

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

[Date]

ATTENTION:

**SUBJECT: BCDC Regionwide Permit No. RWP-3
(Notice of Intent to Proceed No. NOIxxxx.xxx.xx)**

Dear _____:

Enclosed please find an original of Regionwide Permit No. RWP-3, stamped "BCDC Original," and a copy, stamped "Permittee's Copy," both executed by the Executive Director. I am issuing this regionwide permit to you to _____, as requested by your Notice of Intent to Proceed under a regionwide permit dated _____, including its accompanying exhibits, any subsequent additions or changes, and as modified by the conditions of this regionwide permit.

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

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

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

Very truly yours,

ANALYST
(Coastal Program Analyst)

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Enc.

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn: Certification Section
Environmental Protection Agency
City/County Department



San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

**REGIONWIDE PERMIT NO. RWP-3
NOTICE OF INTENT TO PROCEED NO. NOIxxxx.xxx.xx
(As Amended Through December 18, 2008)
(Construction, reconstruction, replacement, and
maintenance of: (1) new docks, piers, boat hoists,
associated pilings and mooring buoys of less than 1,000
square feet; (2) wildlife habitat improvement structures;
and (3) other pile-supported, water-oriented uses) in the
Bay, certain waterways, managed wetlands and
shoreline band)**

[Date]

On December 4, 1986, the San Francisco Bay Conservation and Development Commission, by a vote of 21 affirmative, 0 negative, and 0 abstentions, approved the issuance of the original of this Regionwide Permit. On April 18, 1996, the Commission, by a vote of 17 affirmative, 0 negative, and 0 abstentions, approved Amendment No. One of this Regionwide Permit. On February 5, 2009, the Commission by a vote of 23 affirmative, 0 negative, and 0 abstentions, approved Amendment No. Two of this Regionwide Permit upon which your authorization is based:

I. Authorization

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

Location: _____

Description: _____

B. This authority is limited to activities undertaken at a site where activities are not already authorized by another BCDC permit and to projects that would not adversely impact: (1) the Bay; (2) Bay resources such as those that are scarce or have an abundance and diversity of fish, other aquatic organisms or wildlife (such as tidal marshes or eelgrass beds); and (3) existing or possible future visual or physical public access to and along the Bay from public access areas, roads and pathways. This authority is generally pursuant to and limited by your notice of intent to proceed under a Regionwide Permit dated _____, including its accompanying exhibits, any subsequent additions or modifications, and all conditions of this Regionwide Permit.

C. Work authorized herein must commence within two years of the date of the transmittal of this Regionwide Permit by the Executive Director to you or the authorization of your work will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within two years of commencement, or within three years of the date of transmittal of this Regionwide Permit to you, whichever is earlier, unless an extension of time is granted by the Executive Director.

II. Special Conditions

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

A. **Limit of Work.** Authorized work shall be built in general conformance with the plans entitled _____, prepared by _____ and dated _____, submitted as part of the application.

B. **Construction Operations and Debris Removal.** All construction operations shall be performed so as to minimize turbidity and the roiling of waters, to prevent construction materials from falling, washing, or blowing into any tidal areas of the Bay or drifting and presenting a navigation or pollution hazard. In the event that any such material is placed or escapes into any area subject to tidal action of the Bay, the permittee(s), its assigns or successors in interest, or the owner of the improvements shall immediately retrieve and remove such material at its expense. All construction debris shall be removed to an authorized location outside the Commission's jurisdiction.

C. **Habitat Protection.** The work authorized by this Regionwide Permit shall be performed so as to prevent any significant adverse impact on any tidal marsh, tidal flat, eelgrass habitat or other sensitive Bay resources. If any unforeseen adverse impacts occur to any such area as a result of the activities authorized herein, the permittee(s) shall restore the area to or improve the area above its previous condition, which may include returning the disturbed area to its original elevation and soil composition and, if the area does not revegetate to its former condition within one year, seeding all disturbed areas with appropriate vegetation.

D. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, in any salt pond, or in any managed wetland within the Commission's jurisdiction as part of the project authorized herein.

E. **Maintenance and Replacement of Authorized Facilities.** Any construction of a new boat dock or wildlife habitat improvement facility, and any in-kind repairs and maintenance of an authorized boat dock, pier, boat hoist, wildlife habitat improvement or other water-related structure, shall only use construction material that is approved by the Commission in consultation with the Regional Water Quality Control Board and the California Department of

Fish and Game for use in San Francisco Bay. Construction shall only occur during those months of the year, as approved by the Commission in consultation with resource agencies such as U.S. Fish and Wildlife Service, Department of Fish and Game and National Marine Fisheries Service, that avoid or minimize potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions.

F. **Impacts to Fish from Pile Driving.** The permittee shall assure that sound pressure levels generated from pile driving do not exceed injury threshold levels for fish established by the National Marine Fisheries Service. Two criteria have been established to determine the onset of physical injury to fish: peak sound pressure level of 206 decibels (dB) or more, and accumulated sound exposure level (SEL). The criterion for accumulated SEL is based upon the mass of the fish under consideration. The onset of physical injury is expected if fish smaller than 2 grams are present and 183 dB SEL is exceeded. If larger fish are present, physical injury is expected if 187 dB SEL is exceeded. Projects where sound pressure levels may exceed either or both of these criteria do not qualify for a regionwide permit.

G. **Diked Wetlands Protection.** No work authorized herein on any structure of facility shall significantly alter water management, circulation or drainage patterns or otherwise adversely affect any salt pond, managed wetland, or other sensitive diked wetland resources.

H. **Abandonment.** If, at any time, the Commission determines that the improvements authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee(s), its assigns or successors in interest, or by the owner of the improvements within 60 days or such other reasonable time as the Commission may direct.

I. **Notice to Contractor.** The permittee(s) shall provide a copy of this Regionwide Permit to any contractor or person working in concert with the permittee(s) to carry out the activities authorized herein and shall point out the special conditions contained herein.

III. Findings and Declarations

The Commission hereby finds, declares, and certifies that:

A. **Consistency with Commission Regulations.** The projects authorized by this Regionwide Permit include: (1) construction, reconstruction, maintenance and use of a floating dock, fixed pier, gangway, boat hoist or mooring buoy in the Bay, in certain waterways, in managed wetlands, and within the 100-foot shoreline band that satisfies the following criteria: (a) the pier, gangway, and/or dock is no larger than a total of 1,000 square feet; and (b) any pile-supported or cantilevered portion of the pier, is no more than 8 feet wide; (2) wildlife habitat improvements, such as fish screens and ladders, tidegates and other devices that do not involve

any substantial enlargement or extension into the Bay, in certain waterways, and within managed wetlands; and (3) reconstruction, replacement and maintenance of other pile-supported, water-oriented uses in the Bay, certain waterways and managed wetlands. Such projects have been authorized by the Commission as qualifying for a Regionwide Permit because they involve as defined in Regulation Sections 10601(a)(1), 10601(a)(2), 10601(a)(6) and 10601(c)(2), or activities similar to those described above, as defined in Regulation Section 10601(e)(3), and thus are equivalent to a “minor repair and improvement” and qualify for authorization under a Regionwide Permit that may be issued by the Commission and approved by the Executive Director, pursuant to Government Code Section 66632(f) and Regulation Sections 11700 and 11713.

B. Consistency with McAteer-Petris Act and San Francisco Bay Plan. The project authorized by this permit is consistent with the McAteer-Petris Act and with the *San Francisco Bay Plan* in that it will not adversely affect the Bay nor public access to and enjoyment of the Bay. Special conditions have been included to assure that project construction, materials and the improvements themselves will not adversely affect the Bay’s natural resources, water quality or navigation and that any deteriorated improvements will be removed if they adversely impact the Bay’s natural resources, water quality, or pose a navigation hazard, as required by the *San Francisco Bay Plan* policies on fish, other aquatic organisms, and wildlife, tidal marshes and tidal flats, water quality, and navigational safety.

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

D. Consistency with California Environmental Quality Act. California Public Resources Code Section 21084 provides that the California Environmental Quality Act (CEQA) guidelines shall include a list of classes of projects that have been determined not to have a substantial adverse impact on the environment and are therefore exempt from the requirements of CEQA. This list of “categorical exemptions” is located at 14 Cal. Code Reg. Sections 15300 through 15329. Section 15301 (Class 1) exempts the operation, repair, maintenance or minor alteration of existing public or private structures or facilities that involve negligible or no expansion of previous use. Section 15302 (Class 2) exempts the replacement or reconstruction of existing structures or facilities where the new structure will be located on the same site as the structure being replaced and will have substantially the same purpose and capacity as the replaced structure. The Commission's own regulations provide that the Commission need not prepare an environmental assessment before it issues a permit for a project that falls within the list of categorically exempt activities (14 Cal. Code Reg. Section 11501). This Regionwide Permit is therefore categorically exempt because it authorizes only reconstruction and replacement of

existing, currently-used pilings, boat docks on pilings, boat slips, and other pile-supported structures being used for water-oriented purposes, and wildlife habitat improvement structures such as fish screens and ladders and other waterway devices, that do not involve any substantial enlargement, any substantial extension into the water or wetlands, or any substantial change in use.

E. **Listing with the Commission.** The Commission staff will prepare a description and indicate the location of any project authorized under this Regionwide Permit, along with the name and address of the permittee(s), and attach such information to the listing of administrative permits, marsh development permits, and federal consistency actions that is sent to the Commission, following the Executive Director's approval of the project under this Regionwide Permit.

F. **Enforcement Program and Civil Penalties.** The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts materials, or makes any substantial change in use of any water, land or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor.

IV. Standard Conditions

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

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

Regionwide Permit and agrees to be bound by the terms and conditions of the Regionwide Permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the Regionwide Permit.

C. **Permit Runs With the Land.** Unless otherwise provided in this Regionwide Permit, the terms and conditions of this Regionwide Permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

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

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

F. **Life of Authorization.** Unless otherwise provided in this Regionwide Permit, all the terms and conditions of this Regionwide Permit shall remain effective for so long as the Regionwide Permit remains in effect or for so long as any use or construction authorized by this Regionwide Permit exists, whichever is longer.

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

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

I. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this Regionwide Permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee(s) or its assignee if the permit has been effectively assigned. If the Regionwide Permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this Regionwide Permit shall be removed by the permittee(s) or its assignee if the Regionwide Permit has been assigned.

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

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

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

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

LJG/XX

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

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____

Permittee

On _____

By: _____

Print Name and Title

SAMPLE