorization until final precise site and public access plans, including grading and landscaping details 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. Site plans and public access plans shall include and clearly label the mean high tide line, the line 100 feet inland of the mean high tide line, property lines, grading, details showing the location, types, dimensions, and materials to be used for all structures, drainage, fences, utilities, and other proposed improvements. The specific drawings and information required shall be determined by the staff and shall be generally consistent with the plans and information required in Special Condition II-B-2 below and the plans attached herein as Exhibit A.

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

- a. completeness and accuracy of the plans in showing the features required above, particularly the mean high tide line, property lines, and the line 100-foot inland of the mean high tide line, and any other criteria required by this authorization;
- b. consistency of the plans with the recommendations and advice of the Commission’s Design Review Board; and
- c. consistency of the plans with the terms and conditions of this authorization.

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

2. **Conformity With Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the signage, levee or landscaping work without first obtaining written approval of the change(s) by or on behalf of the Commission.
3. **Discrepancies Between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittees are responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.
4. **Plans for Work Authorized in Amendments**
 - a. **Plans for Improvements Authorized by Amendment No. Four.** The improvements authorized by Amendment No. Four shall be built generally in conformance with the plan entitled "Bay Ship and Yacht Facility Upgrade and Shiplift", prepared by Ben C. Gerwick, Inc., as revised through May 4, 2004, and the plan entitled "Bay Ship Public Access Improvements", prepared by OMG, as revised through November 15, 2004.
 5. b. **Plans for Improvements Authorized by Amendment No. Five.** The work authorized by Amendment No. Five of this amended permit shall be built generally in conformance with the plans entitled "Repair Facilities Project," dated August 5, 2005 and August 17, 2005 and prepared by Bay Design and Bay Ship and Yacht Company. Provided that the work authorized in Amendment No. Five is constructed in accord with these plans, no additional plan review is required.
 6. c. **Plans for Improvements Authorized by Amendment No. Six.** The work authorized by Amendment No. Six of this amended permit shall be built generally in conformance with the plans entitled "Rip Rap Plan, Bay Ship & Yacht," dated December 29, 2006, and prepared by W.B. Clausen Structural Engineers. Provided that the work authorized in Amendment No. Six is constructed in accordance with these plans, no additional plan review is required.
 - d. **Plans for Improvements Authorized by Amendment No. Eight.** Final plans submitted pursuant to Special Condition II-A of this amended permit for the public access improvements authorized by Amendment No. Eight of this amended permit shall be generally in conformance with the plans entitled, "Bay Ship and Yacht Public Access Improvements, Alameda, CA; Conceptual Landscape Masterplan," last revised on March 3, 2013 and prepared by OMG, and attached as Exhibit C to this amended permit.

B. **Public Access**

1. **Area.** The following public access areas shall be provided:
 - a. **East of Ferry Terminal.** An The approximately 17,337-square-foot public access area connecting to the Ferry Terminal public access and encompassing the entry plaza, the path, landscaping, and the viewing platform, as shown on Exhibit A, shall be improved and maintained for public access uses (Amendment No. Four).

- b. **West of Ferry Terminal.** An approximately 63,838-square-foot (1.47 acres) area that extends 970 feet along the shoreline west of the Ferry Terminal and encompassing the Bay Trail path, landscaping, and five overlook areas, as shown on Exhibit B (Amendment No. Eight).
2. **Public Access Guarantee.** By completing the acknowledgment section of this amended permit, which indicates that the permittees both read and understand all of the terms and conditions of the amended permit, the permittees guarantee such rights for the public for access for walking, sitting, viewing, nature study, picnicking, and other related purposes to the public access areas, as described in Special Condition II-B-1 above. This guarantee shall run with the duration of the ship repair facilities and operations authorized herein, or until this amended permit is otherwise modified by or on behalf of the Commission. If the permittees wish to use either the public areas for other than public access purposes, they must obtain prior written approval by or on behalf of the Commission. This amended permit create rights in favor of the public which shall commence no later than the construction of the public access improvements required by this authorization.
3. **Improvements within the Total Public Access Area East of the Ferry Terminal (Amendment No. Four).** Prior to use of the shipyard improvements authorized in Amendment No. Four, the permittees shall install the following improvements, as generally approved by or on behalf of the Design Review Board, and as generally shown on Exhibit A:
- a. **Plaza.** An approximately 947-square-foot entry plaza adjacent to the Ferry Terminal public access sidewalk, located on the west side of the property (Amendment No. Four);
 - b. **Paths.** An approximately 218-foot-long, 8-foot-wide path connecting the entry plaza with the new viewing platform;
 - c. **Seating.** At least three benches within the total public access area, any number of which may be constructed using artifacts from the ship repair operation pursuant to Special Condition II-A (Original Permit and Amendment No. Four);
 - d. **Public Access Signs.** At least two public access signs (one at the intersection of Main Street and the Ferry Terminal Public Access and the other near the intersection of the new pathway and the Ferry Terminal Public Access);
 - e. **Interpretive Signs.** At least one interpretive sign (the content of which shall be approved by or on behalf of the Commission) shall be installed on the viewing platform. The sign should explain the dry dock and ship repair operations, their function in the Bay Area port economy, and should point out important landmarks visible from the viewing platform;
 - f. **Viewing Area.** An elevated, circular public viewing area that measures approximately 20 feet in diameter, at the eastern terminus of the pathway;
 - g. **Plaza Furnishings.** Plaza furnishings that are attractive and usable and add an interpretive element by reusing artifacts from the ship repair facilities (Amendment No. Four); and
 - h. **Native Landscaping.** Irrigated landscaping over the remainder of the public access area with native or drought-resistant plants, consistent with the Design Review Board's November 8, 1999 recommendations, for the original permit application and with the permittees' request for Amendment No. Four.

Such improvements shall be installed or constructed consistent with the plans approved pursuant to Special Condition II-A of this authorization.

4. **Improvements within the Public Access Area West of the Ferry Terminal (Amendment No. Eight)**. By November 1, 2013, the permittees shall install the following improvements, as generally approved by or on behalf of the Design Review Board, and as generally shown on Exhibit C:
 - a. **Bay Trail Path**. A 970-foot-long, ten-foot-wide asphalt trail with a four-foot-wide decomposed granite multi-use shoulder that extends from the Ferry Terminal west, and that includes a connection south to Main Street;
 - b. **Overlooks**. A total of five overlook areas with seating, signage, a minimum of one marine/nautical salvaged item at each overlook, and low plantings;
 - c. **Public Access Signs**. At least two public access signs (one at the edge of the new pathway at the Ferry Terminal and another at the west end of the pathway);
 - d. **Interpretive Signs**. At least two interpretive signs (the content of which shall be approved by or on behalf of the Commission) shall be installed at each of the overlook areas. The sign should explain the dry dock and ship repair operations, their function in the Bay Area port economy, the history of the site, and should point out important landmarks visible from the public access area; and
 - e. **Native Landscaping**. Landscaping over the remainder of the public access area with native or drought-resistant plants, consistent with the Design Review Board's October 8, 2012 recommendations, for Amendment No. Eight. The landscaping shall be irrigated or watered long enough for the plants to become established.
4. **5. Maintenance**. The areas and improvements within the public access area described in Special Condition II-B-3 and 4 shall be permanently maintained by and at the expense of the permittees or their assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces, benches, replacement of any plant materials within the access areas that die or become unkempt, removal of any encroachments into the access areas, and assuring that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittees shall correct any maintenance deficiency noted in a staff inspection of the site.
5. **6 Assignment**. The permittees shall transfer maintenance responsibility to a public agency or another party acceptable to the Commission at such time as the property transfers to a new party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this amended permit.
6. **7. Reasonable Rules and Restrictions**. The permittees may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittees have both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

7. **8. Debris Removal.** Prior to commencement of public access construction, all existing debris located in the area of the new public access shall be removed to an area outside the Commission's jurisdiction. To prevent uneven settling of the public access improvements, such debris, which includes pieces of broken concrete, shall not be used in the construction of the new public access improvements.
8. **9. Landscape Contractor.** The public access improvements authorized herein, including all public access amenities, hard surfaces, planting, and irrigation, shall be installed by a licensed landscape contractor. The permittees shall submit within 45 days of completion of the public access improvements evidence, such as an invoice with the contractor's name and license number, that the improvements were installed by such a licensed landscape contractor (Amendment No. Four).
- C. **Transfer of Property Ownership for Public Access.** By June 1, 2013, the permittees shall provide BCDC staff with proof of conveyance of title from the U.S. Navy to the City of Alameda, for the property where the public access West of the Ferry Terminal will be constructed and shall also provide any maintenance, lease or other agreement between the City and Bay Ship and Yacht for the long-term maintenance of the public access area.

If conveyance of title from the U.S. Navy to the City of Alameda for the property does not occur by June 1, 2013, the City shall provide BCDC staff on that same date with an update on the conveyance, an explanation for the delay, and an expected timeframe when conveyance will occur. If it is likely that the conveyance will be further delayed, the City shall obtain from the U.S. Navy, no later than July 1, 2013, appropriate authorization from the U.S. Navy for development of the property for public access, as required in this amended permit. If no evidence that the permittees have obtained sufficient title to construct, use, and maintain the public access area within the time specified herein has been provided to the Commission by July 1, 2013, the authorization for the location and operation of drydock HMB-1 contained in Amendment No. Eight may terminate and may become null and void, as determined by the Executive Director (Amendment No. Eight).

D. Public Views

1. **Visual Access.** The permittees shall protect public views from the public access area to the Bay and the drydock by limiting the number and location of storage containers placed on Pier 5. The permittees shall locate no more than 8 containers on Pier 5 and may only stack one additional container on top of each of the two containers that are closest to the gangway. No materials may be stored on top of any storage containers. Containers and materials which are not in conformance with this amended permit shall be relocated by February 1, 2000 (Amendment Nos. Four and Eight).
 2. **Landscaping.** The permittees shall protect public views from the public access area to the Bay and the drydock by landscaping the view corridor with plants or shrubs that do not exceed three feet in height and that have been approved by or on behalf of the Commission pursuant to Special Condition II.A and II.B of this amended permit (Amendment Nos. Four and Eight).
- E. **Bay Fill Mitigation.** By June 1, 2013, the permittee, Bay Ship and Yacht, shall prepare and enter into a Memorandum of Agreement (MOA) among the permittee, BSY and the Commission which shall provide for the permittee, BSY to remit a total of \$75,000 in funds to The California Department of Resources Recycling and Recovery's (CalRecycle) Oakland Estuary Clean-Up Project (OECUP) and the use of Bay Ship and Yacht's facilities, for the removal of an abandoned dock, two vessels, and marine debris at Union Point Park near Coast Guard Island in the Oakland Estuary, or in the event that the environmental impact or the cost of removing those facilities makes

such removal cost prohibitive, another collection of marine debris from the Oakland estuary. Any required environmental review under the California Environmental Quality Act (CEQA) and any other required approvals or permits by regulatory agencies (including but not limited to, BCDC, RWQCB or NMFS) shall be obtained by CalRecycle prior to the removal of any marine debris from the Oakland Estuary. The MOA shall provide that if the removal of the above-identified debris has not occurred within one year of the issuance of Amendment No. Eight to this permit due to infeasibility due to environmental, permitting, financing or other reasons, the permittee, BSY, shall coordinate with CalRecycle and the Commission to propose appropriate modifications to the MOA for an alternate use of the funds by CalRecycle for the removal of marine debris within the scope of the OECUP (Amendment No. Eight).

F. Minimizing Impacts to Special-Status Fish Species. The permittees shall conduct all work authorized in Amendment No. Eight, in accord with the following conditions:

1. **Work Windows.** All work to convert the HMB-1 barge into a dry dock (including installing flooding and crossover valves, de-ballasting pumps and valves, tank venting and appropriate fish screens) shall be conducted during June 1 and November 30 to minimize impacts to green sturgeon and steelhead.
2. **Fish Screens.** Fish screens as required by NMFS and the RWQCB shall be installed on the dry dock to minimize the potential for fish entrainment and impingement. The screens shall be raised to an elevated position when not in use for safety concerns, to prevent damage to the pier or fender structures, as a "self-cleaning" mechanism to prevent clogging from marine life, and to limit the effects of galvanic corrosion to the dry dock.
3. **Bubble Curtains.** When moving ships into the dry dock, the permittees shall use bubble curtains within the center of the dry dock during the entire time the ship is being transferred and the gates are open to deter fish from entering the dry dock. Bubble curtains shall be used pursuant to the recommendations of NMFS.

D. G. Minimizing Construction Impacts

1. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling 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 their expense.
2. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission and disposed at authorized sites. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittees, their assigns, 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.
3. **Water Quality.** The permittees shall comply with all provisions of San Francisco Bay Regional Water Quality Control Board NPDES Permit No. CA 003012 and General Permit No. CAS000001 for discharge of stormwater (Amendment No. Four) and NPDES Permit No. CAG032012, Order No. R2-2012-0050, dated June 13, 2012 and the Water Quality Certification for the installation and use of dry dock HMB-1, dated March 12, 2013 (Amendment No. Eight).
4. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, in any salt pond, or in any managed wetland within the Commission's jurisdiction as part of the project authorized herein.

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

1. **Riprap Material.** Riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited.
2. **Riprap Placement.** Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site. The riprap should connect with the existing riprap on either sides of the project area to establish an even and unified shoreline.
3. **Maintenance.** The shoreline protection improvements authorized herein shall be regularly maintained by, and at the expense of the permittees, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Within 30 days after notification by the staff of the Commission, the permittees or any successor or assignee shall correct any maintenance deficiency noted by the staff.

~~F.~~ I. **Notice of Assignment**

1. **Notice to Buyers.** Prior to entering into any agreement to sell or otherwise transfer any property interest to any third party, the permittees, or any assignee of this amended permit or any part of it, 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 obtain approval of construction plans prior to any construction.
2. **Partial Assignment of Permit.** Within ten days after executing any agreement to sell or otherwise transfer any interest in the subdivision to a buyer, the transferor(s) shall (a) notify the Commission of the nature of the transfer, the name address and telephone number of the buyer and the date of the transfer, and (b) shall also submit a partial assignment of this amended permit for the area transferred that has been executed by the buyer indicating that the buyer has read, understood, and agreed to the terms and conditions of this amended permit.

~~G.~~ J. **Notice to Contractor.** The permittees shall provide a copy of this amended permit to any contractor or person working in concert with the permittees to carry out the activities authorized herein and shall point out the special conditions contained herein.

~~H.~~ K. **Recording.** The permittees shall record this document or a notice specifically referring to this document with Alameda County within 60 days after execution of the amended permit issued pursuant to this authorization and shall, within 60 days after recordation, provide evidence of recordation to the Commission.

- ~~L~~ L. **Removal of Ship Repair Facilities.** This authorization for the dry dock(s) and other ship repair facilities authorized herein shall run with the terms and for the duration of the lease agreement between the City of Alameda and Alameda Gateway, Ltd., dated April 20, 1984, including the additional 25-year term should Alameda Gateway choose its option to renew the lease. Upon expiration of said lease, all structures, equipment, and facilities associated with the dry dock and other ship repair operations authorized under this amended permit must be removed to a location outside the Commission's jurisdiction.
- ~~J~~ M. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein, have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittees, their assigns or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.
- ~~K~~ N. **Number and Location of Temporary Buildings.** The permittees shall place no more 10,080 square feet of temporary buildings or no more than 16 single-story, temporary buildings, whichever is less, within the 100-foot shoreline band. The permittees shall establish a five-foot setback line from the top of the estuary bank. All structures must be located inland of the five-foot setback. Structures that are currently within the setback and/or cantilevered over the top of bank shall be relocated inland of the setback by February 1, 2000.
- ~~L~~ O. **Advertising.** The dry dock(s) shall not be used as a stage for any kind of advertising unrelated to the ship repair facilities herein, including but not limited to painted-on advertisements and banners hung from the top of the dry dock walls.
- ~~M~~ P. **Relocation of Ship Repair Facilities.** The dry dock(s) and associated ship repair facilities and operations authorized herein shall not interfere with the use of any area required by the U.S. Army Corps of Engineers for the safe maneuvering of commercial vessels. All facilities authorized herein that will interfere with the planned turning basin required for safe maneuvering of commercial vessels, shall be moved out of the turning basin area and to a location outside of the Commission's jurisdiction or to a location specifically authorized by the Commission within 30 days of the notification by BCDC staff of the initiation of construction of the 50-foot channel deepening project.
- ~~N~~ Q. **Drydock Removal.** Prior to use of the new ship lift authorized in Amendment No. Four, the 8,960-square-foot drydock shall be moved to an authorized location outside of the Commission's jurisdiction (Amendment No. Four).
- ~~O~~ R. **In-Kind Repairs and Maintenance.** Any in-kind repairs and maintenance of the drydocks, ship lift, work floats and pilings, bulkhead and associated curb, Pier 2 and Pier 5 shall only use construction material that is approved for use in San Francisco Bay. Construction shall only occur during current approved months during the year to avoid potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions (Amendment Nos. Five and Eight).
- ~~P~~ S. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas (Amendment No. Five).

- ~~Q.~~ **T. Certificate of Occupancy or Use.** Prior to occupancy or use of any of the improvements authorized herein, the permittees 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 inspect the project site and provide the permittees with written notification of all outstanding amended permit compliance problems, if any. The permittees shall not occupy or make use of any improvements authorized herein until the staff has confirmed that the identified permittees 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 inspection and notify the permittees of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the amended permit, but the permittees may occupy and use the improvements authorized herein (Amendment No. Five).
- ~~R.~~ **U. 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 the area; so that the permittees or the permittees' successors in interest will require further action by or on behalf of the Commission prior to any future change of use or work within areas filled pursuant to this authorization (Amendment No. Five).
- ~~S.~~ **V. 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 \$1,000 per day up to a maximum of \$20,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$5,000 in addition to any other penalties, knowing and intentional penalties of between \$50 and \$5,000 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 (Amendment No. Five).

III. Findings and Declarations

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan*, the California Environmental Quality Act, and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- A. **Use.** The project site is not located in a priority use area as designated in the *San Francisco Bay Plan*.
- B. **Bay Fill.** The Commission may allow fill only when it meets the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that: (a) fill "should be limited to water-oriented uses or "minor fill for improving shoreline appearance and public access"; (b) fill in the Bay should be approved only when "no alternative upland location" is available; (c) fill should be "the minimum amount necessary to achieve the purpose of the fill"; (d) "the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment..."; and (e) "fill should be authorized when the applicant has such

valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.” Section 66605 of the McAteer-Petris Act states, in part, that: (1) fill in the Bay can be authorized only when public benefits of the fill exceed the public detriment from the loss of water areas; (2) the fill must be limited to water oriented uses (such as water related industry), or minor fill for improving shoreline appearance or for public access; (3) fill can be authorized only when no alternative upland location exists for such purposes; (4) the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill; and, (5) the nature, location and extent of any fill should be such that it will minimize harmful effects to the Bay Area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources....”

1. **Public Benefits.** There are few remaining ship repair facilities in the Bay area. The AFDL-38 dry dock will primarily service ferries and tugboats. Reliable tugboats are a crucial component of port activities and therefore important to the economic vitality of Bay Area ports, especially at nearby Port of Oakland. Ferries, on the other hand, facilitate efficient public transportation. Therefore, the dry dock and related ship repair facilities will provide a public benefit by contributing to efficient public transportation and the economic vitality of ports in the Bay. Other benefits include improved public access along the shoreline and improved shoreline appearance on a portion of the project site.

The major public detriments from the fill will result from potential water quality impacts. The City of Alameda prepared a Mitigated Negative Declaration for project impacts and found that, with implementation of the best management practices, the impacts would be mitigated to a point of non-significance. The City’s project analysis for the negative declaration included a second dry dock, located at Pier 4. The mitigation measures included in the negative declaration apply to the mooring, operation and maintenance of the second dry dock, even though it is now located at Pier 2. Therefore, the project, as amended, will operate under the same best management practices to mitigate any potential impacts to the point of non-significance.

The larger dry dock was formerly located at Pacific Drydock, across the estuary and south of Highway 880 in the City of Oakland. While dry dock mooring and operations constitute a new use in this particular area of the estuary, it does not constitute new fill in the estuary that would usually require mitigation.

Because the project would provide a crucial link in the economic vitality of Bay Area ports, facilitate efficient public transportation, and improve public access along the shoreline, the Commission finds that the proposed project provides more public benefits than detriments and is therefore consistent with this provision of the McAteer-Petris Act.

2. **Water-oriented Use.**

- a. **The AFDL-38 Drydock.** The AFDL-38 dry dock will be used for ship repairs and is thus a port use, which is defined in the McAteer-Petris Act as a water-oriented use for which fill may be permitted. A service road will be expanded onto an area that was previously filled pursuant to BCDC Permit/Consistency Determination No. 14-00. No additional fill in the Bay will be needed for this road, the road is technically in the Bay. While roads are not a use for which fill may be authorized, this road is integral to serve the continued demands of an operation that serves a water-oriented use and, thus, can be considered part of the water-oriented use (Amendment No. Five).

b. **The HMB-1 Drydock.** The HMB-1 dry dock would be used for ship repairs, a maritime and water-oriented use, and would accommodate the repair of larger vessels within the Bay Area, a crucial component of maritime industry activities and operations. The dry dock is expected to result in 20 additional docking projects and \$3 million in additional revenue annually, supporting new local employment (Amendment No. Eight).

3. **Alternative Upland Location/Minimum Fill**

a. **The AFDL-38 Drydock.** Dry docks are floating facilities that are operated by submerging the dock and maneuvering ships onto the dry dock. Therefore, an upland location is infeasible. The AFDL-38 dry dock is approximately 389 feet long by 84 feet wide while the tugboats and ferries that would be serviced on the dock are typically from 100 to 300+ feet long. Thus, the dry dock is an appropriate size to meet the ship repair demand. The second, smaller dry dock will service smaller ships and allow Bay Ship and Yacht to service more than one ship at a time.

b. **The HMB-1 Drydock.** By permanently placing and continually using the dry dock, the HMB-1 project would result in an increase of 32,770 square feet of new floating fill. This dry dock was purchased by Bay Ship & Yacht because it was already constructed and was of sufficient size to accommodate anticipated ships needing repair. For this reason, the permittee has stated the proposed dry dock is the minimum fill necessary for servicing the size of vessels they are expecting.

~~The Commission finds that the fill is the minimum amount necessary to service tugboats and ferries and that an alternative upland location is inconsistent with the nature of dry dock operations.~~

4. **Minimization of Harmful Effects to the Bay Area, Such as the Reduction or Impairment of the Volume Surface Area, or Circulation of Water, Water Quality, Fertility of Marshes, or Fish or Wildlife Resources.** The dry docks will float at all stages of the tide and thus will have minimal adverse impact on the circulation of water. The volume of fill (the displacement of Bay volume) would will vary according to stages in the ship repair process and how much of the dock is submerged at a given stage. There will be a loss of 41,660 square feet (0.96 acre) of surface area and consequent shading; however, visibility in the estuary is such that light only penetrates 6 to 8 feet below the surface and the water depth in this area is between 30 and 45 feet. Thus, mooring of the dry docks is not likely to affect organisms on the Bay bottom, as light is already limited.

As discussed more fully in the "Natural Resources Policies" section below, best management practices and other conditions have been incorporated into the HMB-1 dry dock project to minimize the impacts of the proposed new fill associated with the HMB-1 dry dock on the Bay. NOAA's National Marine Fisheries Service (NMFS) determined that, with the mitigation measures incorporated into the project, such as, the project will not likely adversely affect threatened CCC steelhead, threatened green sturgeon and their critical habitat. NMFS determined that the project will adversely affect Essential Fish Habitat (EFH) for various federally-managed species within the Pacific Groundfish, Coastal Pelagic, and Pacific Salmonid Fishery Management Plans (FMPs) through shading and loss of prey resources but that the project includes measures to avoid, minimize or otherwise offset such adverse effects. For this reason, NMFS concluded that no further EFH conservation recommendations were necessary. On March 12, 2013, the Regional Water Quality Control Board (RWQCB) issued a water quality certification for the project.

~~Because the dry docks are floating fill that will have a minimal adverse impact on the circulation of water and because the permittees would implement best management practices consistent with their San Francisco Regional Water Quality Control Board Permit and General Permit, the Commission finds that the project minimizes harmful effects to the Bay area.~~

5. **Valid Title.** The upland portion of Bay Ship & Yacht's ship repair facility is located on land owned by Alameda Gateway, Ltd. and leased to Bay Ship & Yacht Company. Pier 5, where the proposed dry dock would be moored, is on land owned by the City of Alameda and leased to Bay Ship & Yacht Company. The United States Government owns the property where the public access pathway and area west of the Ferry Terminal is located, but this area is part of the land that the City is expecting to be conveyed from the United States government in May 2013 through an Economic Development Conveyance. The City already has a purchase and sale agreement for the property, which was executed in June 2000 and the City has submitted a letter to BCDC supporting the creation of the public access pathway and Bay Trail in this location. However, at the date of this authorization, this transfer has not yet occurred although it is anticipated to be completed by May 2013. This authorization is conditioned so that either the transfer to the City of the area where the public access will be located occurs by June 1, 2013, or the U.S. Navy has provided evidence of their authorization of the public access area, use for public access and public access improvements by July 1, 2013, or the authorization for the location and operation of dry dock HMB-1 may become null and void.

6. **Safety of Fills / Climate Change / Sea Level Rise (Amendment No. Eight).** Policy 4 of the Bay Plan policies on Safety of Fills states, in part, that "adequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project," that "new projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity."

Policy 2 of the Bay Plan policies on Climate Change states in part, "when planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise", that "a range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used in the risk assessment" and that "the risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices." Policy 3 requires all projects "other than repairs of existing facilities, small projects that do not increase risks to public safety, interim projects and infill projects within existing urbanized areas" to be "designed to be resilient to a mid-century sea level rise projection."

In addition, Policy 5 of the Bay Plan policies on Public Access state, "public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding."

On March 18, 2013, the permittee Bay Ship & Yacht's consultants provided: (1) a memorandum on how the proposed public access and the HMB-1 dry dock would be used and constructed to avoid significant impacts from sea level rise and shoreline flooding; and (2) a March 20, 2013 report prepared by Moffat &

Nichols, Engineers dated March 20, 2013, that analyzed tidal data and provided recommendations to manage the impact of sea level rise specifically on the public access area of the project.

According to the permittee, Bay Ship & Yacht, dry docks are maintained to function for many years. The permittee anticipates that with its typical maintenance standards, the HMB-1 dry dock will continue to be utilized through 2050. The elevation of the dry dock when moored will rise and fall with tidal action. Therefore, the dry dock itself will not be impacted by sea level rise and is constructed with materials that withstand periodic flooding and submergence for its expected life. However, the pier structure (Pier 5) to which the dry dock is moored, as well as the public access areas could be impacted by sea level rise.

The following table includes the tidal datum elevations for the long-term station at Alameda obtained from the National Oceanic and Atmospheric Administration (NOAA), including the 100-year extreme high water levels for the project vicinity (also known as FEMA's Base Flood Elevation (BFE)) or "100-year flood elevation", based on long term data from the Alameda tide gauge, as well as work completed by the U.S. Army Corps of Engineers (1984). The 100-year BFE is defined by the Federal Emergency Management Agency (FEMA) as the "flood elevation having a 1% chance of being exceeded in a given year."

Tidal Datum	Elevation (feet)			
	MLLW	NAVD88	NGVD29	City Datum
100-year flood elevation	9.70	9.47	6.78	3.37
Highest Observed Water Level (HOWL) (12-3-83)	9.65	9.42	6.73	3.32
Mean Higher High Water (MHHW)	6.59	6.36	3.67	0.26
Mean High Water (MHW)	5.97	5.74	3.05	-0.36

Current estimates of the future rate of sea level rise vary widely, from the historic trend measured over the last century of about 8 inches per century, to as much as 55 inches per century put forth by Stefan Rahmstorf based on his empirical studies of sea level rise and global temperature rise. The following table includes sea level rise projections (in feet) for the coast of California provided in the October 2010 *State of California Sea-Level Rise Interim Guidance Document*, and the 2012 National Research Council (NRC) report titled *Sea-Level Rise for the Coasts of California, Oregon and Washington: Past, Present and Future*.

Year	CA Interim Strategy (2010)		National Research Council NRC (2012)
	Average	Range	
2030	0.6	0.4 - 0.7	0.1 - 1.0
2050	1.2	0.9 - 1.4	0.4 - 2.0
2070	2.0	1.4 - 2.7	N/A
2100	4.0	2.6 - 5.8	1.4 - 5.5

According to the October 2010 *State of California Sea-Level Rise Interim Guidance Document*, sea level is expected to rise at a high estimate of 1.4 feet (16 inches) by mid-century or 2050. The permittee, Bay Ship & Yacht, has calculated that by 2065-2075, sea level is expected to rise by approximately 30 inches at the project site.

The existing Pier 5 structure is at elevation 11.90 feet (NAVD88), several feet above the existing mean high water elevation but just slightly over the 100-year flood elevation. Using a 16-inch sea level rise projection for 2050, the Pier 5 structure will be just inches above the 100-year flood elevation, however, by 2075, the pier structure will be vulnerable to inundation in extreme tide events. The pier structure provides access to other ship repair facilities, including another existing dry dock. The permittee, Bay Ship & Yacht will need to consider raising or reconstructing the pier deck if continued access to these facilities is required in the future during all tides, or if the structure becomes vulnerable or weakened by regular inundation. It is unclear at this time, how much longer the dry dock will be used past 2050, whether the normal course of aging will require significant future modifications to Pier 5, and what the demand for Pier 5 and the associated dry docks will be in the future. In addition, by its nature, the dry dock can be easily moved and relocated to another location with pier decks above tidal influence if this is needed in the future. The permittee, Bay Ship & Yacht plan to monitor and assess the need for a variety of adaptive management solutions for the dry dock and Pier 5 in the future, based on changing conditions.

The proposed public access area ranges in elevation between 9.4 feet to 11.7 feet (NAVD88). According to the permittee, Bay Ship & Yacht, and using FEMA's 100-year flood projections, a portion of the public access area is currently within the 100-year flood elevation. With projected sea level rise, potential flooding along the low points of the shoreline will likely increase in frequency and extent. With 16 inches of sea level rise, a majority of the site would be below the 100-year flood elevation by 2050 (Exhibit C).

To address future coastal flooding related to sea level rise in San Francisco Bay, recent development projects have used a combination of raising development grades, setting the development footprint back from the shoreline; and improving shoreline protection systems, among other approaches. The permittee, Bay Ship & Yacht, have studied various alternatives and have proposed an incremental approach that provides flexibility to adapt to changing conditions. The final strategy chosen to address sea level rise by 2050 includes: (1) locating the trail where it can be elevated in the future without impacting adjacent land uses; (2) creating a 20-foot-wide crest between the trail and the top of bank to allow space to accommodate future protection facilities such as a levee or flood wall; (3) consulting with a geotechnical engineer for the appropriate treatment of existing soils and design of pavements that will withstand periodic flooding and can be easily replaced; (4) re-grading the existing site and setting the trail and overlooks at 10.9 feet (NAVD88) that places them 0.10 feet above the estimated 100-year flood elevation in 2050; (5) constructing the trail with asphalt paving and overlooks with concrete paving on structural base rock; and (6) specifying native shoreline plant species that can tolerate occasional salt water inundation.

Given mid-range sea level rise projections for the end of century, the majority of the site will be well below the 100-year flood elevation by 2100 (Exhibit C). Due to the physical constraints of the site including existing utilities, adjacent land uses and the proximity of the shoreline, the permittee, Bay Ship & Yacht, determined that it is not feasible or cost effective at this time to raise the public access areas to

14.05 feet (NAVD88) (the estimated 100-year flood elevation in 2100). According to the permittee, for the length of access trail that is being proposed, a planning horizon of 50 years is adequate and will provide for the flexibility to adapt and incorporate new strategies and techniques to address sea level rise in the future. The permittee, Bay Ship & Yacht, has set back the trail at least 20 feet from the top of bank and the north edge of the trail to provide the necessary space for the City of Alameda to address island-wide flood protection in the future when the adjacent parcels of land experience flooding. In addition, the site has been re-graded to 10.9 feet (NAVD88) placing them at the estimated Mean High Water line in 2100 and could be further graded and raised, as necessary in the future.

The Commission finds that the project is consistent with its law and policies regarding Bay fill, safety of fills, climate change and sea level rise.

- C. Water Quality.** ~~The Commission's Bay Plan policies on Water Quality state that "water quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board's Basin Plan.... Polluted runoff from projects should be controlled by the use of best management practices in order to protect the water quality and beneficial uses of the Bay...." The Commission's Bay Plan policies on Water Surface Area and Volume state "the surface area of the Bay and the total volume of water should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action....Water circulation in the Bay should be maintained, and improved as much as possible. Any proposed fill, dikes, or piers should be thoroughly evaluated to determine their effects upon water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects...."~~
- D. C. Public Access.** ~~Section 66602 of the McAteer-Petris Act states that "...maximum feasible public access, consistent with a proposed project, should be provided." Policy 1 and Policy 6 of the Bay Plan policies on Public Access state that "a proposed fill project should increase public access to the Bay to the maximum extent feasible" and that the public access improvements "...should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for the physically handicapped to the maximum extent feasible, should include an ongoing maintenance program, and should be identified with appropriate signs." Policy 8 states "access to and along the waterfront should be provided by walkways, trails, or other appropriate means to connect the nearest public thoroughfare where convenient parking or public transportation may be available" and Policy 11 states that, "the Design Review Board should advise the Commission regarding the adequacy of the public access proposed." Policy 2 of the Bay Plan's Appearance, Design and Scenic Views section states that "all bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay" and that "maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore." Section 66602 of the McAteer Petris Act states, in part, that: "...existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." The San Francisco Bay Plan policies on public access further state that "...maximum feasible public access should be provided in and through every new development in the Bay or on the shoreline...the access should be permanently guaranteed...should be consistent with the physical environment...provide for the public's safety and convenience...and built to encourage diverse Bay related activities and movement to and along the shoreline...."~~

The *Public Access Design Guidelines* recommend providing "point access or view area(s)" in and near water-related industry and port uses, "which offer safe views of both the Bay and the particular activity where potential safety hazards or use conflicts may occur." They also recommend providing other improvements, "such as, parking, benches, paved walkways, signs, landscaping, etc., that are appropriate for the project size, location, and the amount of shoreline affected."

~~In assessing whether a proposed project will provide the maximum feasible public access consistent with the project, the Commission is guided, in part, by the decisions contained in *Nollan et. ux. v. California Coastal Commission* and *Dolan et. ux. v. City of Tigard*. In these decisions, the U.S. Supreme Court held that a public agency must show a nexus, or essential connection, between a permit condition and the public burden created by a private development project and that the condition must be roughly proportional to the burden.~~

1. Work Authorized Through Amendment No. Seven. Public access within the Bay Ship and Yacht repair operations and facilities would pose a significant threat to public safety. However, Bay Ship and Yacht typically employs 175 people and when a ship is docked for repair, its facilities may attract up to 350 people, potentially placing a burden on nearby public access. Therefore, the public access required herein is located in an area west of the repair facilities, where it will connect with existing public access and allow the public to view the drydock and the Bay from a safe location. The public access leads along the shoreline to a terminus that is fenced from the ship repair facility. The on-shore ship repair facility alone, consisting of primarily office and storage buildings, does not offer most public users an appealing reason for walking along the shoreline in this location. Thus, the circular viewing area at the public access terminus, the landscaping, and nodes along the pathway required herein are designed to attract public users from the Ferry Terminal to view the Bay and drydock operations. The circular viewing area is approximately twenty feet in diameter and elevated approximately three feet above grade. The area is bordered by columnar trees. One bench is provided for seating in this area and another bench is provided at the midway point along the pathway. The public access is designed with public access signs at the beginning of the pathway. The landscaping and concrete pathway are designed as a continuation of existing Ferry Terminal landscaping and concrete sidewalks.

The addition of the second, smaller dry dock to the project site may enable Bay Ship and Yacht to enlarge its ship repair operation by hiring additional employees to repair and service additional ships. Each ship serviced may bring more ship crewmembers to the project site. While the second dry dock in and of itself is not large enough to create a significant impact to public access in the area, the addition of future dry docks and ship repair facilities at Bay Ship and Yacht may have an adverse cumulative impact on public access. In the event that small additions to the ship repair facilities continue, the cumulative impacts of additions should be assessed and additional public access improvements should be required where necessary to mitigate for those impacts.

~~The Commission finds that the public access is the maximum feasible public access consistent with the proposed project. However, should the permittees develop the area south of the public access in the future, additional public access improvements will likely be required by the Commission.~~

Public Views. The Bay Plan policies on appearance, design, and scenic views state, "maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, the Bay itself, and from the opposite shore...." The *Public Access Design Guidelines* direct public access design to enhance

~~views of the Bay and the shoreline. Public access should also be designed to enhance Bay views from the shoreline. The Guidelines for water related industry and port uses recommend providing elevated point access or viewing areas. They further recommend that incompatible uses are screened from the shoreline by fences, plantings, or elevational changes.~~

The public access required herein (through Amendment No. Seven) will significantly improve the shoreline area on which it is located. It is designed with an elevated platform to enhance Bay views as well as views of the dry dock. To promote views from the viewing platform to the dry dock and the Bay, the permittees will stack only two storage containers on the containers that are closest to the gangway.

At present, there are five temporary buildings located on the bank of the estuary, two of which cantilever over the bank and are supported on posts in the estuary. In order to improve the appearance of this portion of the shoreline and to eliminate unauthorized Bay fill, this amended permit requires a five-foot setback from the top of the bank and the relocation of the temporary buildings on the inland side of the setback line.

~~The Commission concurs that public views of the dry dock and the Bay are protected under this authorization as conditioned.~~

2. **Amendment No. Eight.** BCDC Permit No. 1994.013, last amended on February 15, 2008 (Amendment No. 7), was issued to Alameda Gateway, Ltd. and Bay Ship & Yacht Company for their existing ship repair facility, offices, and the mooring of an existing 32,700-square-foot dry dock at Pier 5. The permit requires an approximately 17,337-square-foot (0.40 acre) public access area extending 270 feet along the shoreline east of the Alameda Point Ferry Terminal, that includes a 947-square-foot entry plaza, an eight-foot-wide pathway, a twenty-foot-in-diameter circular viewing area, two benches and two trash receptacles, and landscaping on both sides of the pathway (Exhibit A). The current view from this public access area is of Pier 5, the existing dry dock, BSY's ship repair facility, and of the Schnitzer Steel Company's recycling yard across the estuary in Oakland. The placement of the new HMB-1 dry dock at Pier 5 will obstruct views of the Bay from this existing public access area. The proposed new dry dock has a retractable telescoping cover. When closed, the dry dock will be approximately 65 feet high from pier deck to the top of the cover. When the telescopic cover is opened, the dry dock will be approximately 33 feet high from pier deck to the top of the dry dock.

The public access associated with the HMB-1 dry dock project includes the construction of 970 feet of new Bay trail along the shoreline west of the Alameda Point Ferry Terminal and an approximately 63,838-square-foot (1.56 acre) open space area to mitigate for the view impacts from the new dry dock and to provide additional public access. The public access area is bounded by the Ferry Terminal facility to the east, a dog park and parking lot for the Alameda ferry to the south, the Oakland Inner Harbor shoreline to the north, and an unimproved gravel parking area to the west. The public access improvements would feature a new 10-foot-wide asphalt trail with a single four-foot-wide decomposed granite multi-use shoulder, five overlook areas with seating and signage, and landscaping on both sides of the pathway with native drought tolerant plantings. Similar to the existing public access area adjacent to Bay Ship & Yacht's facilities, interpretive elements salvaged from the shipyard would be repurposed to provide unique marine/nautical themes. The trail will extend the Bay Trail west from the Alameda Ferry Terminal to the edge of an unimproved gravel parking area, and will connect south to Main Street along the edge of the Ferry Terminal parking. The views from the public access area would include views of the

San Francisco skyline, the Bay Bridge, and unique vistas of the Port of Oakland shipping terminals. The trail will be accessible by persons with disabilities and barrier-free.

On October 8, 2012, the Design Review Board (DRB) reviewed the project's public access and overall, supported the project and the proposed public access. The initial design included an approximately 8-foot-wide pathway that was aligned differently along the shoreline, and had six overlook areas and different landscaping treatment. In response to comments by the Board and the Bay Trail representatives, the permittees have widened the proposed pathway to 14 feet, have re-aligned the pathway and included five relocated overlooks, have provided a connection from the pathway to Main Street, and have further developed their landscaping, seating and interpretive elements plan (see "**Design Review Board**" below for more details on the discussion at the October 8, 2012, meeting).

The Commission finds that the public access improvements are the maximum feasible consistent with the project and consistent with its policies on Public Access and Appearance, Design and Scenic Views.

D. Natural Resources Policies. Policy 1 of the Bay Plan policies on Water Surface Area and Volume state, in part: "The surface area of the Bay and the total volume of water should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action." Policy 2 of the Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife state, in part: "Specific habitats that are needed to conserve, increase, or prevent the extinction of any native species, species threatened or endangered...should be protected...." Policy 4 states that the Commission should "...consult with the California Department of Fish and Wildlife [CDFW] and the U.S. Fish and Wildlife Service or [NMFS] whenever a proposed project may adversely affect an endangered or threatened...species" and "...[g]ive appropriate consideration to the recommendations of the [state and federal resource agencies] in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat." Policy 1 of the Bay Plan policies on Water Quality states, "Bay water pollution should be prevented to the greatest extent feasible..." and policy 2 states that, "...the policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Board, should be the basis for carrying out the Commission's water quality responsibilities."

1. Work Authorized Through Amendment No. Seven. The permittees' environmental assessment found that the water quality impacts of the various facilities and activities authorized through Amendment No. Seven were less than significant with the employment of best management practices. As discussed above, the permittees propose several best management practices to minimize potential impacts on water quality consistent with their Regional Water Quality Control Board Permit and General Permit. The dry docks will have a less than significant impact on water circulation because they are floating fill in deep water.

~~The Commission finds that the ship repair facilities, if employing best management practices consistent with their above noted permits, will adequately protect the Bay's water quality.~~

2. Amendment No. Eight. The dry dock HMB-1 will cover 32,770 square feet (0.75 acre) of Bay surface area and displace a varying amount of Bay volume, depending on the size of the ship being serviced and whether the dry dock is being lowered or is empty. The project also has the potential for the entrainment of longfin smelt, Chinook salmon, steelhead trout, and green sturgeon into ballast tanks during dry dock operations.

The dry dock will be lowered by filling four ballast tanks with ambient water. The water intakes for the ballast tanks will be equipped with screens to prevent the entrainment of fish into the tanks, as required by CDFW, NMFS and the RWQCB. Ships to be repaired within the dry dock will enter and exit the facility via the aft opening. The stern of the dry dock has a large opening which allows water to fill into the center of the dry dock. There are no doors on the stern when it is open. Once the dry dock is flooded, the ship is positioned and secured within the center of the dry dock by a dive team. There are two, 3-foot diameter scuppers located on the bow which allow water to fill into the center of the dry dock as well. During the filling and operation of the dry dock, the facility will always be positioned at least six feet above the San Francisco Bay floor. Once the ship is secured, the dry dock will be raised by discharging water from the ballast tanks and allowing them to fill with air. Water within the center of the dry dock will flow out through the stern and through the scupper on either side of the bow. The deck of the dry dock will be slightly sloped to encourage water to drain towards the stern. The lowering and raising of the dry dock will take approximately four hours (90 minutes to submerge and 133 minutes to rise). There will be no pumping system to move water in or out of the center of the dry dock nor are there any weirs or obstructions along the perimeter of the dry dock that would impede draining or create ponding.

According to the permittee, Bay Ship & Yacht, floating dry docks have minimal adverse impacts on the circulation of water and float at all stages of the tide, although they always occupy a varying amount of water. On September 19, 2012, the U.S. Army Corps of Engineers initiated consultation with NMFS pursuant to Section 7 of the Endangered Species Act and the Essential Fish Habitat (EFH) provisions of the Magnuson Stevens Fishery Conservation and Management Act. On February 5, 2013, NMFS found that, with the mitigation measures incorporated into the project, the project is not likely to adversely affect threatened CCC steelhead, threatened green sturgeon and their critical habitat. NMFS determined that the project would adversely affect EFH for various federally-managed species within the Pacific Groundfish, Coastal Pelagic, and Pacific Salmonid FMPs through shading and loss of prey resources, but that the project includes measures to avoid, minimize or otherwise offset adverse effects, such that NMFS has no further EFH conservation recommendations to provide.

All construction work to convert the barge into a dry dock (including installing flooding and crossover valves, de-ballasting pumps and valves, and tank venting) will be performed between June 1 and November 30 and thus, will not affect CCC steelhead or green sturgeon. Most of the work will also occur on the deck of the barge in the dry, with the exception of the installation of the fish screens. The future operations of the dry dock after conversion may affect listed fish when ballast tanks are filled with water and when ships are entering or exiting the dry dock. NMFS concluded, however, that although the Oakland Inner Harbor is connected to the greater San Francisco Bay, the channel is an unlikely migration route for steelhead and green sturgeon. The Inner Harbor is frequently dredged and the shoreline is comprised of riprap, bulkheads, concrete walls, piers, docks and wharves. To minimize potential impacts to CCC steelhead and green sturgeon which infrequently occur in the Oakland Inner Harbor, the project will install fish screens on the ballast tank water intakes to prevent entrainment and/or impingement of fish. The screens are required to be designed to protect the smallest life stages of steelhead and green sturgeon that may occur in the Bay. In addition, to deter fish from entering the dock with ships, deterrent bubble curtains located along the aft opening and under the scuppers are required to be operated during ship docking procedures. According to NMFS, bubble curtains

have been used effectively to deter fish from entering the Allied Defense Recycling dry dock facility at Mare Island near Vallejo, California. The proposed fish screens and bubble curtain deterrent systems are anticipated to effectively prevent the entrainment, impingement and stranding of steelhead and green sturgeon in the dry dock. In the unlikely event that anadromous CCC steelhead or green sturgeon do enter the dry dock during ship docking operations, they are expected to exit the area free of injury during the slow dock raising procedure because of the draining dock slope design.

According to NMFS, shading from the dry dock could affect the growth of submerged aquatic vegetation under the barge, and alter the invertebrate assemblages on the Bay floor. However, these effects are anticipated to be insignificant at the project site because water depths range from 25 feet to 35 feet Mean Lower Low Water, which is beyond the maximum depth for eelgrass and other submerged aquatic vegetation. NMFS also states that the area's benthic invertebrate population is frequently disturbed by regular dredging operations at the Port of Oakland so the impacts associated with shading is expected to be insignificant.

BSY proposes to mitigate the impacts from the shading and occupying a portion of the Bay's water column by providing \$75,000 in funds to CalRecycle's Oakland Estuary Cleanup Project to specifically remove an old abandoned dock, two vessels, and marine debris at Union Point Park. CalRecycle staff would use the funds to remove the dock and debris and assist with the salvaging of two abandoned vessels. In addition to funding, BSY will make its facilities available for the salvaging and dismantling of two 55-foot vessels that are submerged offshore of Union Point Park. CalRecycle will obtain any required approvals or prepare any required environmental review needed for the removal prior to the work. The removal of the marine debris will increase Bay water circulation and volume, improve water quality, eliminate navigational hazards in the Bay, and create new and clean substrate material for species.

On March 12, 2013, the RWQCB issued a water quality certification for the project. The water quality certification included conditions based on NMFS's recommendations including: (1) limiting any in-water construction work on the floating dry dock from June 1 and November 30; (2) requiring fish screens to minimize the potential for fish entrainment and impingement and raising the screens to an elevated position when not in use for safety concerns, to prevent damage to the pier or fender structures, as a "self-cleaning" mechanism to prevent clogging from marine life, and to limit the effects of galvanic corrosion to the dry dock; (3) requiring deterrent bubble curtains to minimize fish entry into the dry dock and two scupper ports during dock submersion; and (4) providing funding to CalRecycle's Oakland Estuary Clean-Up Project (as discussed above). Additional best management practices conditions are required including conditions regarding construction debris and construction and operation activities.

The Commission finds that the project, with the incorporation of NMFS's and the RWQCB's recommendations and as conditioned herein, is consistent with the Bay Plan policies regarding fish, other aquatic organisms, and wildlife, and water quality.

E. Design Review Board

1. **Work Authorized Through Amendment No. Seven.** The Design Review Board reviewed the proposed project at its November 8, 1999 Board meeting. There were no public comments. The Board had few recommendations; although, Board Members commented on their preference for more diverse and more native plants in the landscaped areas of the proposed public access.

2. **Amendment No. Eight.** On October 8, 2012, the Commission's Design Review Board (DRB) reviewed the project's original public access proposal that included an eight-foot-wide pathway in a different location and configuration than the current proposal, six overlook areas also located in different locations, a different landscaping design and different plant species. The Board recommended that the shoreline path be placed in a more graceful manner, be wider and that public safety should be carefully considered and dense shrubbery should not be used in order to ensure clear visibility of the area from Main Street. In addition, the Board recommended that the placement of salvaged nautical/marine elements be carefully considered and interpretive signage be placed to describe these pieces as well as the turning basin and the dry dock operations. Finally, the Board warned that it is very difficult to establish native grasslands and there will need to be careful management of the landscaping treatment in order for establishment to be successful. At the meeting, comments from the Bay Trail were presented via a letter that was read into the record. The Bay Trail requested that the trail be widened to typical Bay Trail standards of 14 – 16 feet, that a better connection be made in front of the ferry terminal between the existing and proposed trail segments and also that the existing Bay Trail segment be widened and improved. In response, the permittees have widened the proposed pathway to 14 feet, have re-aligned the pathway and relocated the proposed overlooks, have provided a connection from the pathway to Main Street, and have further developed their landscaping, seating and interpretive elements plan.

F. Environmental Review. Pursuant to the California Environmental Quality Act, the City of Alameda, the lead agency for the environmental evaluation of the original project, certified a Negative Declaration, including mitigation measures, on October 26, 1996. The project authorized by Amendment No. Five of this amended permit was included as a part of the final Environmental Impact Review (EIR) for the Port of Oakland -50 foot deepening project (February 2000) and the three subsequent addendums (2000, 2002, and 2004) to the EIR. The project authorized by Amendment No. Six of this amended permit is categorically exempt from the requirement to prepare an environmental impact report, pursuant to Regulation Section 11501. On September 10, 2012, the City of Alameda issued a Zoning Compliance Determination, determining that the addition of a second dry dock to Pier 5 is consistent with these prior local approvals and would not result in any new environmental impacts that had not been previously identified and analyzed, nor would the additional dry dock increase the severity of any previously identified environmental impact. On March 12, 2013, the RWQCB issued a water quality certification for the project and found that the project is categorically exempt from the requirements of CEQA, pursuant to Section 15301(d), for the *Restoration or Reconstruction of Existing Structures*.

F. G. Amendment No. Four. The improvements to the Bay Ship and Yacht repair yard authorized in Amendment No. Four involve the following: (1) replacing a 8,960-square-foot dry dock with an approximately 11,256-square-foot, pile-supported ship lift for a net gain in Bay fill of 2,296 square feet; (2) removing 5,590 square feet of concrete work floats to an area outside the Commission's jurisdiction and replacing them with 10,425 square feet of concrete work floats for a net gain in Bay fill of 4,835 square feet; (3) reconfiguring the upland portions of the ship yard and installing a track system to transport ships to three upland berths; (4) installing a new administration building; and (5) improving and expanding the public access from 8,100 square feet to approximately 17,337 square feet.

The purpose of the permittees' project is to replace important vessel repair facilities that will be impacted by the U.S. Army Corps of Engineers' -50 Foot Project, which, through the Corps' assertion of Navigational Servitude, requires the removal of approximately 6,086 square feet of shoreline to create a larger turning basin for cargo ships. Both the removal of shoreline area and the location of the turning basin force

Bay Ship and Yacht to reconfigure its ship yard. The reconfiguration will allow more of Bay Ship and Yacht's ship repair work to occur on shore rather than in the Bay. This will reduce the water quality impacts associated with repairing ships on a drydock and in preparing ships for the dry dock while they are still in the Bay. Bay Ship and Yacht's project will result in an approximately 7,000-square-foot net gain of floating and pile supported fill. When the Commission reviewed the -50 Foot Project, per Consistency Determination No. 14-00, under its federally certified Coastal Zone Management Plan, the Commission was aware of the impacts to these ship repair facilities. The Commission recognized the important service that Bay Ship and Yacht provides as a ship repair facility that repairs larger ships. The Commission further asked the Corps to ensure that a plan would be implemented to retain Bay Ship and Yacht's operations. In implementing the -50 Foot Project, 6,086 square feet of solid fill will be removed from Bay Ship and Yacht's shoreline. Factoring in this change in the shoreline the net gain in fill is 1,065 square feet. Special Condition II-M is included in the permit to ensure that the net gain in Bay fill is kept to a minimum by removing the 8,960-square-foot dry dock from the Bay to an authorized location outside of the Commission's jurisdiction.

The project also involves extending Bay Ship and Yacht's upland operations west to the Ferry Terminal parking lot and placing a new administration building adjacent to the existing public access area near the parking lot. The building mass and the proximity of the building to the public access area could adversely impact use of the existing public access area. Therefore, the permittees will improve the existing public access by doing the following: (1) installing a new entry plaza with artifacts from the ship repair facility; (2) regrading the existing viewing platform to create a more gentle rise; and (3) installing irrigated landscaping in a 60-foot-wide area measured from the top of bank (top of riprap). Special Conditions II-A-4 and II-B-8 require the public access to be installed by a licensed landscape contractor to ensure that the public access is constructed consistent with the project plans and has the greatest likelihood of becoming successfully established.

Amendment No. Four to this amended permit is not a material alteration of the work authorized in the original permit because the amendment involves the replacement of one type of ship repair equipment (a dry dock) with another type with no substantial increase in Bay fill. The amendment also authorized the reconfiguration of the upland repair facilities, and some revisions to public access improvements for which the Executive Director may issue a nonmaterial amendment to a major permit pursuant to Regulation Section 10822.

As conditioned, Amendment No. Four to this amended permit is consistent with the San Francisco Bay Plan and the McAteer-Petris Act because the proposed project will not adversely affect the Bay nor public access to and enjoyment of the Bay consistent with the project.

- G. H. **Amendment No. Five.** The project authorized herein per Amendment No. Five of this amended permit involves the demolition of existing facilities used as an employee breakroom and repair facilities, the construction of approximately 4,000 square feet of building space, and the relocation of an existing blast booth and water treatment facilities within the Commission's shoreline band, and thus involves the extraction and placement of material that does not conflict with a priority use designation or public access and will not result in a significant adverse environmental effect, as defined in Regulation Sections 10601(b)(1), and the ongoing maintenance of the authorized facilities, as defined in Regulation Section 10601(b)(5), and thus is a "minor repair or improvement" for which the Executive Director may issue an amendment to a permit pursuant to Regulation Section 10810.

- ~~H.~~ I. **Amendment No. Six.** The project authorized by Amendment No. Six to this amended permit involves the placement of up to 954 cubic yards of riprap material in the Bay and up to 477 cubic yards of riprap material in the shoreline band. The riprap will be placed in an area along the shoreline approximately 340 feet long and 45 feet wide, under and near the Pier 5 causeway, resulting in approximately 9,990 square feet of Bay fill coverage and 5,310 square feet of shoreline band coverage. The riprap is intended to replace eroded sections of the shoreline where additional material is needed to stabilize the shoreline and to connect with the existing riprap on either sides of the project area. The project authorized by Amendment No. Six constitutes the installation of new protective works and repairs to existing protective works, such as bulkheads and riprap in the Bay and shoreline band, that: (1) is of a size that constitutes the minimum amount necessary to stabilize existing dikes and banks; and (2) covers less than 10,000 square feet of the horizontal projection of the work below the shoreline, as defined in Regulation Section 10601(a)(2) and 10601(b)(4). As such, the project is a "minor repair or improvement" for which the Executive Director may issue a permit or a non-material amendment to a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).
- I. **Amendment No. Seven.** Amendment No. Seven authorized an extension of commencement time, until March 1, 2012; and an extension of completion time, until March 1, 2013, for work previously authorized under the permit.
- K. **Amendment No Eight.** Amendment No. Eight authorizes the construction and mooring of an additional 32,770-square-foot floating dry dock at Pier 5, the construction of an approximately 63,838-square-foot (1.56 acre) open space area and 970-foot-long new segment of Bay Trail and public access, the contribution of \$75,000 to CalRecycle for the removal of a derelict dock, two vessels and marine debris within the Oakland Estuary and the use of the Bay Ship and Yacht facilities in dismantling the marine debris. The project authorized in Amendment No. Eight was heard and voted on by the Commission on April 18, 2013.
- ~~F.~~ L. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the *San Francisco Bay Plan*, the McAteer-Petris Act, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

IV. Standard Conditions

- ~~A.~~ ~~This amended permit shall not take effect unless the permittees execute the original of this amended permit and return 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 assignees execute and the Executive Director receives an acknowledgment that the assignees 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.~~

- ~~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 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 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.~~

- ~~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.~~
- A. **Permit Execution.** This amended permit shall not take effect unless the permittees execute the original of this amended permit and return 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. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- C. **Permit Assignment.** The rights, duties, and obligations contained in this amended permit are assignable. When the permittees transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittees/transferrors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the 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.
- D. **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.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This amended permit does not relieve the permittees of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the amended permit and any plans approved in writing by or on behalf of the Commission.

- G. **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.
- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the 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.
- I. **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.
- J. **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 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.
- K. **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 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.
- L. **Permission to Conduct Site Visit.** The permittees shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.