
**SETTLEMENT AGREEMENT
CONCERNING MAINTENANCE DREDGING
AT LARKSPUR MARINA
July 7, 2016**

PARTIES

This Settlement Agreement (“Agreement”) is entered into, effective July 7, 2016, by and among the EXECUTIVE DIRECTOR of the SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION (“Commission”), THE GREENBRAE MARINA PROPERTY OWNERS ASSOCIATION (“GMPOA”), THE LARKSPUR MARINA FINANCE AUTHORITY (“LMFA”), and THE SALT RIVER CONSTRUCTION CORPORATION (“SRCC”) herein collectively referred to as the “Parties.”

RECITALS

A. BCDC Permit No. M1992.050.02 (“the Permit”), as amended through July 29, 2010 (Amendment No. 2), authorizes GMPOA to maintenance dredge up to 150,000 cy of sediment over a period of ten years in Larkspur Channel, Corte Madera Creek, and Lucky Channel (“the Site”), to depths ranging from -3 feet to -5 feet Mean Lower Low Water (MLLW), plus 2 feet of over-dredge allowance.

The Permit requires dredged material to be disposed of at the state- and federally-designated Alcatraz Disposal Site (SF-11), San Pablo Bay Disposal Site (SF-10), the San Francisco Deep Ocean Disposal Site (SF DODS) or an authorized upland location.

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B. “Episode Approvals” are the mechanism by which GMPOA receives individual authorization for each annual dredging episode under the umbrella of the larger authorization found in the Permit. GMPOA submits a dredge operation plan as its episode approval request.

C. Special Condition II.D.1 of the Permit requires GMPOA to submit an “Episode Approval” request at least 45 days prior to conducting any dredging, Special Condition II.D.2 precludes GMPOA from commencing an episode until receiving written BCDC staff approval of its episode approval request, and Special Condition II.D.3.a requires GMPOA to submit a post dredge survey within 30 days of completion of each dredging episode to verify that the dredging that occurred was consistent with the authorized volume, depth, and locations of dredging and disposal of dredged material.

D. GMPOA created THE LARKSPUR MARINA FINANCE AUTHORITY (“LMFA”) to represent the interests of individuals with access to the Larkspur Marina.

E. On September 25, 2015, LMFA entered into an agreement with SRCC to perform and complete a maintenance dredging project at the Site in accordance with the terms of their agreement and applicable law, including relevant Permit requirements. The agreement assigns to SRCC the sole responsibility for, and control over, the construction means, methods, and procedures of the project.

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F. On May 25, 2016, by a dredge operation plan dated April 24, 2016, SRRC on behalf of LMFA, submitted a request for an episode approval to conduct up to 39,521 cy of dredging at the Larkspur Marina in the City of Larkspur, Marin County.

G. On June 1, 2016, BCDC approved GMPOA's episode request at the Larkspur Marina. The approval authorizes GMPOA to maintenance dredge up to 39,521 cy of sediment from portions of the Larkspur Marina, including the Larkspur, Corte Madera, and Lucky channels, and adjacent berthing areas, to the approved project depths. The approval requires dredged materials to be disposed at SF-10.

H. On July 1, 2016, BCDC Staff observed an SRCC employee acting in violation of the Permit and the McAteer-Petris Act (Act) by disposing dredged material into the Lucky Channel rather than in the dredge material disposal scow intended to transport the material to SF-10.

I. On July 1, 2016, BCDC's Executive Director issued Cease And Desist Order No. ECD 2016.02, ordering GMPOA, SRCC, all of their agents and employees, and any other persons acting in concert, to cease and desist all activity in violation of the Permit, San Francisco Bay Plan, and Act at Larkspur Marina:

1. Cease and desist from dredging any sediment from the Larkspur Marina, and disposing the sediment back into the Lucky channel, in violation of the Permit as required under Government Code Section 66632(h);

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2. Fully comply with the conditions of the Order, including stop dredging at the Larkspur Marina in the Lucky Channel, stop unauthorized disposal of sediment in the same channel, and perform a bathymetric survey of the dredged channel within twenty (20) days of the date of the Order.

J. On July 7, 2016, BCDC staff, GMPOA, LMFA, and SRCC met at the BCDC office, located at 455 Golden Gate Avenue, Suite 10600, San Francisco, to discuss the above-outlined facts and circumstances. In that meeting, BCDC staff, GMPOA, LMFA, and SRCC reached an agreement that it is in their respective interests to settle this dispute on the terms set forth herein.

- K. The Effective Date of this Agreement is July 7, 2016.

AGREEMENT

A. SRCC shall prepare and submit a revised dredge operation plan to BCDC for review and approval that specifies the dredging methods to be used at the Site. Before SRCC may recommence dredging activity in the Lucky Channel, and the subsequent channels of Larkspur Marina, SRCC must submit and BCDC must approve a revised dredge operation plan and issue an episode approval letter for each channel.

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B. SRCC shall provide to BCDC by the close of business on Thursday of each week preceded by dredging and disposal activity a compilation of SRCC's weekly disposal logs and include its own summary along with an observation report from the Third Party Independent Observer to be retained by LMFA on behalf of GMPOA. GMPOA shall provide the third party observer with copies of the Permit and this Agreement.

C. A third party observer will be on site during all dredging activities in Lucky Channel and Larkspur Channel to ensure that the dredging operator complies with the terms of the Agreement and the BCDC permit, including special conditions. The third party shall provide to GMPOA written observation reports to be included in GMPOA's weekly summary to BCDC. The third party observer shall report directly and immediately to BCDC staff any potential violations of the Permit of this Agreement that occur by the close of the business day on which it observes any potential violation.

D. SRCC shall notify BCDC staff in writing within 3 days when dredging is complete on each channel and will similarly notify staff in writing within 7 days prior commencement of dredging of the next channel.

E. Within 7 days of the meeting between the Parties that occurred on July 7, 2016, SRCC shall conduct a personnel training seminar on how to properly conduct the dredging at all floating docks and channels within the Larkspur Marina. SRCC shall

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provide written notice to BCDC confirming that the training has been conducted; the notice shall include the names and title, if any, of all individuals who received the training.

F. BCDC shall not seek to impose penalties against GMPOA for the violations of the Permit and the McAteer-Petris Act cited in the cease and desist order. If at any time throughout the remaining duration of the maintenance dredging project at the Site, SRCC again violates the terms of the Permit or the Act by disposing of dredged material at a location other than SF-10, including temporarily re-depositing dredged material at the Site, SRCC shall pay, within 30 days after written demand by BCDC, a penalty of \$10,000 per violation, by cashier's check payable to the Bay Fill Clean-up and Abatement Fund, as agreed by the Parties as the stipulated penalty for each violation.

G. This Agreement resolves all issues, orders, and claims raised in the July 7, 2016, meeting held between BCDC staff, GMPAO, LMFA, and SRCC regarding the issues described in the Recitals section above.

H. Miscellaneous Clauses

1. The Agreement shall be construed according to and governed by the laws of the State of California. In all cases, the language of all parts of the Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties.

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2. The Agreement constitutes the sole and only Agreement of the Parties regarding resolution of the dispute discussed by the Parties on July 7, 2016; it correctly sets forth the rights, duties and obligations of each to the other. Any prior Agreements, promises, negotiations or representations concerning the Agreement or any of its subject matter not expressly set forth in the Agreement are of no force or effect.
3. The Agreement shall be binding upon the Parties, their administrators, representatives, executors, successors and assigns, and shall inure to the benefit of the Parties and each of them, and to their administrators, representatives, executors, successors and assigns.
4. Nothing in the Agreement is or shall be alleged, claimed or construed by any Party hereto, their agents, counsel, or representatives, to be a violation of any state law, federal law, or any policy or regulation.

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**THE SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION**

Dated: _____

LAWRENCE J. GOLDZBAND
Executive Director

**THE GREENBRAE MARINA PROPERTY
OWNERS ASSOCIATION**

Dated: _____

DARRYL FOREMAN
Authorized Representative

**LARKSPUR MARINA
FINANCE AUTHORITY**

Dated: _____

DARRYL FOREMAN
Authorized Representative

SALT RIVER CONSTRUCTION CORPORATION

Dated: 7/27/16



RICHARD T. MOSELEY,
President