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

May 9, 2017

Mark Sanders
Westpoint Harbor LLC
1529 Seaport Boulevard
Redwood City, California 94063

**SUBJECT:** Amendment No. Seven to BCDC Permit No. 2002.002.07, Exclusive of Amendment No. Five

Dear Mr. Sanders:

Enclosed please find an original of BCDC Amended Permit No. 2002.002.07, stamped "BCDC Original" and one copy stamped "Permittee's Copy", both executed by the Executive Director, incorporating the amendment requested in your letter dated January 4, 2017, to authorize the installation of temporary fencing of the Phase 3 building sites. In the amended permit, deleted language has been ~~struck through~~ and added language has been <u>underlined</u>.

Please note that for the reasons discussed below, the amended permit requires setback distances between the temporary fencing and the pedestrian paths, parking lot, and roadway that are greater than the setback distances that you requested, and in some areas the location of the temporary fencing authorized in the amended permit is different than requested. The staff has determined that your requested fence locations and setback distances, as depicted in the plans entitled "Site Plan With Temporary Phase Three Safety Fence," dated April 13, 2017, and prepared by Bohley Consulting ("Temporary Fence Plan"), would conflict with the permit's requirements for Phase 1B public access and associated improvements within the public access area.

**Background**. After reviewing your amendment request, Matthew Trujillo asked, in his letter dated February 6, 2017, that you indicate how close the temporary fencing would be to the public access trail. You responded, in a memorandum dated February 9, 2017, that the temporary fence would be two feet away from the edge of the path. Mr. Trujillo subsequently requested, in his March 23, 2017 letter, that you propose a greater setback, of at least four feet from the public access pathways and view corridors, if applicable. In response, in a memorandum dated April 10, 2017, you stated that "as previously discussed and agreed with BCDC staff the fence setback is 2' for several existing infrastructure reasons," and that the "2' setback gives adequate separation between the path and undeveloped phase 3 [building sites] without impinging on utilities and allows servicing."[1] The Temporary Fence Plan accompanying

[1] The claim that BCDC staff previously agreed to a two-foot setback from the paths is incorrect. In 2012, you submitted proposed landscaping plans that included the agreed-upon location of temporary fencing of the Phase 3 building sites that staff was prepared to authorize as part of the draft and now moot Amendment 5 of the permit. You failed to revise and obtain approval of those plans in response to BCDC staff comments (that were unrelated

your April 10th memorandum indicates that the temporary fence would be located two feet from the paths, three feet from the road, and 10 feet from the future buildings.

**Conflicts Between the Requested Fencing and Public Access.** As you know, Special Conditions II.B.1 and II.B.2 of the permit require you to provide and dedicate an approximately 298,000-square-foot public access area. More specifically, the public access guarantee you executed in February 2007, in accordance with these permit conditions, includes but is not limited to the following dedicated public access areas:

1. a strip of land extending on both sides of the path along Westpoint Slough between the Pacific Shores property and the marina basin;
2. a strip of land extending from the path along Westpoint Slough near the Pacific Shores property directly toward the marina basin (at an approximately 45 degree angle from the referenced path);
3. a strip of land extending on both sides of the path between Westpoint Slough and the parking lot; and
4. strips of land adjacent to the parking lot and along the road.

As you also know, Special Condition II.B.4 requires you to install certain improvements within the Phase 1B total public access area, including but not limited to 170,500 square feet of landscaped areas. The areas to be landscaped include strips of land adjacent to both sides of the paths between the Pacific Shores property and the marina basin and between Westpoint Slough and the parking lot, as well as strips of land adjacent to the parking lot and along the roadway and a strip of land extending from the path along Westpoint Slough near the Pacific Shores property directly toward the marina basin. More specifically, your previously proposed Planting Plan (Sheets L2.0, L2.1, and L2.2), as revised September 11, 2012 (included with the "Westpoint Habor and Marina Existing and Proposed Public Access Plans," originally dated August 19, 2012 and prepared by KSDG) shows landscaping on:

1. a strip of land on the interior (i.e., landward) side of the path between the Pacific Shores property and the marina basin;
2. strips of land on both sides of a path to be constructed from the path along Westpoint Slough near the Pacific Shores property directly toward the marina basin;
3. a strip of land on the interior (i.e., landward) side of the path between Westpoint Slough and the parking lot; and
4. strips of land adjacent to the parking lot and along the road.

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to the proposed location of the temporary fencing) and you declined to execute Amendment No. 5. As discussed below, Amendment No. 7 authorizes installation of temporary fencing as shown on those plans.

In addition, the September 2012 proposed Planting Plan shows your proposed location of temporary fencing of the Phase 3 building sites that staff was prepared to authorize as part of draft Amendment 5 of the permit, which you declined to execute.

You have requested authorization to install temporary fencing to prevent public access to the future Phase 3 building sites. BCDC staff has accommodated your request for temporary fencing even though such fencing is neither required nor necessary to allow access to the Phase 1B public access areas that were required to be accessible to the public since occupancy of the marina berths, or no later than September 2008. However, the installation of temporary fencing shall not reduce the amount of dedicated public access currently required under the permit or prevent the installation of required improvements within the Phase 1B public access areas, including landscaping.

**Authorization for Temporary Fencing.** For these reasons, Amendment No. 7 authorizes the installation of temporary fencing precisely as illustrated in the proposed Planting Plan, Sheets L2.0, L2.1, and L2.2 of the plans entitled, "Westpoint Habor and Marina Existing and Proposed Public Access Plans", dated August 19, 2012, revised September 11, 2012, prepared by KDSG. (For reference purposes, a reduced copy of Sheet L2.0 is attached with the temporary fence locations highlighted in red. Please see the large-scale oversized plans for the dimensions of the strips of land to be landscaped and other measurements relevant to the authorized location of the temporary fencing.)

The Executive Director is issuing this amendment on behalf of the Commission and upon the following findings and declarations:

1. This amendment to the permit is not a material amendment, as defined in Regulation Section 10822, of the project authorized by the permit because the amendment as conditioned is consistent with the McAter-Petris Act, the San Francisco Bay Plan, and the Commission's regulations, and does not result in a material alteration of the originally authorized project.

2. The amendment to the permit is consistent with the the McAter-Petris Act and the San Francisco Bay Plan because the proposed project will not adversely affect the Bay or public access to and enjoyment of the Bay consistent with the project.

You must (1) complete, before a notary, the acknowledgement section of the amended permit stamped "BCDC Original," which indicates that you have read and that you understand all of the terms and conditions of the amended permit; and (2) return that entire executed "BCDC Original" to the Commission's office. The copy stamped "Permittee's Copy" should be retained for your records along with the Notice of Completion and Declaration of Compliance form which you must return to the Commission upon project completion.

Furthermore, your permit contains special conditions all of which you must adhere to. No work may commence on the project until the permit stamped "BCDC Original" is executed and returned to the Commission. Until the Commission receives the executed permit, you do not have the necessary authorization for the work authorized under the amended permit.

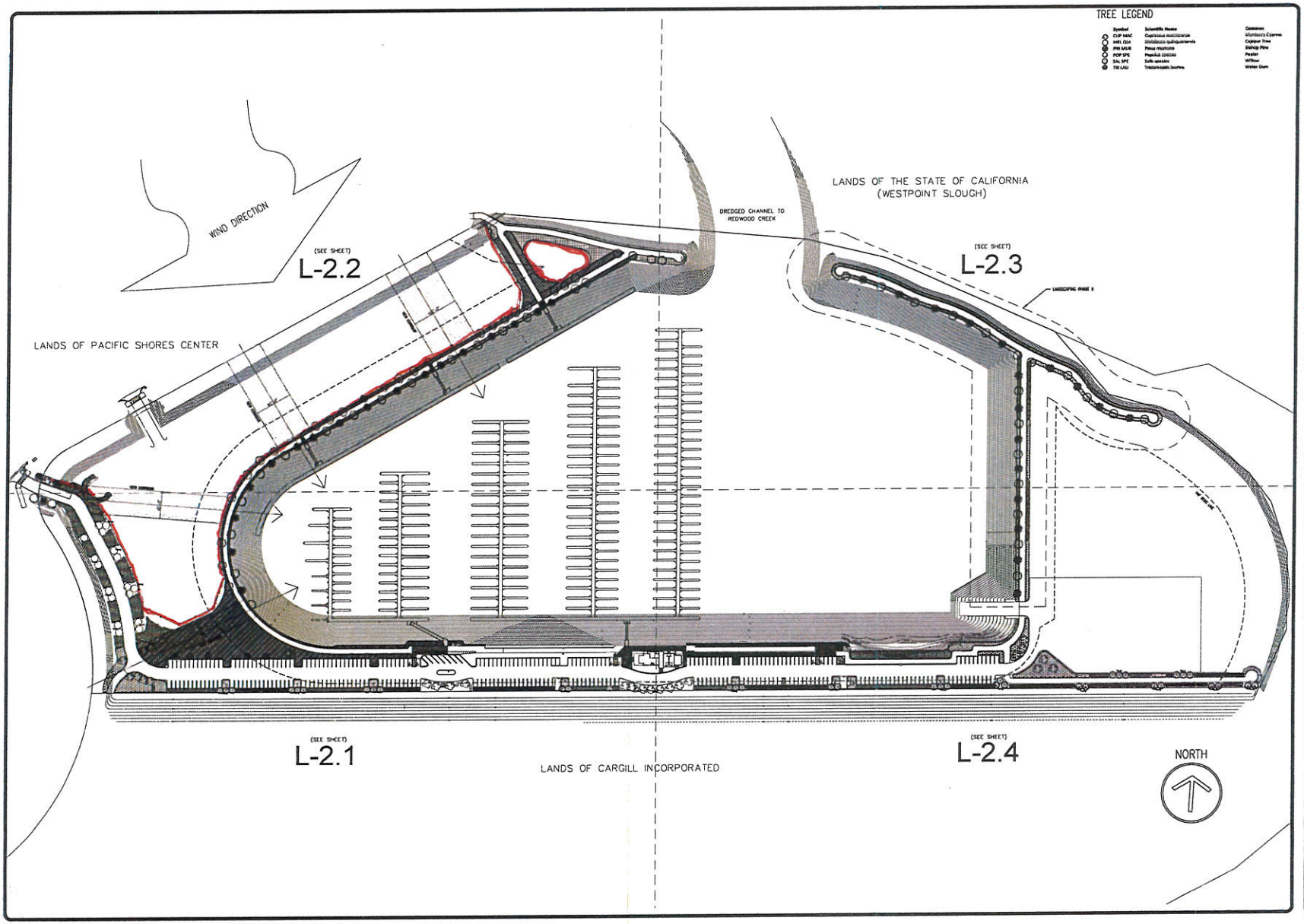
If you have any questions, regarding the amended permit or the procedure outlined above, please do not hesitate to contact Matthew Trujillo of our staff at 415-352-3633 or matthew.trujillo@bcdc.ca.gov.

Sincerely,

BRAD McCREA
Regulatory Program Director

BM/go

(without enclosures)
cc: David Smith, Esq., Stice and Block
Aaron Aknin, Assistant City Manager, Redwood City
Veronica Rameriez, Esq., City Attorney, Redwood City

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KSDG

# WESTPOINT HARBOR MARINA

PLANTING PLAN

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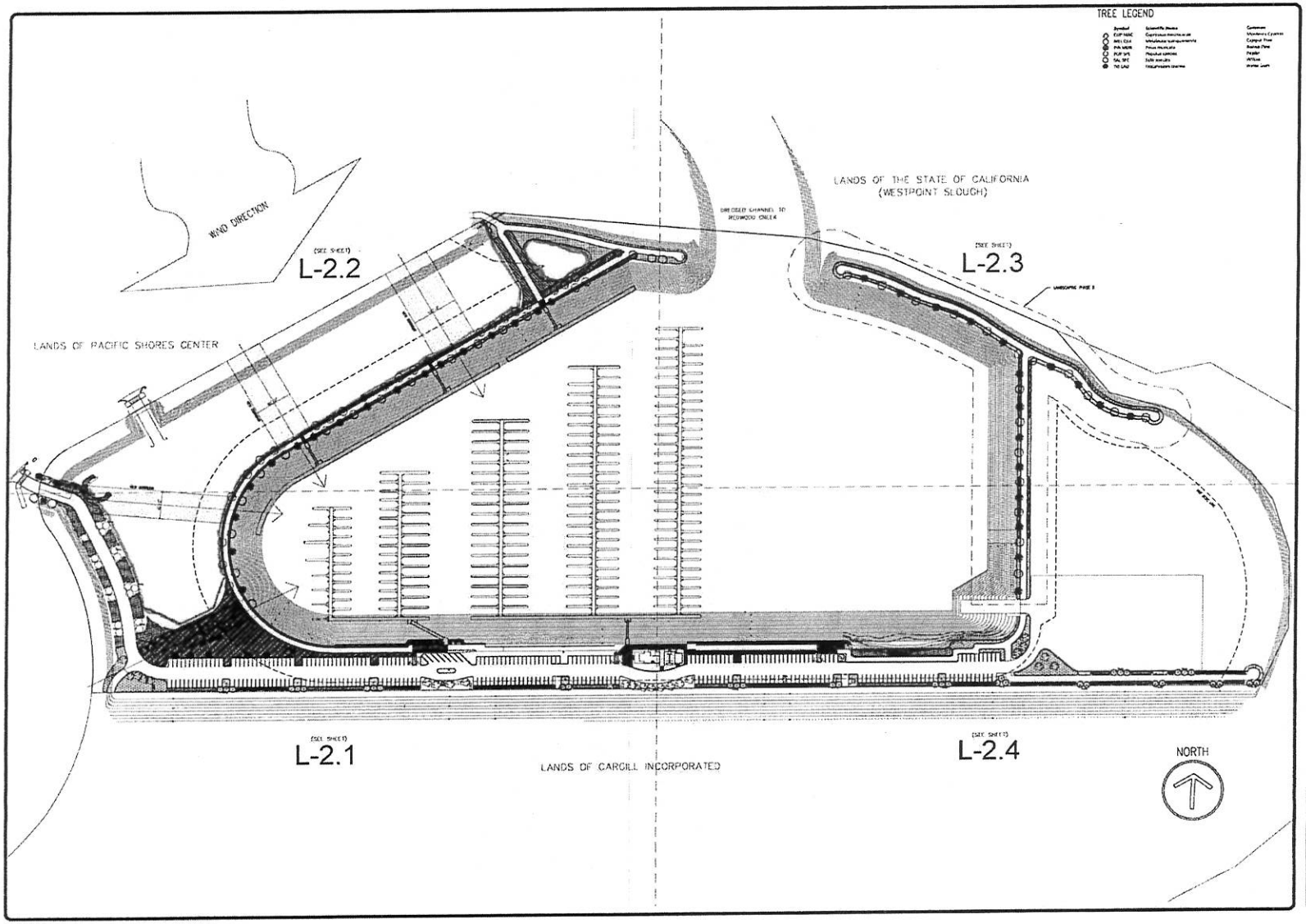
checked:
date: 08-19-2012
scale: 1"=90'0"
sheet:

sheet
L-2.0
of sheets

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KSDG

# WESTPOINT HARBOR MARINA

PLANTING PLAN

drawn

checked

date 08-19-2012

scale 1"=90'0"

sheet

L-2.0

of sheets

PERMIT NO. 2002.002.07

MARK SANDERS

# CERTIFICATION OF CONTRACTOR REVIEW

San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Ladies and Gentlemen:

You are hereby informed that prior to commencing any grading, demolition, or construction authorized by the above referenced permit, I personally reviewed and understand the terms and conditions of the permit, the final plans approved by or on behalf of the Commission, particularly as they pertain to the public access, open space, and environmentally sensitive areas required herein, for those portions of the work for which I am in charge.

I, _____, hereby declare under penalty of perjury that the foregoing is true and correct and that if called upon to testify to the contents of this notice, I would so testify.

Executed on this _____ day of _____,

20_____, at_____, California.

_____
**Contractor Name and Company**

_____
**(Title)**

PERMIT NO. 2002.002.07

MARK SANDERS

# NOTICE OF COMPLETION AND DECLARATION OF COMPLIANCE

Send to the Attention of: Greg Ogata

San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Ladies and Gentlemen:

You are hereby informed that the work authorized by the above-referenced permit was completed on _____.

I have personally reviewed the terms and conditions of the permit, the final plans approved by or on behalf of the Commission, and the completed project and hereby certify that the project is in compliance with all terms and conditions of the permit and conforms to the plans previously reviewed and approved by or on behalf of the Commission. I further certify that all conditions of the permit, particularly with regard to plan review, public access areas and improvements, recordation, open space restrictions and other special conditions have been met.

I, _____, hereby declare under penalty of perjury that the foregoing is true and correct and that if called upon to testify to the contents of this notice, I would so testify.

Executed on this _____ day of _____,

20_____, at _____, California.

_____
**(Permittee)**

_____
**(Title)**

cc: Andrea Gaffney, BCDC Bay Design Analyst
Rafael Montes, BCDC Senior Engineer

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

**PERMIT NO. 2002.002.07**
(Issued On August 21, 2003 As
Amended Through May 9, 2017)
**AMENDMENT NO. SEVEN**

Mark Sanders
Westpoint Harbor LLC
1529 Seaport Boulevard
Redwood City, California 94063

Dear Mr. Sanders:

On August 7, 2003, the San Francisco Bay Conservation and Development Commission, by a vote of 17 affirmative, 0 negative, and 0 abstentions, approved the resolution pursuant to which this permit is hereby issued. Moreover, on March 9, 2004, August 3, 2006, November 1, 2006, June 22, 2011, ~~and~~ April 18, 2016, and May 9, 2017, pursuant to Regulation Section 10822, the Executive Director approved Amendment Nos. One, Two, Three, Four, ~~and~~ Six (exclusive of Amendment No. Five), and Seven to which this amended permit is hereby issued:

## I. Authorization

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

**In the Bay, in a Salt Pond, and Within the 100-foot Shoreline Band:**

**Phase 1A**

1. Import, place, and use for surcharge purposes approximately 90,000 cubic yards (cy) of clean soil over the project site that will not be removed (Amendment No. One);
2. Create and use a marina basin by excavating approximately 545,000 cy of material from approximately 26.6 acres of the site to an average depth of 15 feet below Mean High Water (MHW);
3. Dewater the excavated material on site by pumping liquid into the adjacent salt pond for processing. (A temporary berm constructed between the project site and the salt pond will prevent movement of water from the remaining salt pond back into the project site);
4. Create, use, and maintain a 24-acre upland area by reusing all of the approximately 272,500 cubic yards of the excavated material (the volume of excavated material –545,000 cubic yards—will shrink by 50 percent once dry);

5. Place and use approximately 64,000 cubic yards of imported, clean soil on the upland portion of the site to create a three-foot-deep cap over any bittern-impacted material taken to create the marina basin;
6. Construct, use, and maintain a 63-foot-wide, approximately 2,525-foot-long, earth levee, at a slope of 7:1, using approximately 14,730 cy of soil from the basin excavation on site, between the project site and the Cargill salt pond to the south, to stabilize the soils at the project site (Amendment No. Two);
7. Siphon water from Westpoint Slough at high tide into the new marina basin bringing its surface to mean low water (MLW) to reduce the potential erosive effect of levee breaching;
8. Create and use a 300-foot-wide marina entrance by breaching the levee between Westpoint Slough and the new marina basin;
9. Place and use approximately 11,000 cy of material removed from the levee breach on the upland project site;
10. Install, use, and maintain approximately 96,500 square feet of riprap below mean high water and 24,500 square feet of riprap above mean high water in the new marina basin;
11. Remove, regrade, and replace approximately 17,500 square feet of riprap below mean high water and 23,000 square feet of riprap above mean high water outboard of the project site in Westpoint Slough;
12. Construct, use, and maintain pile-supported and floating structures for three docks, approximately 145 slips, in the marina (Amendment No. Three);
13. Construct, use, and maintain three small buildings, each approximately 500 square feet, containing restroom, shower, and laundry facilities for marina patrons;
14. Construct and "rock" only to allow for settlement, a 24-foot-wide road to the site, a 604-space parking lot (12 of which are for public access), and a 30-space vehicle and boat trailer parking lot (15 of the trailer parking spaces would be public access). Note that not all parking and roadway may be laid out and "rocked" in Phase 1A, but must be completed by the end of Phase 1B, below (Amendment No. Three);
15. Construct and "rock" only to allow for settlement, an approximately 242,000-square-foot public access area along Westpoint Slough and a majority of the marina basin perimeter including approximately 85,300 square feet of

walkways, a twelve to fifteen-foot-wide path along the perimeter of the basin, overlooks of Westpoint Slough and the adjacent habitat (the public access area will be increased with development of marina commercial facilities). Note that not all of the public access areas may be laid out and "rocked" in Phase 1A, but must be completed by the end of Phase 1B, below (Amendment No. Three);

16. Install, use, and maintain a crosswalk, signage, and other pedestrian safety measures where the vehicular access road crosses the Pacific Shores Center public access trail to ensure pedestrian and bicycle safety;
17. Install, use, and maintain signs advising boaters of the sensitive nature of the Greco Island area within Westpoint Slough (in cooperation with the U.S. Fish and Wildlife Service and State Lands Commission, as property owners);
18. Install, use, and maintain channel markers in Westpoint Slough from the main Redwood Channel to the entrance of Westpoint Marina notifying boaters of the "no wake zone" (in cooperation with the State Lands Commission, as property owner); and
19. Install, use, and maintain three temporary buildings to house the harbormaster's office and restroom/shower facilities (Amendment No. Three).

**Phase 1B**

1. Construct, use, and maintain pile-supported and floating structures for the remaining docks at the marina, approximately 271 slips, for a total of 416 slips (Amendment No. Three);
2. Construct, use, and maintain approximately 69,440 square feet of roofing to cover the two easternmost docks (covering a total of approximately 100 berths (Amendment No. Three);
3. Construct, use and maintain 10 guest berths for public use (Amendment No. Three);
4. Construct, use, and maintain an approximately 3,600-square-foot, two-lane public boat launch ramp 2,160 square feet of which is below the 103-foot contour line, and a 670-square-foot boat dock (Amendment Nos. Three and Six);
5. Construct, use, and maintain a 3,500-square-foot harbormaster's building that includes public restrooms (Amendment No. Three);

6. Complete construction of use, and maintain an approximately 242,000-square-foot public access area along Westpoint Slough and a majority of the marina basin perimeter including approximately 85,300 square feet of walkways, a twelve to fifteen-foot-wide path along the perimeter of the basin, and overlooks of Westpoint Slough and the adjacent habitat (Amendment No. Three);
7. Install and maintain approximately 170,500 square feet of landscaping (Amendment No. Three);
8. Install, use, and maintain a six-foot-tall fence on the east side of the site to prevent access into the marshes along Westpoint Slough adjacent to the project site and along the southern property line with Cargill to prevent access into the salt ponds (Amendment No. Three); and
9. Install, use, and maintain approximately 1,749 feet of five-foot tall temporary fencing around the undeveloped building sites of the Phase Three project area as described in Special Condition II-HH, herein. (Amendment No. Seven).

**Phase 2**

1. Construct, use, and maintain boatyard facilities that include:
   a. A large-boat straddle lift bay totaling approximately 2,500 square feet;
   b. A small boat forklift pier totaling approximately 950 square feet;
   c. Two boathouses sized at 8,000 square feet and 10,000 square feet, respectively, each containing maintenance bays and shops;
   d. Approximately 136,480 square feet of asphalt paving for the storage of boats and non-public parking;
   e. A storm water runoff management system comprised of two, landscaped bio-retention basins (approximately 4,000 square feet and 3,950 square feet, respectively), one outfall pipe and 400 square feet of riprap;
   f. An approximately 391-square-foot public restroom building near the public boat launch (which is the second of three public restrooms required by Special Condition II.B.4.f); and
   g. 36,811 square feet of irrigated landscaping - of the total 170,500 square feet authorized above in Section I.A. Phase 1B.7 – adjacent to the public shore trails, public restroom and bio-retention basins on the east side of the site (Original Authorization as modified by Amendment No. Six).

2. Construct, use, and maintain a 2,600-square-foot service dock, including fuel and pump-out facilities (Original Authorization as modified by Amendment No. ~~Six~~Six);
3. Construct, use, and maintain approximately 1,000 square feet of public observation areas overlooking the launch ramp and boat haul-out; and
4. Install, use, and maintain a six-foot-tall fence along the southern and eastern perimeter of the boundary of the Phase 2 project area to enclose the dry boat storage and boatyard areas to ensure public safety, all as shown on the plans referenced in Special Condition II.A.5 (Original Authorization as modified by Amendment No. Six).

**Phase 3**

1. Construct, use, and maintain one and two-story buildings (not to exceed 30 feet in height) associated with a marina resort including up to a 5,000-square-foot yacht club, up to a 8,000-square-foot restaurant, up to a 6,000-square-foot marine store, and up to 10,000 square feet of retail space;
2. Construct, use, and maintain a minimum 15-foot-wide public boardwalk (approximately 12,000 square feet) adjacent to the retail areas with public access augmented with development of marina commercial facilities; and
3. Install, use, and maintain approximately 43,000 square feet of landscaped "greens" and picnic areas.

B. This amended authority is generally pursuant to and limited by the application received on May 21, 2002, and your letters dated October 27, 2003, July 14, 2006, July 14, 2006 and August 15, 2006, May 23, 2011 and July 20, 2015, requesting Amendment Nos. One, Two, Three, Four and Six, respectively, including all accompanying and subsequently submitted correspondence and exhibits, but subject to the modifications required by conditions hereto.

C. All work originally authorized herein (including work authorized under Amendment No. One) must commence prior to August 15, 2004 or this permit will lapse and become null and void. Work authorized under Amendment Nos. Two, Three, Four and Six must commence by September 15, 2007 (with the exception of work authorized by Amendment No. Six issued after this date) or this amended permit will lapse and become null and void. All work (except that authorized by Amendment No. Seven) must ~~also~~ be diligently prosecuted to completion, and must be completed by August 15, 2019, unless an extension of time is granted by amendment of the permit, or this permit will lapse and become null and void.

D. The amended project will result in fill in a salt pond by: (1) placing 90,000 cy of imported fill for surcharge purposes; (2) creating upland land with the placement of 272,500 cubic yards of sediment (excavated to create a 26.6-acre marina basin) over approximately 25 acres to create marina support and commercial facilities; and (3) placing approximately 14,730 cy of the material excavated from the site over approximately 159,075 square feet (3.6 acres) to create a 7:1 slope, supportive buffer between the project site and the Cargill salt pond to the south. In addition, approximately 96,500 square feet of riprap would be placed around the excavated basin. Once the levee is breached and tidal action is introduced to the site, the marina part of the project would result in Bay fill, consisting of approximately 98,917 square feet of docks, 4,505 square feet of boardwalks, 750 square feet of pilings to support the boat docks, , and public access boardwalk, 69,440 square feet of covered boat docks, 2,160 square feet of the 3,600-square-foot boat launch ramp, 670 square feet for a public boat dock at the boat launch ramp, 3,450 square feet for a lift bay and forklift pier, the haul-out, and 17,500 square feet of riprap on the outboard levee, totaling 196,722 square feet of Bay fill. The project would result in approximately 447,077 square feet of new Bay surface. The approximately 298,000 square feet of public access areas would consist of a pathway along a majority of the marina basin perimeter, one pedestrian access connection from the Pacific Shores Center along the shoreline, overlooks of the boat launch area, an extension of the Pacific Shores Center pathway along Westpoint Slough, overlooks of the adjacent habitat, two landscaped lawn areas, public access parking for vehicles and some public boat trailer parking, a boardwalk, and visitor and transient berths.

## II. Special Conditions

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

### A. Specific Plans and Plan Review

1. **Plan Review**. No work whatsoever shall be commenced pursuant to this authorization until final precise site, engineering, grading, architectural, public access, and landscaping plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.

    a. **Site, Architectural, Grading, Public Access, and Landscaping Plans**. Site, architectural, grading, public access, and landscaping plans shall include and clearly label the shoreline (or, if marsh is present, the line 5 feet above mean sea level NGVD (National Geodetic Vertical Datum)), the line 100 feet inland of the

line of the shoreline, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements. In addition to the information listed above, provide the following information:

The site plan shall provide a dimension line, which marks the minimum distance between a proposed structure authorized by this permit and the Mean High Water Line (or, if marsh is present, the line 5 feet above mean sea level NGVD (National Geodetic Vertical Datum)). Additional dimension lines shall be provided, as necessary, to locate where this minimum dimension occurs in relation to either the property line, the top of bank, or some other fixed point upon the site.

b. **Engineering Plans**. Engineering plans shall include a complete set of contract drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil, shoreline erosion, and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:

(1) Evidence that the design complies with all applicable codes; and

(2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.

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

(1) completeness and accuracy of the plans in showing the features required above, particularly the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if marsh is present), property lines, and the line 100-feet inland of the shoreline, and any other criteria required by this authorization;

(2) consistency of the plans with the terms and conditions of this authorization;

(3) the provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization;

(4) consistency with legal instruments reserving public access and open space areas;

(5) assuring that any fill in the Bay does not exceed this authorization and will consist of appropriate shoreline protection materials as determined by or on behalf of the Commission; and

(6) consistency of the plans with the recommendations of the Design Review Board.

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

2. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.

3. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.

4. **Amendment No. Two.** No final plan review is required for the construction of the southern buffer. However, the buffer must be designed and constructed to be in general conformance with this permit, in that fill in the salt pond should not exceed that authorized herein and the buffer must generally conform to the plans submitted entitled "63 Foot Wide Slope License," pages one and two, prepared by Bohley Consulting and dated July 12, 2006. The final design of the buffer should ensure that appropriate provisions have been incorporated for safety in case of a seismic event.

5. **Amendment No. Six – Further Plan Review Required**. The improvements authorized by Amendment No. Six shall be built generally in conformance with:

   a. The two sets of 11 x 17 inch plans – a fourteen page black and white set and an eight page color supplement - both identically entitled "Westpoint Harbor – Phase 2 Boatyard Buildings, 1529 Seaport Boulevard, Redwood City, CA, Conceptual Plan Review for Amendment No. 6," prepared by DES Architects and Engineers, and dated October 26, 2015;

   b. The 8.5 x 11 inch plan entitled "Westpoint Marina – Phase 2, Detention Basin Outlet Pipe Section, Sheet 1 of 1, prepared by Bohley Consulting, and dated December 17, 2015; and

   c. The large format plan set entitled "West Point Marina Boathouse A, Issue for Permit, 1529 Seaport Boulevard, Redwood City, 94063," prepared by DES Architects and Engineers, and most recently revised on July 31, 2015.

   No substantial changes shall be made to these plans without prior review and written approval by the Commission staff. As stated above in Section II.A.1, construction plans must be submitted to and approved by BCDC staff prior to the commencement of any work authorized by Amendment No. Six. The plans cited above lack details for the riprap, fencing, boat dock, observation areas and tables.

B. **Public Access**

1. **Area.** The approximately 298,000-square-foot area and at least 10 percent of the retail building envelopes that will be constructed as part of Phase Three as is more specifically described in Special Condition II-B-8 below, along approximately 4,800 linear feet of shoreline, as generally shown on Exhibit "A", shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. If the permittee wishes to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission.

   Note that at the time Amendment Nos. Two and Three were issued, the Commission's Design Review Board reviewed and agreed with the relocation of several buildings authorized herein. These building relocations, shown in the August 7, 2006, Design Review Board packet, should not change the quantity or quality of public access provided at the site in any way, although trail configuration may be slightly altered from that shown in Exhibit A, particularly around the new location for the harbor in a master's office.

As part of Amendment No. Six, the permittee has proposed to install a 670-square-foot boat dock at the public boat launch ramp. The permittee is also going to construct two already-required public observation areas and a public restroom. The permittee has already obtained staff approval of, and recorded on title, the legal instrument that fulfills the requirement to permanently guarantee the public access areas required by this permit (County of San Mateo Document Number 2007-124894). Amendment No. Six requires the boat dock at the boat launch ramp to be public access but does not require it to be permanently guaranteed. The boat dock, observation areas and public restroom are not shown on Exhibit A but are is shown on the plans referenced in Special Condition II.A.5 above.

2. **Permanent Guarantee**. Prior to the installation of the boat slips, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the new, approximately 298,000-square-foot public access area (excluding the vehicle and boat trailer parking, as well as the guest berths). Prior to the commencement of any grading or construction activity for Phase Three of the project, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to at least 10 percent of retail building envelopes as is more specifically described in Special Condition II-B-8 below.

   The instruments shall create rights in favor of the public which shall commence no later than: (1) after completion of construction of any public access improvements required by this authorization and prior to docking any vessels within the marina basin authorized herein in the case of the 298,000-square-foot public access area; and (2) after completion of construction of any public access improvements required as part of the authorization of Phase Three and prior to the use of any structures authorized as part of Phase Three, in the public access area required in Special Condition II-B-8 below. Such instruments shall be in a form that meets recordation requirements of San Mateo County and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if marsh is present), the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, marina basin, any significant elevation changes, and the location of the

nearest public street and adjacent public access areas. Approval or disapproval of the instruments shall occur within 30 days after submittal for approval and shall be based on the following:

a. Sufficiency of the instruments to create legally enforceable rights and duties to provide the public access area required by this authorization;

b. Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and

c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.

3. **Recordation of the Instruments.** Within 30 days after approval of the instruments, the permittee shall record the instruments on all parcels affected by the instruments and shall provide evidence of recording to the Commission. No changes shall be made to the instruments after approval without the express written consent by or on behalf of the Commission.

4. **Improvements Within the Total Public Access Area**

**Phase 1B.** Prior to the use of any structure authorized herein (including the marina berths) under Phase 1B of the project, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

a. A 3,600-square-foot, two-lane, signed, public boat launch ramp, 2,160 square feet of which is below the 103-foot contour line (the location of mean high tide), and a 670-square-foot boat dock (Amendment No. Five);

b. Fifteen~~,~~ signed public parking spaces for vehicle and boat trailer parking;

c. Twelve~~,~~ signed public parking spaces at various locations around the marina basin, although the entire, approximately 600-space parking lot is open to public parking;

d. Approximately 85,300 square feet of concrete, decomposed granite, wood, or asphalt (with header board) walkways (all designed to provide connections to adjacent properties), including a 12 to 15-foot-wide path along the majority of the marina basin perimeter and overlooks of Westpoint Slough and the adjacent habitat. The overlooks at the levee entrance to the marina shall include belvederes or other special features;

e. Ten guest berths, identified with signage;

f. One public restroom, provided within the Harbormaster's building and two public restrooms in the marina basin area;

g. Approximately 170,500 square feet of landscaped areas;

h. Site furnishings, as determined appropriate by the Commission staff as advised by the Design Review Board, including, but not limited to, lighting, seating (not less than 20 benches), tables, and trash receptacles (not less than 10 trash containers); and

i. No fewer than fifteen public access and, when appropriate, Bay Trail signs, one at the beginning of each path on the site.

**Phase 2.** Prior to the use of any structure authorized herein under Phase 2 of the project, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

a. Public observation areas or plazas that are an extension of or connected to the public pathway overlooking the launch ramp and boat haul-out areas that are at least 15 feet wide and total at least approximately 1,000 square feet;

b. Site furnishings, as determined appropriate by the Commission staff as advised by the Design Review Board, including, but not limited to, lighting, seating (not less than 4 benches), tables, and trash receptacles (not less than 2 containers); and

c. No fewer than two public access and, when appropriate, Bay Trail signs.

**Phase 3 .** Prior to the use of any structure authorized herein under Phase 3 of the project, the permittee shall install the following improvements, as generally shown on attached Exhibit A:

a. An approximately 800-foot-long and 15-foot-wide public boardwalk adjacent to the retail areas;

b. At least 10 percent of the building envelopes for the retail areas and appropriate public access amenities and site furnishings, as outlined in Special Condition II-B-8, below;

c. Site furnishings, as determined appropriate by the Commission staff as advised by the Design Review Board, including, but not limited to, lighting, seating, tables, and trash receptacles (this may involve relocating some of the site furnishings required above);

d. No fewer than two public access and, when appropriate, Bay Trail signs; and

e. Approximately 43,000 square feet of landscaped "greens" and picnic areas.

Such improvements shall be consistent with the plans approved pursuant to Condition II-A of this authorization and substantially conform to the plans entitled Public Access Plan, Westpoint Marina and Boatyard, and Site Sections (three plans), Westpoint Marina and Boatyard, all dated June 27, 2003 and prepared by BMS Design Group and Bohley Consulting.

5. **Maintenance**. The areas and improvements within the total 298,000-square-foot area (plus any additional access area provided with development of the commercial buildings) shall be permanently maintained by and at the expense of, the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces including the Phase 2 boat ramp and dock; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; regular and periodic cleanup of litter and other materials deposited within the access areas and in trash containers; 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 permittee shall correct any maintenance deficiency noted in a staff inspection of the site.

6. **Assignment.** The permittee 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 permit.

7. **Reasonable Rules and Restrictions.** The permittee 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 permittee has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

8. **Criteria for Public Access within Retail Building Envelopes (Phase Three of Construction).** At least 10 percent of the retail building envelopes shall be provided as dedicated public access. The following criteria, at a minimum, shall be used by Commission staff and the Design Review Board in approving the design for the public access provided in these building envelopes: (1) the width of public access

between the top of bank and adjacent structure shall be at least as wide as the height of the structure; (2) the public access shall feel open, useable, and inviting to the public; and (3) an appropriate number and type of public access amenities and furnishings shall be provided in these access areas. Some exceptions to criteria number 1 above may be approved by the Executive Director upon the recommendation of the Design Review Board, as long as the design of the public access area and the adjacent structures still comply with criteria number 2 above.

9. **Accessible to Persons with Disabilities.** All public access facilities authorized or required under terms of this amended authorization shall be designed so that they are accessible to persons with disabilities (Original Authorization as modified by Amendment No. Six).

10. **Visual Access**. The permittee shall provide as visual access: (1) a 100-foot-wide view corridor located on the northwest side of the property and labeled as "Marina Green North" on attached Exhibit A; (2) a 80-foot-wide view corridor located on the northwest side of the property and labeled as "Marina Green South" on attached Exhibit A; (3) a 60-foot-wide view corridor located on the west side of the property and located between the 31,200-square-foot building site envelope and the 31,600-square-foot building envelope, as shown on Exhibit A; and (4) a 45-foot-wide view corridor located on the southwest side of the property between the 31,600-square-foot building site envelope and the west end of the parking lot. The permittee shall not allow any portion of a large structure to intrude into the view corridors, and the permittee shall landscape the view corridor only with plants or shrubs that that have been approved by or on behalf of the Commission pursuant to Special Condition II-A to this permit. The permittee shall maintain the view corridor by the regular trimming of shrubs and any plants to prevent their exceeding three feet in height and clearing and replacing of any dead plants.

11. **Easements with Pacific Shores Center LLC for Ingress and Egress.** The permittee shall continue to make a good faith effort to acquire easements from Pacific Shores Center, LLC, to increase the vehicular and pedestrian connections into the site. These easements include: (1) an easement, or otherwise permission to construct, for a public access trail along the shoreline that would move north past the permittee's property line and cross over the drainage swale and connect with the trail at Pacific Shores Center; (2) an easement for a public access trail located on the west side of the site between the shoreline trail and the vehicular easement described in item 3 of this paragraph, below; (3) an easement for a second vehicular access way through Pacific Shores Center that would allow an entrance to the project site; and (4) a revised easement for widening the vehicular entrance to the project. Final plan

approval shall only be granted to the permittee for vehicular and public access connections, including specific widths and dimensions, for which there are valid easements with Pacific Shores Center. If these easements are obtained, the permittee is authorized to and shall construct connections 1, 2, 3, and 4 with Pacific Shores Center as described above in accordance with: (1) the site plans entitled "Westpoint Marina and Boatyard", dated May 5, 2003, that shows all of the easements described above; and (2) Special Condition II-A of this permit.

12. **Safety Measures for Vehicular Entrance and Permit Amendment of BCDC Permit No. 1998.021 (formerly known as 21-98), Pacific Shores Center.** The permittee shall make a good faith effort to work with Pacific Shores Center to install any signage, a crosswalk, and any other safety measures (such as speed bumps, traffic dots, etc.) necessary to ensure that the vehicular entrance to the site does not impede safe pedestrian and bicycle use of the required Pacific Shores Center public access trail.

13. **Easement with Cargill for Fire Road.** If the permittee determines that a fire access road to Seaport Boulevard must be constructed on its easement with Cargill, the permittee shall make a good faith effort to gain permission from the underlying property owner to allow public access on this road. Amendment of this permit shall be required to construct this fire road.

14. **Docks Open to the Public.** The marina docks shall remain open during daylight hours to the public for viewing of the marina, boatyard operations, and surrounding habitat.

C. **Further Review by Design Review Board.** Portions of the proposed project shall be reviewed by the Commission's Design Review Board prior to the submittal of final plans for approval. The elements of the project that shall return to the Design Review Board at a minimum include: (1) architecture and layout of all proposed buildings and associated landscaping and park furniture; (2) the covered berthing; (3) path surfaces; and (4) site furnishings and landscaping.

D. **Boathouse and Rowing Center.** The permittee shall make a good faith effort to create a non-profit corporation that shall meet community needs for a boathouse and rowing center for all ages and abilities. In addition, the permittee shall make a good faith effort to involve the Bair Island Aquatic Center and Kent Mitchell Masters rowing clubs to ensure the boathouse and rowing center are open to a diverse group of the rowing and boating community.

E. **Shoreline Protection**

1. **Alternative Shoreline Protection.** The permittee shall investigate, with the aid of a coastal engineer, non-structural alternative measures to provide shoreline protection and protect against shoreline erosion. The permittee shall evaluate alternative measures that reduce the amount of fill and hardscape placed at the site and promote the growth of native plants.

2. **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.

3. **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.

4. **Riprap Plans**

   a. **Design.** Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design of the shoreline protection improvements authorized herein.

   b. **Plan Review**. No work whatsoever shall be commenced on the shoreline protection improvements authorized herein until final riprap plans have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The plans shall consist of appropriate diagrams and cross-sections that (1) show and clearly label the mean high tide line or five feet above mean sea level in marshes, property lines, grading limits, and details showing the location, types, and dimensions of all materials to be used, (2) indicate the source of all materials to be used, and (3) indicate who designed the proposed shoreline protection improvements and their background in coastal engineering and familiarity with the Commission's concerns. Approval or disapproval of the plans shall be based upon (1) completeness and accuracy of the plans in showing the features required above, (2) consistency of the plans with the terms and conditions of this

permit, (3) assuring that the proposed fill material does not exceed this permit, (4) the appropriateness of the types of fill material and their proposed manner of placement, and (5) the preparation of the plans by professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes. All improvements constructed pursuant to this permit shall conform to the final approved plans. No changes shall be made thereafter to any final plans or to the constructed shoreline protection improvements without first obtaining written approval of the change(s) by or on behalf of the Commission.

5. **Maintenance.** The shoreline protection improvements authorized herein shall be regularly maintained by, and at the expense of the permittee, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to, collecting any riprap materials that become dislodged and repositioning them in appropriate locations within the riprap covered areas, replacing in-kind riprap material that is lost, repairing the required filter fabric as needed, and removing debris that collects on top of the riprap. Within 30 days after notification by the staff of the Commission, the permittee or any successor or assignee shall correct any maintenance deficiency noted by the staff;

6. **Riprap Placed Pursuant to Amendment No. Six**. All riprap placed as part of the construction of the two bio-retention basins must be placed in a manner consistent with the requirements outlined above.

F. **Shorebird Roost Habitat Mitigation.** Prior to commencement of work authorized under Phase Two, the permittee shall provide mitigation for the 2.3 acres of shorebird roost habitat lost as a result of this project with approximately 3.0 acres of replacement habitat with similar functions and benefits for shorebirds. The habitat creation plans shall be reviewed and approved by or on behalf of the Commission after consultation with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife .

G. **Non-tidal Wetland Mitigation.** The permittee shall provide mitigation for the loss of 0.27 acres of non-tidal wetlands located in a drainage ditch on the site by enhancing and enlarging the wetlands in the remainder of the drainage ditch and by creating additional wetland on isolated fringes of the project site for a replacement ratio of at least 1:1. The habitat enhancement plans shall be reviewed and approved by the U.S. Fish and Wildlife Service, California Department of Fish and Wildlife , and by or on behalf of the Commission.

H. **"No Wake" Zone in Westpoint Slough.** The permittee shall install and maintain buoys adjacent to the navigation channel of Westpoint Slough to identify the "No Wake" speed zone, delineate the center of the channel for adequate draw, and discourage boats from deviating out of the navigable channel. The permittee shall also install and permanently maintain a buoy

system 100 feet from the salt marsh on Greco Island along the Westpoint Slough up to its confluence with Redwood Creek. The buoys shall contain signs informing the public that public access into the marshlands of the San Francisco Bay National Wildlife Refuge is prohibited. The permittee shall coordinate with the San Francisco Bay National Wildlife Refuge on specific wording and locations of buoys.

I. **Signage to Alert Boaters of Sensitive Habitat.** The permittee shall install and permanently maintain information signs at the boat launch and other public access areas informing the public of the access restrictions on Greco Island and other wetlands in the San Francisco Bay National Wildlife Refuge. The draft wording and locations of the signs shall be coordinated with the U.S. Fish and Wildlife Service, California Department of Fish and Wildlife , and the Commission staff.

J. **Cooperation on any Future Salt Pond Restoration.** The permittee shall cooperate with the City of Redwood City, California Department of Fish and Wildlife , U.S. Fish and Wildlife Service, and the Commission on any future habitat restoration plans for the adjacent salt ponds.

K. **Visual Barriers to Adjacent Salt Pond.** The permittee shall provide visual barriers between the active marina areas and the adjacent salt pond to reduce disturbance to water birds using the salt pond. The visual screening can be achieved through setbacks (85 to 90 feet in width) or through a combination of reduced setbacks combined with landscaping or other visual barriers (fence slats) that obscure near range views of the salt ponds (less than 100 feet from the human use areas).

L. **Native Plant Species.** The permittee shall select and limit landscaping to species that are not considered to be problematic invasive exotics by the California Exotic Pest Plant Species Council.

M. **Marsh Protection**

1. **Best Management Practices.** All construction operations shall be performed to prevent construction materials from falling, washing, or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at their expense. The permittee shall also employ best management practices, such as compaction, soil fences, jute matting, etc. to assure that construction activities do not impact adjacent marshlands.

2. **Marsh and Upland Plant Protection During Construction.** The work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize to the extent possible any significant adverse impact on any tidal marsh, other sensitive

wetland resources, and existing native upland vegetation. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the permittee shall restore the area to its previous condition, including returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, the permittee shall seed all disturbed areas with appropriate vegetation consistent with plans approved by or on behalf of the Commission pursuant to Special Condition II-A. The permittee shall employ mitigation measures to minimize impacts to wetland areas, such as: (1) minimizing all traffic in marsh/mudflat areas; and (2) carefully removing, storing, and replacing wetland vegetation that has been removed or "peeled back" from construction areas as soon as possible following construction.

N. **Protection of Water Quality.** All construction operations and materials including but not limited to those authorized by Amendment No. Six shall maintain water quality at a level that will support and promote beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board's Basin Plan and within the conditional water quality certification issued by the Water Quality Control Board for this project on May 16, 2003. Protection of water quality includes, but is not limited to, using no pilings or other wood structures that have been pressure treated with creosote, or other treatments that could adversely affect water quality, shall be used as part of the project authorized herein. As required by the Water Quality Control Board conditional water quality certification, the permittee shall prepare and submit to the Water Quality Control Board for its review and approval: (1) a Construction Stormwater Pollution Prevention Plan; (2) a Marina Water Quality Management Plan that will address sewage management, fueling station design and operation, control of oil and discharge from boats, hazardous waste management, vessel cleaning and maintenance operations for boats in the water, solid waste management, fish waste management, boat operations, public education, and stormwater runoff treatment (Original Authorization as modified by Amendment No. Six).

O. **Marina Conditions**

1. **Construction**. Construction standards for marina berths and associated facilities shall be at least equal to those established by the State Department of Boating and Waterways. All construction activity shall be performed to minimize turbidity and to prevent debris from drifting and presenting a pollution or navigation hazard.

2. **Waste Discharge.** The discharge of any solid or liquid wastes, including bilge water, grey water, or sewage, into the Bay within the marina basin is prohibited.

3. **Waste Facilities.** Prior to the use of any berth, the permittee shall install a suitable facility for receiving and disposing of oily wastes, and a facility for pumping out vessel holding tanks and receiving wastes from portable toilets. Such facilities shall be constructed to all applicable codes and standards, shall be connected to onshore waste treatment facilities, and shall be maintained by the permittee in a safe and sanitary manner. Such facilities shall be available to boaters every day of the week and any fees for the use of the facilities shall be limited in amount to cover the cost of the operation of the facilities.

4. **Marine Toilets.** The permittee shall make it a requirement of the use or occupancy of any berth that: (a) any vessel berthed, if equipped with a marine toilet, shall contain an adequate holding tank, incinerator recirculation device, or other equivalent device approved by applicable agencies to preclude discharge of wastes into the waters of the marina, or have the marine toilet rendered inoperable while any such vessel is moored in the marina; and (b) any violation of the waste discharge requirements of this authorization shall be cause for immediate cancellation of the right of such use or occupancy. The permittee shall submit to the Commission a copy of the berthing agreement which shall set forth the requirements included in this condition.

5. **Enforcement Responsibility.** The permittee shall adequately enforce the requirements herein, and shall submit to the Commission the name, address, and telephone number of the person at the marina responsible for such enforcement.

6. **Enforcement Alternatives**. The Commission reserves the right, in the event of repeated or serious problems with waste discharges in violation of the requirements herein or in the event of laboratory test results that indicate the presence of materials associated with waste discharges, to require that onshore sewer lines be provided for each berth or that the permittee remove or cause to be removed permanently from the marina any vessels from which wastes have been discharged.

7. **Houseboats**. No houseboat (floating home) or other structure used as a residence shall be permitted in the marina.

8. **Live-aboard Boats**. Except as specifically authorized in Special Condition II-P of this authorization, no vessel moored in the marina shall become a long-term place of residence. Any violation of this condition shall be grounds for immediate termination of the berthing rights of any such owner or occupant.

9. **Sales or Long-Term Rental of Berths**. Berths shall be rented to the general public without discrimination and no right to use of an individual berth shall be granted or otherwise transferred that exceeds one year in duration.

P. **Live-Aboard Boats**

1. Live-aboard boats shall be those boats designed and used for active navigation but are distinguished from other navigable boats in that they are also used as a primary place of residence. No houseboats shall be moored in the marina. Live-aboard boats should be placed so as to increase security for the marina. The location of live-aboard boats shall be approved by or on behalf of the Commission pursuant to Special Condition II-A;
2. Convenient and adequate parking, restrooms, showers, garbage disposal facilities and sewage pump-out stations shall be provided and maintained for use by occupants of the live-aboard boats;
3. The number of live-aboard boats shall at no time exceed ten percent of the number of authorized berths in the marina;
4. Adequate tidal circulation shall be maintained in the marina;
5. Prior to the lease for live-aboard boat use of any of the approximately 40 liveaboard berths authorized herein, the permittee shall have received prior written approval by or on behalf of the Commission, and have completed construction of restrooms, showers, parking and garbage disposal facilities on land adequate to serve authorized resident live-aboard and houseboat occupants, pursuant to plans submitted as required in Special Condition II-A and have submitted a letter from the City of Redwood City stating the lease of a berth for houseboat or live-aboard purposes in this marina is consistent with local codes; and
6. At such time as the Environmental Protection Agency designates the South Bay or Westpoint Slough area as a "no discharge" area, direct shoreside sewer connections for each live-aboard shall be provided by the permittee.

Q. **Personal Watercraft**. Motorized personal watercraft such as jetskis shall be prohibited in all portions of the marina, including the boat launch ramp.

R. **Clean and Safe Boating Signs**. The permittee shall provide signs and other information, such as charts, pamphlets and brochures near the harbor master's office that address shipping lanes, safety guidelines, U.S. Coast Guard rules for navigation, such as U.S. Coast Guard Rule 9, and clean boating information for smaller recreational craft. Any signs shall be located in a manner that does not adversely impact public access or views of the Bay and shoreline. The permittee may contact the U.S. Coast Guard Auxiliary, Power Squadron and Sea Partners organizations, the California Department of Boating and Waterways and the Commission's Clean, Green Boating Program for existing sources of this type of information and its availability.

S. **Horizontal Control Points**. As shown on plans required by Special Condition II-A, the permittee shall install a minimum of four permanent horizontal control points of a type and at locations approved by or on behalf of the Commission. These control points shall be placed under the supervision of a registered civil engineer or land surveyor, and shall be accurately located and mapped in relation to each other, to the closest known existing control point or other acceptable fixed point in the project area, and to the limits of any proposed fill in the Bay. These control points shall be located so as to facilitate field checking, with simple equipment, of the limits of the fill authorized pursuant to this authorization. Such fill limits shall be dimensioned from these control points, or, if the scale of the drawing is adequate, it shall carry a note stating that field dimensions may be scaled from the drawing and the accuracy of such scaling, e.g., "Field dimensions to an accuracy of + may be scaled from the drawing." The control point locations shall be clearly shown on all plans submitted pursuant to Special Condition II-A.

T. **Debris Removal**. All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed, washed, or blown into any area within the Commission's jurisdiction, the permittee, its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.

U. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, including the project authorized by Amendment No. Six, 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 (Original Authorization as modified by Amendment No. Six).

V. **Certificate of Occupancy or Use**. Prior to occupancy or use of any of the improvements authorized herein, including the project authorized by Amendment No. Six, the permittee shall submit a Notice of Completion and Compliance – multiple Notices of Completion shall be submitted throughout the life of the project and each one, until the final one, shall be interim Notices of Completion - 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 permittee with written notification of all outstanding permit compliance problems, if any. The permittee shall not occupy or make use of the phased improvements authorized herein until the staff has confirmed that the identified permittee compliance problems have been satisfactorily resolved and has provided the permittee with a Certificate of Occupancy or Use. Failure by the staff to perform such inspection and notify the permittee of any deficiencies of the project within this

30-day period shall not deem the project to be in compliance with the permit, but the permittee may occupy and use the improvements authorized herein (Original Authorization as modified by Amendment No. Six).

W. **Hold Harmless Agreement.** The permittee agrees to indemnify, defend, and hold harmless the Commission, its agencies, departments, officers, agents, and employees from any and all claims, demands, losses, or judgments accruing to or in favor of any person, firm, corporation, or entity who or whose property may be injured or damaged by work performed in accordance with the terms and conditions of this permit.

X. **Responsibility for Flooding.** The Commission shall not be responsible for any flooding that may occur as a result of undertaking this project.

Y. **Recording.** The permittee shall record this amended permit or a notice specifically referring to this permit on all parcels affected by this permit with San Mateo County within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission (Original Authorization as modified by Amendment No. Six).

Z. **Notice of Assignment**

1. **Notice to Buyers.** Prior to entering into any agreement to transfer any interest in any property subject to this permit, the permittee(s), or any assignee(s) of this permit or any part of it, shall provide the third party with a copy of this permit and shall call his or her attention to any provisions regarding public access or open space or the need to obtain approval of construction plans prior to the commencement of any construction.

2. **Assignment of Permit.** No more than ten days after transferring any interest in any property subject to this permit to another party, the transferor(s) shall (a) notify the Commission of the nature of the transfer, the name, address, and telephone number of the transferee, and the effective date of the transfer, and (b) shall also submit an assignment of this permit for the area transferred that has been executed by the transferor and the transferee and that indicates that the transferor has transferred the permit as it applies to the property that was transferred and that the transferee has read, understood, and has agreed to be bound by the terms and conditions of this permit.

AA. **Notifying NOAA to update Nautical Charts.** Within 30 days of the completion of the project authorized by this permit, the permittee shall provide written verification to the Commission that it has submitted to the Nautical Data Branch of the National Oceanic and Atmospheric Administration (NOAA) the following: (1) (a) as-built drawings, blueprints or other

plans that correctly depict the completed development or, if the project involves the removal of an existing development; (b) a list of the existing development(s) that have been removed and a statement from a qualified engineer or professional salvage company certifying which portions of the development have been removed; (2) the geographic coordinates of the project using a differential geographic positioning system (DGPS) unit or other comparable equipment suitable for providing location on a Nautical Chart; and (3) the permittee's name and contact information (such as a mailing address, telephone number, fax number and/or e-mail address).

BB. **Site Access.** The permittee grants 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/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.

CC. **Open Space.** Prior to the installation of the boat slips authorized herein, the permittee shall permanently restrict as open space, to remain unfilled except as provided herein, approximately 447,077 square feet of marina basin. Within this basin, the permittee is authorized to place approximately 100,000 square feet of floating and pile-supported fill for docks, boardwalks, pilings, covered berths, boat launch ramp and boat dock, and boat-haul out area and approximately 96,500 square feet of riprap below mean high water. In-kind repairs as authorized herein to the pile-supported and floating marina facilities and public boardwalk, the reconfiguration of the pile-supported and floating marina facilities, some minor additions to the pile-supported and floating marina facilities, and periodic repairs to the shoreline protection authorized herein may performed within the basin through plan review or amendment of the authorization herein. However, the open water areas of the basin shall be as contiguous as possible. Minor amounts of floating and pile-supported fill, in addition to that authorized herein may be added to the basin through amendment of this permit to improve the water-related recreational marina and public access uses (Original Authorization as modified by Amendment No. Six).

The permittee shall comply with this condition by doing the following: the permittee shall submit to the Executive Director an instrument that creates such open space restriction and that includes a map that shows all appropriate boundaries, including the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if marsh is present), and a metes and bounds description of the area being restricted as open space. The instrument shall be in a form suitable for recording in San Mateo County.

The Executive Director shall review and either approve or disapprove the proposed instrument within 30 days of its receipt. Approval or disapproval shall be based on the sufficiency of the instrument to create the required open space condition. If the Executive Director approves the instrument, the permittee shall record the instrument on all parcels

affected by the instrument within 30 days of its approval and shall thereafter provide the Commission with a copy of the recorded instrument. If the Executive Director disapproves the instrument, the permittee shall correct all deficiencies and resubmit the corrected instrument for further staff review within 30 days of receipt of the written notification of disapproval. The Executive Director shall then review the corrected instrument in accordance with this review procedure, and the permittee shall record the approved instrument on all parcels affected by the instrument within 30 days of its approval.

DD.**Temporary Harbor-masters Building and Restroom Shower Facilities.** The temporary structures authorized under Amendment No. Three shall be removed once permanent buildings are constructed and their temporary locations shall be reviewed under Special Condition II-A, herein (Amendment No. Three).

EE. **Bio-Retention Basin Shall Not Adversely Impact Public Access and Shall Comply with Requirements for Shoreline Protection - Amendment No. Six.** The 4,000-square-foot bio-retention basin authorized by Amendment No. Six in the "Phase II Project Area," as shown on the plans referenced in Special Condition II.A.5 shall not intrude upon or in any other way adversely impact the required public shoreline pathway to which it is adjacent. Riprap placement must be conducted in a manner consistent with the requirements of Special Condition II.E, Shoreline Protection, and Special Condition II.A, Specific Plans and Plan Review.

FF. **Phase 2 Fence Placement and Design - Amendment No. Six.** The fencing authorized in the "Phase II Project Area," as shown on the plans referenced in Special Condition II.A.5, must (1) be located at least ten (10) feet from the edge of the public shore trail when it is located adjacent to a trail, (2) protect existing required views as shown on Exhibit A, and (3) be constructed of an attractive material (4) provide for maximum transparency, and (5) obtain BCDC staff plan review and approval prior to its installation pursuant to the requirements of Special Condition II.A, Specific Plans and Plan Review.

GG. **Public Access To Remain Open During Construction of the Boatyard Area and Facilities – Amendment No. Six.** The public access required herein may not be closed to the public or otherwise blocked by the construction activities associated with the Phase 2 boatyard area and facilities unless absolutely necessary for a limited period of time and only in a manner consistent with the requirements of Special Condition II.B.7, Reasonable Rules and Restrictions.

HH. **Temporary Fencing Around the Phase Three Project Area—Amendment No. Seven.**
(1) The temporary fence authorized by Amendment No. Seven shall be installed precisely as specified in Sheets D-1.01, L-2.0, L-2.1, and L-2.2 of the plans entitled, "Westpoint Harbor and Marina, Existing and Proposed Public Access Plans", dated August 19, 2012, revised September 11, 2012, prepared by Kevin Stevens Design Group (KSDG). No further plan review is required prior to its installation. (2) Within 10 days of fence installation, the permittee shall submit a

Notice of Completion. (3) Prior to relocating the fence, the permittee shall submit revised fencing plans to the BCDC staff, along with a written request to conduct such work, and obtain written approval prior to commencing work. At no time shall a Phase 3 building or area be occupied or in use where one or more sections of fencing are obstructing access to it from an adjacent required public access area (including the obstruction of public view corridors). At all times, the fence shall not interfere with the requirements of Special Condition II.B.4.Phase 3. (4) The temporary fence authorized by Amendment No. Seven may remain in place as long as it is deemed necessary by mutual agreement of the permittee and Commission staff. Where a mutual agreement cannot be reached, Commission staff shall have final say as to when the temporary fence is no longer necessary; at which time the permittee shall remove any portion, or all, of the fence within ten (10) days of notice by Commission staff.

**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. **Salt Ponds.** In addition to the McAteer-Petris Act and the Bay Plan salt pond policies outlined below, it is important to note that the Bay Plan findings for salt ponds state, in part, that "...ponds provide 15 percent of the total Bay and pond water surface. This large pond surface area supplements the water surface of the Bay and thus helps to moderate the Bay Area climate and to prevent smog." The findings also state that "[t]he ponds are used as a habitat by shorebirds." Finally, the findings state that "[t]he ponds...provide some of the open space character of the Bay."

1. **Integrity of Salt Pond Production System and Opening Ponds to the Bay.** Section 66602.1 of the McAteer-Petris Act states, in part, that "...salt ponds and managed wetlands are important to the bay area in that, among other things, such areas provide a wildlife habitat and a large water surface which, together with the surface of the bay, moderate the climate of the bay area and alleviate air pollution...if development is proposed for these areas, dedication or public purchase of some of these lands should be encouraged in order to preserve water areas...if development is proposed for these areas...the development....should retain the maximum amount of water surface area consistent with the proposed project." Bay Plan Salt Pond policy number one states that "[a]s long as is economically feasible, the salt ponds should be maintained in salt production and the wetlands should be maintained in their present use. Property tax policy should assure that rising property taxes do not force conversion of the ponds and other wetlands to urban development. In

addition, the integrity of the salt production system should be respected (i.e., public agencies should not take for other projects any pond or portion of a pond that is a vital part of the production system)."

Salt Pond policy number two states that, "[i]f, despite these provisions, the owner of the salt ponds or the owner of any managed wetland desires to withdraw any of the ponds or marshes from their present uses, the public should make every effort to buy these lands, breach the existing dikes, and reopen these areas to the Bay. This type of purchase should have a high priority for any public funds available, because opening ponds and managed wetlands to the Bay represents man's last substantial opportunity to enlarge the Bay rather than shrink it. (In some cases, if salt ponds are opened to the Bay, new dikes will have to be built on the landward side of the ponds to provide the flood control protection now being provided by the salt pond dikes.)"

Cargill Salt Company stated in a letter written to Commission staff dated February 25, 2003, that the project site is no longer needed for the salt production process because "Pond 10 has never been an economically viable part of our salt making operations." Cargill states that the sale of a portion of Pond 10 to the applicant has not affected the salt making operations. Pond 10 is a highly saline pond at higher elevations than neighboring ponds. Historically, Cargill used the pond for desalting and other purposes and most often for the deposition of bittern liquids to allow more salt to precipitate out of the liquid. Cargill states that bittern has always been "...a saleable product, but until recently, production exceeded demand." In recent years, bittern sales have increased, allowing Cargill to construct a bittern plant in Newark. Now bittern from the Redwood City salt ponds is shipped to the Newark plant, when the demand for bittern is high. Although the Redwood City salt ponds are not currently a major salt harvesting facility due to the current salt market, these ponds are still maintained and utilized to increase the volume of product available if and when the salt demand increases. Cargill states that it "...cannot predict what future market conditions in salt may bring so we cannot know how long it will be profitable to utilize the Redwood City facilities for salt making facilities."

Cargill also stated in its letter that the development of a portion of Pond 10 would not impact the potential opening of the remaining salt ponds to the Bay. Cargill has "...retained the right to drain through the marina and the remaining frontage along First Slough totals thousands of feet...providing excellent access to the Bay." Cargill stated that is has "...no definitive plans for the ultimate use of the remaining 1,400 acres of the Redwood City plant site. We [Cargill] acknowledge the intense interest in this site by a number of individuals, organizations and agencies, and as previously stated, have no plans at this time."

The permittee executed a contract of sale on a portion of the current project site (35 acres) in 1993. In conjunction with this sale Cargill provided eight acres to the permittee as an easement to provide a barrier between the marina and salt production activities on Cargill's property. At that time, Cargill determined the multi-purpose pond was larger than needed and that the northern corner of Pond 10 could be sold. In the intervening years the permittee was able to annex the property to Redwood City, make it a legal parcel, and move forward with the permitting process. In the same period Cargill began to assess its operations and began discussions with resource agencies for the potential sale of surplus property. Cargill states acreage from Redwood City was made available in the sale of surplus ponds to the public but were determined to be too costly to include in the purchase price to the public. Cargill states that a number of government agencies stated "...that the purchase price for the Redwood City plant site was not an appropriate use of very limited public funds for resource properties." Throughout the negotiations, the Westpoint Marina site was specifically excluded, as it was previously committed by contract. Subsequently, Cargill sold seven additional acres to the permittee to increase the open-water portion of the marina, and continues to maintain the remaining Redwood City salt ponds.

2. **High Wildlife Value and Dedicated Open Water.** Salt Pond policy number three states that, "[I]f public funds do not permit purchase of all the salt ponds or marshes proposed for withdrawal from their present uses, and if some of the ponds or marshes are therefore proposed for development, consideration of the development should be guided by the following criteria: (a) Just as dedication of streets, parks, etc., is customary in the planned unit development and subdivision laws of many local governments, dedication of some of the pond or marsh areas as open water can and should be required as part of any development. Highest priority to such dedication should be given to ponds that (1) would, if opened to the Bay, significantly improve water circulation, (2) have especially high wildlife values, or (3) have high potential for water-oriented recreation. (b) Depending on the amount of pond or marsh area to be dedicated as open water, the public may wish to purchase additional areas. Plans to purchase any ponds or marshes should give first consideration to the priorities in paragraph a. above. (c) Development of the ponds or marshes should provide for retaining substantial amounts of open water, should provide for substantial public access to the Bay, and should be in accord with the Bay Plan policies for non-priority uses of the shoreline."

Salt Pond policy number four states that, "[a]s soon as possible, recreational developments such as marinas and small parks should be built in appropriate areas outboard of the present salt ponds, or in sloughs; but these developments should in no way jeopardize the salt production system or be so located as to prevent opening of ponds to the Bay at any future time." The project site is 50 acres in size and approximately half the site will be excavated to create a water basin. However, a 416-boat slip marina will be constructed in the 26.6-acre water basin, as well as a public boardwalk, boat launch area, and boatyard haul-out. Salt pond policy numbers three and four note the importance of both open water, wildlife habitat, and water-related recreation. It should be noted that the South San Francisco Bay offers few suitable sites for a marina, and this site in the Redwood City deepwater port area is expected to incur minimal maintenance dredging.

Salt pond policy number three states that developed salt ponds should provide substantial open water and the policy implies that opening a salt pond should be done to increase the health of Bay species and thus improve environmental conditions. The Commission finds that open water proposed as part of the marina development should be considered in both quantitative and qualitative terms. The Commission believes that the fairways will provide some environmental benefit, but they will provide less benefit than an open water area. Furthermore, the Commission finds that open water, by definition, should not be covered by pile-supported, cantilevered, or floating fill. Finally, the presence of boat slips in a basin, because they are so frequently occupied by boats, may not be considered open water. The project will create a 26.6-acre water basin. Within the basin, approximately 10 percent would be open water, located between the marina opening and the fairways, approximately 30 percent would be fairways between the rows of boat slips, and approximately 60 percent would be covered with boats, boat slips, and docks.

Salt pond policy number three states that salt ponds that have especially high wildlife values should be preserved or given priority for potential purchase and preservation. The U.S. Fish and Wildlife Service (FWS) and California Department of Fish and Wildlife (CDFW ) were contacted by staff regarding the potential wildlife value of the project site. CDFW stated that there was very little data on bird use of the Redwood City salt ponds because the ponds have not been made available to CDFW or FWS by Cargill for surveys. The permittee, however, has conducted two biological studies of the site. CDFW added that bittern ponds tend to be less valuable to wildlife because of the presence of high salinity. When bittern ponds dry out, however, they can provide habitat for the endangered snowy plover. The FWS noted in a October 22, 2002 letter that similar to CDFW , it was not sure of the value of the project site because surveys have not been conducted at this location. However, the FWS has noted that on the occasions when the bittern pond was partially dry or dry, shorebirds were observed resting at the site, although there is no feeding nor nesting on the dried bittern.

Furthermore, FWS is concerned that the mitigation proposed for the loss of 2.3 acres of shorebird roosting habitat on the site will not result in the long-term protection from disturbance if the nearby salt ponds are developed. The mitigation for shorebird roosting habitat will include the creation of 3.0 acres of habitat with similar functions on Cargill property to the south of the project site. The FWS also states that mitigation measures would be required to avoid impacts to nearby Greco Island and that development of the project site could impact the restoration of the remaining salt ponds, as item III-F of this permit discusses further. In conclusion, although the project site does appear to have significant resource values for wildlife, its total value is unknown due to the lack of surveys at the site. The presence of bittern, however, makes the project site less valuable to wildlife compared to ponds that contain lower salinity levels. Special Condition II-F ensures the permanent guarantee of the shorebird roost habitat and Special Conditions II-H through II-M will ensure protection of the valuable habitat surrounding the project site.

Salt pond policy number three notes the importance of water-related recreation. Thus, the Commission finds that because this project site would be developed as a marina, it provides public benefits that other developments would not. For example, a marina would provide water-related recreational benefits that a residential or office development would not. However, Bay Plan salt pond policy number three requires that any development of salt ponds, including a marina, must still provide substantial open water.

The Commission finds that the proposed project is consistent with the McAteer-Petris Act and the San Francisco Bay Plan policies on salt ponds and other managed wetlands. Specifically, the Commission finds that the integrity of the salt pond production system is maintained because development of the project site does not impact the salt pond production capability due to improved salt pond production methods. In addition, the Commission finds that the project will create a 26.6-acre water basin and that the pile-supported and floating fill that will be placed in the basin cannot be considered open water. Therefore, approximately 40 percent of the water basin is returned to open water because it is not covered with marina facilities. Special Condition II-CC requires the permittee to maintain, as unfilled, approximately 447,077 square feet of marina basin. This special condition allows in-kind repairs to the pile-supported and floating fill, as well as the shoreline protection, authorized herein, but allows only minor additional fill for marina and public access uses in the future by permit amendment. The Commission does not make a finding regarding whether the boat slips, fairways, or other heavily used water areas constitute open water. However, the Commission finds that the site now provides little habitat value and as required in Special Conditions II-F through II-K, any impacts to habitat will be mitigated. In addition, this marina provides for needed water-related recreational uses and other public trust benefits that enable the Commission to determine that

for this project, at this location, substantial open water is provided. Finally, the Commission finds that the commercial and retail uses that will be constructed on the upland portion of the project site are incidental to the water-related recreational uses the marina will provide.

B. **Consistency with Fill Policies of the McAteer-Petris Act and Bay Plan.** The Commission may only allow fill for any use when it is consistent with the McAteer-Petris Act and Bay Plan. The placement of fill in the Bay may be authorized when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act, which state, in part, that: (1) the public benefits from the fill must clearly exceed the public detriment from the loss of water areas; (2) the fill should be limited to water-oriented uses, such as ports, water-related industry, and bridges, or minor fill to improve shoreline appearance or public access; (3) there should be no alternative upland location; (4) the fill should be the minimum amount necessary; (5) the fill should minimize harmful effects to the bay, such as the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish and wildlife resources; and (6) that the fill should, to the maximum extent feasible, establish a permanent shoreline. Fill in salt ponds may be authorized only if the Commission can find that the fill meets the tests of subsections three, four, five, and six above.

The proposed project will result in filling approximately 25 acres of a salt pond to create upland for marina resort and boatyard facilities and the excavation of approximately 26.6 acres of the salt pond to create a water basin. (Amendment No. Two resulted in filling an additional 3.6 acres of salt pond to create a supportive levee to stabilize the project site, located between the project site and the Cargill salt pond to the south.) Approximately 96,500 square feet of riprap would be placed in the excavated basin before it is opened to tidal action. Once opened to tidal action, the marina basin will be filled with approximately 178,079 square feet of Bay fill for marina uses. In addition, approximately 17,500 square feet of riprap will be placed in Westpoint Slough on the outboard side of the project levee. Most of the fill will be placed in the Commission's salt pond jurisdiction, although the marina basin will become Bay once the levee is breached, an action that will occur prior to installing the proposed boat slips, boats, and docks.

1. **Public Benefit.** The permittee believes the project will provide a significant public benefit because there are few marina and boatyard facilities in the South Bay, yet a high demand for these uses exists. The permittee states that "[t]he South Bay is the largest of the San Francisco Bays and it borders on the largest population group in the greater Bay area. Unfortunately, a combination of the shallow nature of the South Bay, the high cost of maintenance dredging, and extremely high land values have depleted the once rich boating and fishing infrastructure of the South Bay, and today few marinas and boating facilities remain. Marinas and boatyards in Alviso, Palo Alto, Menlo Park, Belmont and most recently Redwood City have closed. Pete's

Harbor in Redwood City has also been sold for condo towers and is due to close next year, suffering the same fate as Peninsula Marina in Redwood City. These two losses represent more than 700 displaced boats. There are not boatyards left in the South Bay...the large boating community in the South Bay now must travel to Sausalito, Alameda, or the Delta for these basic services. Once a cruising destination for virtually every boating and yacht club in the bay, today few boats venture south because of the lack of basic facilities and guest berth accommodations...."

The potential public detriments associated with the project are discussed below in Special Conditions II-E and II-F of permit.

2. **Water-oriented Use.** The fill in areas that are now tidal and in areas that will be tidal when the salt pond levee is breached is all for water-oriented uses.

3. **Alternative Upland Location.** The project site does not have any upland or non-salt pond area that could support this proposed development; upland land must be created by filling the salt pond. However, since the basin will be excavated in the dry, before the pond is open to tidal action, the fill for the marina support facilities such as parking, boatyard, marina commercial, and restaurants, will not be fill in the Bay. Once the levee is breached, the marina basin will fall within the Commission's "Bay" jurisdiction and the boat slips will be considered Bay fill. These proposed marina facilities, such as boat slips and boat launch ramp, could not be constructed at an upland location, but require water to function, thus there is no alternative location for the fill.

4. **Minimum Fill Necessary.** The permitee believes the project involves the minimum amount of fill necessary to create a successful marina and amortize the investment needed to create the water basin and associated upland facilities. The land area is required to construct a full-service boatyard, marina resort, and associated parking and public access facilities. In addition, the permittee has stated that the due to the number of marinas that have closed in the South Bay, the number of boat berths proposed is appropriate for the demand.

5. **Minimize Harmful Effects.** The project will result in the removal and capping of bittern, a substance that can be toxic to aquatic organisms. However, the project would also result in the development of a former salt pond and will likely introduce more boat traffic in the Westpoint Slough, potentially impacting the adjacent wildlife at Greco Island. Mitigation measures are included in the environmental document and this permit that require signage and buoys in Westpoint Slough to keep boaters away from sensitive habitat and alert them to a "no wake zone" in front of Greco Island.

6. **Permanent Shoreline.** The proposed marina project will result in a permanent shoreline, as the size of marina basin limits any expansion of the marina. Shoreline protection will ensure that the public access proposed is made available in the long-term, avoiding erosion at the site. The permittee does not own the open water areas outside of the project levee and thus cannot dedicate any open water area.

The Commission finds that the proposed project is consistent with the San Francisco Bay Plan fill policies because the public benefits outweigh the public detriments. Specifically, there is no upland alternative for the fill associated with the water related recreation, which provides significant public benefit, and the potential impacts to water quality and wildlife are mitigated in Special Conditions II-F through II-O, as discussed below in Section III-F of this permit.

C. **Recreational (Marina) Policies.** Recreation Policy No. 4 outlines, in part, the following general standards for marinas: "(1) Marinas should be allowed at any suitable site on the Bay. Unsuitable sites are those that tend to fill up rapidly with sediment; have insufficient upland, contain valuable marsh, mudflat, or other wildlife habitat; or are subject to unusual amounts of fog. At suitable sites, the Commission should encourage new marinas, particularly those that result in the creation of new open water through the excavation of areas not part of the Bay and not containing valuable wetlands. (2) Fill should be permitted for marina facilities that must be in or over the Bay, such as breakwaters, shoreline protection, berths, ramps, launching facilities, pump-out and fuel docks, and short-term unloading areas. Fill for marina support facilities may be permitted at sites with difficult land configurations provided that the fill in the Bay is the minimum necessary and any unavoidable loss of Bay habitat, surface area, or volume is offset to the maximum extent feasible, preferably at or near the site. (3) No new marina or expansion of any existing marina should be approved unless water quality and circulation will be adequately protected and, if possible, improved. (4) In addition, all projects approved should provide public amenities such as viewing areas, restrooms and public parking; substantial physical and visual access; and maintenance for all facilities. Frequent dredging should be avoided." The recreation policies also state that only ten percent of the total slips can be authorized for live-aboard boats.

A Geotechnical report prepared for this project in November 2002 indicates that West-point Slough has not been dredged in the project area and is scoured naturally in this location, allowing a depth, even at low tide, which is appropriate for recreational boating. According to the report, the marina basin is not expected to fill up rapidly with sediment. The permittee has stated that every ten years up to 50,000 cubic yards of sediment may need to be dredged to maintain the marina entrance and basin depth. The proposed project will result in excavating a former salt pond and introducing tidal action to the site. Fill will be placed in the salt pond for marina support facilities and the majority of Bay fill will be for marina-related facilities. Habitat impacts to wetlands adjacent to the site will be mitigated, as required by the FWS and

described further below. Water quality will be protected through the implementation of plans to control the run-off associated with marinas, as required by the Regional Water Quality Control Board and outlined in more detail below. Special Conditions II-F through II-O ensure that the surrounding wildlife habitat and water quality are protected. Finally, public access will be provided with the project. Special Condition II-P requires that only 10 percent of the marina boat slips will include live-aboard boats and ensures that use of the live-aboard boats are consistent with the Bay Plan policies.

The Commission finds that the proposed project is consistent with the San Francisco Bay Plan policies on recreation because the site is suitable for a marina, the fill in the Bay is only for marina facilities, and public access is provided with the project.

D. **Public Access.** Section 66602.1 of the McAteer-Petris Act states, in part, that "...if any such areas [salt ponds] are authorized to be developed and used for other purposes, the development should provide the maximum public access to the bay consistent with the proposed project...." 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." Section 66632.4 of the McAteer-Petris Act states that "[w]ithin any portion or portions of the shoreline band that are located outside the boundaries of water-oriented priority land uses, as fixed and established pursuant to Section 66611, the commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline. When considering whether a project provides maximum feasible public access in areas of sensitive habitat, including tidal marshes and mudflats, the commission shall, after consultation with the Department of Fish and Game, and using the best available scientific evidence, determine whether the access is compatible with wildlife protection in the Bay."

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 San Francisco Bay Plan policies on public access were recently amended and several of the amended policies specifically address the interaction between public access and wildlife. The Bay Plan specifically recommends that "[p]ublic access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife are sensitive to human intrusion. For this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided." In addition, the Bay Plan policies state that "[p]ublic access should be sited, designed and

managed to prevent significant adverse effects on wildlife. To the extent necessary to understand the potential effects of public access on wildlife, information on the species and habitats of a proposed project site should be provided, and the likely human use of the access area analyzed."

Approximately 298,000 square feet of public access areas (plus a 670-square-foot boat dock added as part of Amendment No. Six) will be provided within the total project site and will consist of a pathway along the majority of the marina basin perimeter, one pedestrian access connection from the Pacific Shores Center, one vehicular access connection from Pacific Shores Center, overlooks of the boat launch area, Westpoint Slough, and the adjacent habitat, public access parking for vehicles and some public boat trailer parking, a boardwalk, and visitor and transient berths. In addition, the permittee has agreed to provide at least 10 percent dedicated public access within the building sites.

The proposed project was reviewed by the Design Review Board at two meetings, on May 5, 2003 and June 16, 2003. Generally, the Board liked the layout of the proposed public access, but felt that the Board should review more detailed plans, including architecture and layout of all building sites, the covered berthing, path surfaces, and site furnishings. The Board agreed that views into the marina basin and out to the Bay are as important as the physical connections proposed at the site and that all views should be maintained as much as possible. The project will include two view corridors over grassy lawns that will provide views to the marina, as well as a third view corridor from the entry road at Pacific Shores Center and a fourth from the public access trail at Pacific Shores Center. Special Condition II-B-10 ensures that these view corridors will be maintained. The Board also suggested that the permittee work with staff to develop criteria for augmenting the proposed public access with additional access provided with developing the western building sites. Future buildings will be considerably smaller than the building sites shown on Exhibit A, but are being shown at this size to allow future developers flexibility in siting and designing future buildings. Special Condition II-B-8 requires the permittee to include 10 percent of these building envelopes as public access and require other site design criteria to make the access useable and inviting.

The project as originally reviewed by the Board included several pedestrian connections to the Pacific Shores Center and two vehicular entrances to the site. However, due to the inability to receive easements from Pacific Shores Center for these connections at this time, the permittee removed these connections from the public access plan. In fact, the ability to only access the marina site through the Pacific Shores Center poses several public access issues. First, the vehicular access into the marina will have to cross a dedicated public access trail required by the Commission in the Pacific Shores Center permit (BCDC Permit No. 21-98). The Commission believes that the installation of signage, a crosswalk, and possibly other safety measures (e.g., speed bumps, traffic dots, etc.,) will ensure pedestrian and vehicular safety as

this crossing. In addition, because the permittee has been unable to receive an easement from Pacific Shores Center to construct a pedestrian crossing over a drainage ditch on the site, the pedestrian trail along the shoreline will end at the permittee's property line, resulting in an unpaved gap between the trail on the permittee's property and the paved trails at Pacific Shores Center. Both the Design Review Board and staff have recommended to the permittee that he continue to pursue acquiring these easements to increase the vehicular and pedestrian movement into the site. Special Condition II-B-11 requires the permittee to make a good faith effort to pursue these easements. The permittee does have an easement with Cargill that would allow the construction of a road for emergency fire access on the south side of Pacific Shores Center. This fire road will provide a direct connection to Seaport Boulevard. At this time it is unclear whether this fire road could be used for public access due to the permittee's easement terms with Cargill. Special Condition II-B-13 requires the permittee to return to the Commission for authorization to build this road, at which time the Commission may explore the need for public access on the fire road. An alternative connection to Seaport Boulevard is available, however. A perimeter trail on Pacific Shores Center property connects to Seaport Boulevard and will provide a connection from the marina to Seaport Boulevard.

The Commission finds that the project, as proposed, provides the maximum public access to the bay consistent with the proposed project because the public access provided will result in high quality, dedicated access through the site that provides views of the marina and surrounding habitat.

E. **Consistency with Bay Plan Policies on Water Quality.** Bay Plan Water Quality Policy Number 1 states, in part, that "[t]o the greatest extent feasible, the Bay marshes, mudflats, and water surface area and volume should be maintained and, whenever possible, increased....Bay water pollution should be avoided." The Bay Plan Policy on Water Quality Number 2, in part, states: "[w]ater quality in all parts of the Bay should be sufficiently high to permit water contact sports and to provide a suitable habitat for all indigenous and desirable forms of aquatic life.... [T]he entire Bay Plan is founded on the belief that water quality in San Francisco Bay can and will be maintained at levels sufficiently high to permit full public enjoyment and use of the Bay." In addition, the Bay Plan states, in part, that "[t]he policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board should be the basis for carrying out the Commission's water quality responsibilities."

The San Francisco Bay Regional Water Quality Control Board (RWQCB) has issued a conditional water quality certification for the project. This certification requires that a Construction Stormwater Pollution Prevention Plan be prepared to ensure that adequate erosion and sediment transport control measures will be implemented during the construction phase of the project. During project construction, all stormwater, as well as sediment

dewatering liquids, will be captured inside the marina site in a borrow ditch and pumped to adjacent Cargill property for processing. A levee provides a barrier between the remaining salt ponds and the project site and will ensure highly saline water will not enter the marina basin.

During project operation, the marina will be required to prepare a Marina Water Quality Management Plan and submit it for review by the RWQCB. The permittee is required to submit a water quality management plan to control nonpoint source pollution originating from the marina. This will include sewage management, fueling station design and operation, control of oil and fuel discharge from boats, hazardous waste management, vessel cleaning and maintenance operations for boats in the water, solid waste management, fish waste management, boat operation, public education, and stormwater runoff treatment. Special Conditions II-N through II-P ensure the protection of water quality by ensuring appropriate water quality plans are prepared, reviewed, and implemented and all discharge associated with marinas and live-aboard boats are controlled.

The Commission finds that the Special Conditions contained herein are sufficient to assure the protection water quality.

F. **Fish and Wildlife and Tidal Marshes and Tidal Flats.** The San Francisco Bay Plan policies on fish and wildlife state, in part, that "[s]pecific habitats that are needed to conserve, increase or prevent the extinction of any native species, species threatened or endangered, species that the California Department of Fish and Game has determined are candidates for listing as endangered or threatened under the California Endangered Species Act, or any species that provides substantial public benefits, should be protected, whether in the Bay or on the shoreline behind dikes." The San Francisco Bay Plan policies on tidal marshes and tidal flats state, in part, that "[w]here and whenever possible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action in order to replace lost historic wetlands or should be managed to provide important Bay habitat functions....Further, local government land use and tax policies should not lead to the conversion of these restorable lands to uses that would preclude or deter potential restoration."

No federally proposed or listed threatened or endangered species of plants or wildlife are known to inhabit the project area. However, several listed species including the western snowy plover, California clapper rail, and salt marsh harvest mouse occur on Greco Island, part of the San Francisco Bay National Wildlife Refuge, located across Westpoint Slough from the project site. The shoreline of Greco Island in the vicinity of the project consists of broad shallow mudflats and any boat or human access is restricted.

An existing drainage ditch containing non-tidal wetlands (a small portion of which is located within the Commission's shoreline band jurisdiction) extends along the westerly boundary of the project site, separating it from the Pacific Shores development. A total of 0.27

acres of wetlands would be filled in the U.S. Army Corps' jurisdiction to place 60-inch-diameter culverts to provide drainage where the primary access road to the marina crosses the drainage ditch and to replace the deteriorated tide gate where the ditch enters Westpoint Slough. To compensate for the loss of these 0.27 acres of wetlands in the drainage ditch, the permittee will enhance and enlarge the wetlands in the remainder of the ditch and create additional wetland areas on isolated fringes of the project site for a replacement ratio of 1:1 or greater.

The project will also result in the loss of 2.3 acres of shorebird roosting habitat. To mitigate for this impact, approximately 3.0 acres of replacement roosting habitat with similar functions and benefits for the birds will be created pursuant to plans approved by the DF&G and FWS on the remaining portions of the former bittern pond lying south of the project site or an approved alternate location.

The permittee has agreed to place and maintain buoys 100 feet from the Greco Island salt marshes with signs that inform the public not to enter the sensitive areas of Greco Island, as well as to install ind maintain buoys down the centerline of Westpoint Slough to identify a "no wake" speed zone. The permittee has also agreed to not allow personal motorized watercraft (e.g., jet skis) in the marina. Special Conditions II-H, II-I, and II-Q require the permittee to enforce a "no wake zone", place and maintain buoys to prevent access to sensitive habitat, and prohibit personal watercraft (e.g., jetskis). In addition, no public access will be allowed on the east perimeter of the project site, where salt marsh is present. The permittee has agreed to erect and maintain a fence along the eastern and southern property boundaries to protect habitats potentially used by listed species from predator and human intrusion. The permittee will implement in perpetuity a predator management program to control predators of clapper rail such as the red fox and feral cats, coordinated with the FWS. Although the FWS refuge branch still requests that the project's mitigation be adjusted to guarantee that the new roosting island be protected from impacts that may occur with development of the surrounding land, as well as other mitigation measures outlined below, all consultations required under Section 7 of the Endangered Species Act with the FWS endangered species branch were completed as part of the Corps application process, as outlined below.

The nearby San Francisco Bay National Wildlife Refuge believes that the marina project should include the following additional mitigation measures: (1) mitigation for roosting habitat should guarantee long-term protection from potential impacts associated with development of the surrounding salt ponds; (2) alternatives to the placement of riprap should be examined because it may provide habitat for predators; and (3) no dredging should be allowed in Westpoint Slough in the future, except the Port of Redwood City's historic dredging of the bar entrance of the Slough to Redwood Creek, to avoid any potential erosion of refuge salt marshes and mud flats from increased tidal flows down Westpoint Slough. Special Condition II-E requires the permittee to consider alternate shoreline protection. The permit does not contain a

condition requiring the permittee to permanently guarantee the shorebird roosting habitat; Cargill will have to provide additional or replacement mitigation for this habitat if it develops the adjacent salt pond. If dredging of Westpoint Slough is proposed, which is owned by the State Lands Commission, the Commission will consider whether to authorize it at that time.

The Commission finds that the project will result in the protection of Bay resources including marshes and fish and wildlife because Special Conditions ensure the protection of surrounding valuable habitat and require mitigation for any impacts to wildlife or habitat at the project site.

G. **Commission Jurisdiction.** Government Code Section 66610(c) defines the Commission's salt pond jurisdiction as "...all areas which have been diked off from the bay and have been used during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature for the solar evaporation of bay water in the course of salt production." The parcel that is the subject of this permit satisfies those criteria and therefore the Commission believes that the parcel is and will continue to be within the Commission's salt pond jurisdiction. Commission Regulation Section 10710 supports this conclusion; it states that areas once subject to Commission jurisdiction remain subject to that same jurisdiction even if filled or otherwise artificially altered. Further, Government Code Section 66610(a) defines the Commission's "Bay" jurisdiction as "...all areas that are subject to tidal action...." The project will result in breaching a portion of the salt pond levee and opening of the marina basin to tidal waters and therefore will extend the Commission's "Bay" jurisdiction inland to Mean High Tide or, in areas containing tidal marsh, to five feet above Mean Sea Level.

H. **Amendment Nos. One Through Three.** Amendment No. One involves placing 90,000 cy of imported soil in a salt point to prepare the site for project construction. The material will be used for surcharge purposes to aid in drying the Bay mud present at the site. This alteration in the project is not a material change because the previously authorized project, once completed, will not be changed in any was a result of the imported fill nor will the imported fill result in any adverse environmental impacts.

In addition, Amendment No. One involves altering the date by which the required public access must be permanently guaranteed. Rather than requiring the permittee to guarantee the public access prior to the commencement of any grading or construction activity for Phase One of the project, the permittee is required to permanently guarantee the public access prior to the installation of the boat slips in the marina basin. This change in date is not a material alteration to the project and in fact, was altered because it will likely allow a more accurate metes and bounds description of the public access areas because the marina basin and upland area would be in place by that time.

Amendment No. One also involves altering the date by which the open space within the marina basin must be permanently restricted. Rather than requiring the permanent restriction of the basin open space areas prior to the commencement of any construction authorized herein, the open space must be permanently restricted prior to the installation of the boat slips in the marina basin. This date change is not a material alteration to the project and in fact, will likely allow a more accurate metes and bounds description of the restricted open space because the marina basin would be constructed by that time.

Amendment No. Two involves the construction of an earth levee between the project site and the Cargill salt pond to the south. The approximately 63-foot-wide, 3.5-foot-thick, and 2,525-foot-long levee will be constructed at a 7:1 slope and is needed to stabilize soils within the project site. The soils at the site have been excavated for the marina basin, surcharged to create upland, and dried and prepared for construction. However, the permittee's geotechnical engineers now recommend a wider levee with a greater slope (i.e., 7:1) at the south boundary of the site to ensure no mud waves or other similar movement of the soils occur.

The construction of a wider levee will result in an additional approximately 159,075 square feet (approximately 3.6 acres) of fill in the Commission's salt pond jurisdiction. The additional fill is required to stabilize the authorized project site and is not a material alteration to the project. The additional fill is consistent with the McAteer-Petris Act and the San Francisco Bay Plan, as stated in Regulation Section 10822.

Thus, Amendment No. Two is a non-material amendment for which the Executive Director may issue an amendment to a major permit pursuant to Regulation Section 10822.

Amendment No. Three authorizes changes to the construction phasing for the project, allowing the installation and use of three boat docks and only the lay-out and "rocking" of public access paths as Phase 1A. Phase 1B will complete the public access associated with the marina slips, including landscaping. Amendment No. Three also authorizes the placement and use of temporary buildings until the permanent harbor masters office and shower/restroom facilities can be completed. Those changes are not a material alteration to the project as previously authorized by the Commission. Thus, Amendment No. Three is a non-material amendment for which the Executive Director may issue an amendment to a major permit pursuant to Regulation Section 10822.

I. **Amendment Nos. Four and Six (Exclusive of Amendment No. Five) – Phase 2 Boatyard.** Amendment No. Four was an extension of project completion time from 2010 to 2014. Between 2014 and the present, the permit was expired.

The original permit, as amended by Amendment Nos. One, Two and Three, authorized in part the phased development of Westpoint Harbor, including the Phase 2 boatyard area and facilities, and a comprehensive public access plan extending throughout the project site. In

2015, the permittee secured a boatyard tenant and, working together with Redwood City, refined the Phase 2 boatyard area and facilities' portion of the project to address storm water runoff to meet the requirements of the RWQCB, necessitating the construction of bio-retention basins, riprap and an outfall not already authorized by the permit. Amendment No. Six authorizes: 1. The installation of two landscaped bio-retention basins including riprap and an outfall pipe that drains into Westpoint Harbor, 2. Changes to layout of the boatyard, 3. The construction of a public restroom (already required by Special Condition II.B.4.Phase 1B.f), 4. The construction of a public boat dock at the public boat launch ramp not originally contemplated, and 5. The construction of six-foot-tall - instead of four-foot-tall - fencing around the southern and eastern edges of the boatyard.

Amendment No. Six does not provide a new commencement date because it is modifying a project that is previously approved herein and underway. The new completion date is August 15, 2019, which may be extended. The original authorization requires the Phase 2 public access requirements to be completed and made available to the public prior to the use of any Phase 2 structure and in a manner that complies with all of the relevant special conditions.

Special Condition II.B.1, Public Access, of Amendment No. Six requires the boat dock at the boat launch ramp to be made available to the public access but does not require it to be permanently guaranteed because the permittee has already obtained staff approval of, and recorded on title, the legal instrument that fulfills the requirement to permanently guarantee the public access areas required by the original permit (County of San Mateo Document Number 2007-124894).

Permit Exhibit A, which depicts the public access by the permit, is the original permit exhibit and does not reflect the current layout of the boatyard area, which can be seen by viewing the plans referenced in Special Condition II.A.5. Permit Exhibit A also does not show the 670-square-foot boat dock, at the public boat launch ramp (authorized in Section I.A.Phase 1B.4 and required by Special Condition II.B.4.Phase 1B.a), the two 500-square-foot public observation areas (authorized in Section I.A.Phase 2.3 and required by Special Condition II.B.4.Phase 2.a), nor the second of three – also not shown - public restrooms (required by Special Condition II.B.4.Phase 1B.f). A future amendment to this permit should include an updated Exhibit A that depicts all required public access, including the improvements described above.

Amendment No. Six includes the following three new special conditions: 1. Special Condition II.EE requires the riprap associated with the construction of one of the two bio-retention basins to be placed consistent with the requirements of Special Condition II.E, Shoreline Protection, to avoid adverse habitat impacts and to create a stable shoreline; 2. Special Condition II.FF requires the fencing that will establish the boundary of the boatyard to be placed at least 10 feet away from the public shore trails, to protect existing required views

as shown on Exhibit A, and to be constructed of an attractive and transparent material because it will be located adjacent to, and visible from, some of the public shore trails required by Special Condition II.B.4, Improvements Within the Total Public Access Area; and 3. Special Condition II.GG requires the preservation of physical public access trails and areas and view corridors during construction and operation of the boatyard because the public access is required to be available as of marina occupancy, which occurred ten years ago. Each of these conditions governs the manner in which the project must be constructed and they do not dictate the time by which the activity must be completed, which requirements are located elsewhere in the permit as noted in the third paragraph of these findings above.

The project as modified and conditioned by Amendment No. Six is consistent with McAteer-Petris Act, the San Francisco Bay Plan and the findings above for fill, public access, water quality, shoreline protection and habitat.

The project authorized in Amendment No. Six involves the installation of a public boat dock, two bio-retentions basins, riprap, an outfall pipe, two public observations areas, irrigated landscaping, paving for boat storage and parking, a restroom, two boathouses, and fencing, which as defined in: 1. Regulation Section 10601(a)(1), involves the construction of a new single boat dock within an existing marina; 2. Regulation Sections 10601 (a)(2), (b)(4) and (c)(2), involves the installation of new protective works that is the minimum necessary to stabilize the existing banks and has a horizontal projection of less than 10,000 square feet; 3. Regulation Section 10601(a)(4), involves the placement of an outfall pipe approved by the SF Bay RWQCB; 4. Regulation Section 10601(a)(8), involves the placement of less than 1,000 square feet of minor fill to improve public access; 5. Regulation Section 10601(b)(1), involves the placement of small amounts of inert inorganic fill that does not have an adverse effect on presently required public access to the Bay consistent with the project or on the environment; and 6. Regulation Section 10601(e)(3), involves activities similar to those listed above that have no adverse impacts on the Bay or public access, and thus is defined as a "minor repair or improvement" for which the Executive Director may issue a non-material amendment to a major permit pursuant to Regulation Sections 10820 and 10822.

J. **Amendment No. Seven.** Amendment No. Seven authorizes the installation of approximately 1,779 feet of 5-foot tall fencing around the undeveloped building sites of the Phase 3 project area until each of those sites is developed. The permittee requested permission to install this fence to prevent the public from using the undeveloped building sites due to safety concerns.

Special Condition II.HH requires the permittee to install the fence in accordance with a set of landscaping plans submitted in 2012. Although these plans were not approved, they depict the optimal fence configuration because the fence will be located adjacent to and outside of all required Phase 1B public access areas. Special Condition II.HH also requires the permittee to

submit a Notice of Completion within 10 days of installation of the fence, to relocate and or remove the fence pursuant to updated and staff-approved plans as soon as the permittee completes construction of each Phase 3 building site, and to ensure that the fence never impedes compliance with Special Condition II.B.4.Phase 3. Since Amendment No. Seven in no way alters the public access required by this permit, the permittee is not required to record Amendment No. Seven. As authorized and conditioned, the temporary fence will not adversely affect the public's enjoyment of the shoreline, and will maintain the integrity of the public access system, including connections, continuity, amenities, and closeness to the water. As conditioned, the changes authorized by Amendment No. Seven are not a material alteration to the project as previously authorized by the Commission. Thus, Amendment No. Seven is a non-material amendment for which the Executive Director may issue an amendment to a major permit pursuant to Regulation Section 10822.

K. **Environmental Review.** The City of Redwood City, the lead agency for the project, prepared, circulated and, on October 23, 2001, certified a Mitigated Negative Declaration for the Westpoint Marina. The City of Redwood City recently informed Commission staff that it intends to administratively amend the Mitigated Negative Declaration for the project to include changes that have been made to the proposed project in the last year. These changes include making a larger breach in the levee, resulting in a larger marina entrance, and creating a larger water basin at the site. City of Redwood City staff believes these changes to the Mitigated Negative Declaration would not require the Mitigated Negative Declaration to be re-certified or alter the discretionary approval issued for the project.

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 permittee executes the original of this amended permit and returns it to the Commission within ten days after the date of the issuance of the amended permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

C. The rights, duties, and obligations contained in this amended permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this

amended permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director (*call for a copy of the form or download it from our website*). An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the amended permit and agrees to be bound by the terms and conditions of the amended permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

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

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

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

G. Work must be performed in the precise manner and at the precise locations indicated in your 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 permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.

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

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

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

L. This amended permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this 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 permittee or its assignee if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee or its assignee 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 permittee or its assignee 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.

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

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

By: _____
BRAD McCREA
Regulatory Program Director

BM/AK/go

cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn.: Certification Section
Environmental Protection Agency, Attn.: Mike Monroe, WTR-8
City of Redwood City Planning Department

* * * * * * * * * * * * * * * * * * * * * *

**Receipt acknowledged, contents understood and agreed to:**

Executed at _____ _____
**Mark Sanders**

On _____ By: _____

_____
**Title**

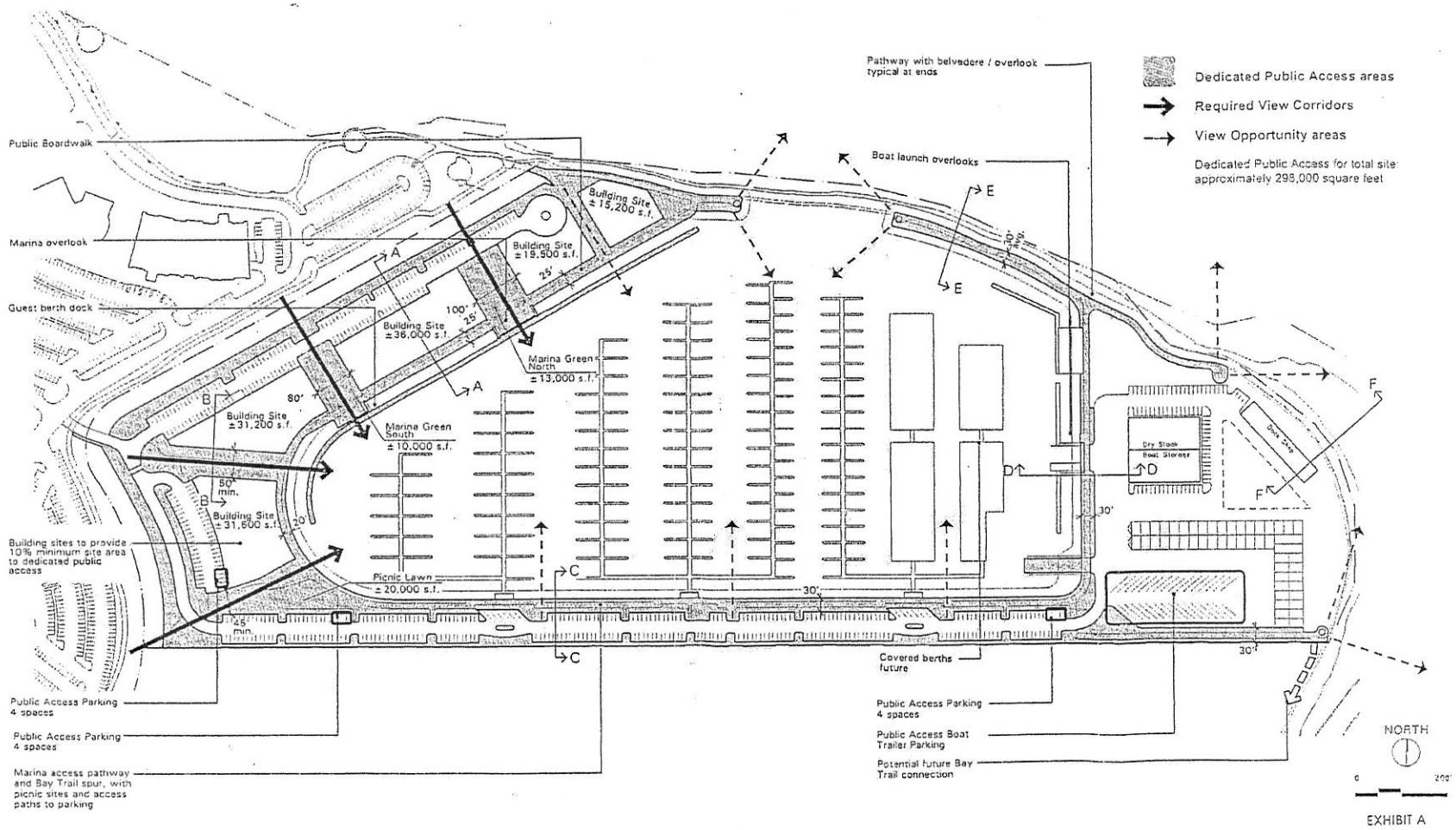


EXHIBIT A

Westpoint Marina and Boatyard

Redwood City, California

27 June 2003

Public Access Plan

BMS DESIGN GROUP

BOHLEY CONSULTING