

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

BCDC Original

PERMIT NO. M2001.052.03B

(Issued on June 27, 2002, As
Amended Through January 22, 2015)

AMENDMENT NO. THREE

The Regents of the University of California
Environmental, Health and Safety
317 University Hall, #1150
Berkeley, California 94720

ATTENTION: Mr. Karl Hans

Ladies and Gentlemen:

I. Authorization

A. **Authorized Project.** Subject to the conditions stated below, the permittee, the Regents of the University of California, is hereby authorized to do the following:

Location: In the Bay and within the 100-foot shoreline band, in the area in and around East and West Stege Marsh, at the Former Zeneca Richmond Facility and Richmond Field Station Site, in the City of Richmond, Contra Costa County.

Description: In preparation for future restoration of East Stege Marsh and West Stege Marsh and development of the adjoining upland area, conduct soil remediation activities and monitor their effectiveness as mandated by the San Francisco Bay Regional Water Quality Control Board and California Department of Toxic Substances Control, including:

Phase I Activities:

(1) Within Subunit 2A: (a) excavate 13,300 cubic yards of soils, sediments and spent pyrite ore (cinders) from a 7,500-square-foot area in the east end of West Stege Marsh; (b) backfill the 7,500-square-foot area in West Stege Marsh with approximately 10,900 cubic yards of clean fill to return the area to its former elevation to achieve optimum pickleweed growth; (c) regrade the east bank of West Stege Marsh to create a less abrupt slope to foster the growth of transitional marsh plants; and

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(d) place a total of approximately 600 square feet of weed block fabric to smother invasive *Spartina alterniflora*. [The Phase 1 activities originally authorized in BCDC Permit No. M01-52 occurred on property owned jointly by the University of California Zeneca.]

Phase 2 Activities:

In the Bay (a tidal marsh): (1) Within Subunit 2B:

(a) excavate 7,300 cubic yards of soils that contain elevated levels of arsenic and mercury from a 40,100-square-foot area (area M3) and excavate 300 cubic yards of soils that contain elevated levels of PCBs from a 1,800-square-foot area (area M1a); and (2) backfill the excavated areas with a total of 7,600 cubic yards of clean fill material.

Within the 100-foot shoreline band: (1) Within Subunit 2B: (a) excavate 4,700 cubic yards of soils that contain elevated levels of arsenic and mercury from a 15,000-square-foot area (area M3); (2) install a ten-square-foot portion of an asphalt and concrete treatment pad; and (3) stockpile approximately 12,300 cubic yards of clean fill material to be used to fill excavated areas. [The Phase 2 activities authorized in BCDC Permit No. M01-52(b) occur on property solely owned by the University of California.]

Phase 4 Activities:

In the Bay: In West Stege Marsh, install six groundwater monitoring piezometers to remain in place between five and 15 years constructed from two inch-diameter PVC with PVC screen, sand, bentonite chips, and Portland cement grout. The piezometers will extend to between five and 15 feet below ground surface, extend 2.5 feet above grade, and be surrounded with a steel stovepipe that protrudes three feet above the sediment surface. The above grade stovepipe will be encased in a two-foot by two-foot concrete pad. The total volume of fill placed in the Bay will be approximately 18 cubic yards and cover an area of approximately 24 square feet.

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In the shoreline band: In upland vegetation adjacent to West Stege Marsh, install seven groundwater monitoring piezometers as described above, but extending a few inches above grade and covered with steel well Christy boxes.

B. **Application Dates.** This authority is generally pursuant to and limited by the original application dated September 17, 2001, and received in our office on September 20, 2001, and the request to amend the original permit dated March 7, 2003, ~~and June 27, 2003, and~~ September 22, 2014, including its accompanying exhibits and all conditions of this permit.

C. **Deadlines for Commencing and Completing Authorized Work.** Work authorized herein by this amended permit must commence prior to February 1, 2017 ~~June 25, 2004~~, or this amended permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within ~~one year~~ three years of commencement, or by February 1, 2020, ~~June 25, 2005~~, whichever is earlier, unless an extension of time is granted by further amendment of this amended permit.

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. **Public Access.** The permittee shall make every effort to minimize closures and impacts to the existing shoreline trail and connecting trails during project construction. These existing public access trails shall be open to the public after work hours and on weekends, whenever possible. Any closure of these trails exceeding two days must be approved by or on behalf of the Commission. In addition, signs shall be installed at all public access entrances informing the public of why the area is closed, when it will be open, possible detours, and when project construction will be completed. Upon completion of construction, the public access trails shall be restored to the condition they were in prior to commencement of construction. Work authorized by Amendment No. Three does not authorize closures of or impacts to the Bay Trail.

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

C. **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 its

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expense. The permittee shall also employ best management practices, such as compaction, installation of an engineered containment system and/or a biologically active permeable barrier, etc. to assure that material placed upland will not erode into the Bay or leach into other water sources.

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 plant all disturbed areas with appropriate native vegetation at appropriate elevations consistent with plans approved by or on behalf of the Commission. The permittee shall minimize impacts to wetland areas by minimizing all traffic in marsh areas.
3. **Protection of Nesting Shorebirds.** No work on the restoration site shall occur during the ~~clapper rail~~ California Ridgway's Rail breeding season, from February 1st through August 31st. Authorized remediation work that takes place from August through February must be conducted consistent with any additional United States Fish and Wildlife Service restrictions on the project, such as the requirement to create buffer zones around marsh areas.

D. **Marsh Restoration.** This permit is issued based, in part, on information from the permittee and its representatives that a future, large-scale restoration project will be conducted in East Stege Marsh and West Stege Marsh. This large-scale restoration effort shall include monitoring of the areas in East Stege Marsh and West Stege Marsh restored pursuant to this authorization. In the event that the Commission does not receive an application for such restoration work by June 25, 2004, the permittee shall submit to the Commission a monitoring plan for any remediation and/or excavation areas authorized herein within West Stege Marsh, to be approved by or on behalf of the Commission. Such monitoring plan shall include a minimum of five years of monitoring, measuring the sedimentation rate, percentage of the site revegetated, plant survival, approximate percentage representation of different plant species, and a plan for removing undesirable exotic plant species such as pepperweed (*Lepidum latifolium*), *Spartina alterniflora*, pampas grass, and broom.

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E. ***Spartina alterniflora* Control.** The approximately 600 square feet of weed block fabric and stakes placed to eradicate *Spartina alterniflora* shall be fully removed after the elimination of *Spartina alterniflora* or by January 1, 2006, whichever is earlier. Within two months of removing the fabric or by March 1, 2006, the permittee shall submit to the Commission a brief written report on the efficacy of this control procedure on eradicating *Spartina alterniflora*.

F. **Construction Plans.** The improvements authorized under Amendment No. Three shall be built generally in conformance with the figure entitled "Figure 2: Project Plan, BAPB Area and Bulb Piezometers" prepared by Tetra Tech, and dated December 22, 2014. No substantial changes shall be made to these plans without prior review and written approval by the Commission staff.

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

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

H. I. **Recording.** The permittee shall record this document or a notice specifically referring to this document on all parcels affected by this document with Contra Costa 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.

III. Findings and Declarations

On behalf of the Commission, I find and declare that:

A. **Project.** The project authorized by the original permit involved remediation of contaminated soils on property owned partially by the University of California and partially by Zeneca, Inc. The project authorized by Amendment No. One is the second phase of remedial activities and will occur on property solely owned by the University of California. To more accurately reflect the property ownership respective to the phasing of the remediation project the original permit, M01-52, has been split into M01-52(a) and M01-52(b). M01-52(b) authorizes activities that occur on University of California property solely. The project authorized by this permit involves excavating approximately 7,600 cubic yards of contaminated soils from a tidal marsh and 4,700 cubic yards of contaminated soils from an adjoining upland area, disposal of the excavated contaminated soils at an authorized upland location outside of the Commission's jurisdiction, and placement of clean, imported fill material in the excavated

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areas. In addition, the work authorized herein involves the installation of a ten-square-foot portion of an asphalt and concrete treatment pad. As such, the work authorized herein involves: (1) new dredging of less than 100,000 cubic yards as defined in Regulation Section 10602(b), with disposal of the dredged material at a non-aquatic location, as defined in Regulation Section 10602(e); (2) a similar activity, as defined in Regulation Section 10601(e)(3) with no greater adverse impacts on the Bay than the placement of new protective works to improve fish and wildlife habitat, as defined in Regulation Section 10601(2)(A); and (3) the placement of small amounts of inert inorganic fill in the shoreline band that does not have a significant adverse effect on present or possible future maximum feasible public access, as defined in Regulation Section 10601(b)(1). Therefore the activities authorized herein are considered "minor repairs or improvements" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).

B. Consistency with Commission Law and Policies. The project authorized by this amended 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. The purpose of the project is to comply with a clean up order from the Regional Water Quality Control Board and to improve existing environmental conditions at West Stege Marsh by removing and/or neutralizing soils contaminated by spent pyrite ore and PCB's. In achieving this purpose, the project will require some excavation and grading near and in a tidal marsh. Therefore, Special Conditions II-B, -C, and -D are included in this authorization to ensure that any adverse impacts to the marsh and the wildlife it supports are reduced and mitigated.

C. Amendment No. One. Amendment No. One authorizes additional remediation work that is similar to the work authorized in the original permit. In addition the amendment authorizes the placement of approximately 600 square feet of weed block fabric to eradicate *Spartina alterniflora*. A special condition has been included requiring removal of the fabric after control of the invasive species of cordgrass or by March 1, 2006, whichever is earlier, and to report on the efficacy of this method of control. This condition is necessary to assure that the project is consistent with the San Francisco Bay Plan policies supporting the eradication of invasive species such as non-native cordgrass.

D. Amendment No. Two. Amendment No. Two authorized an extension of time to complete work until February 1, 2005.

E. Amendment No. Three. Amendment No. Three authorizes the installation of 13 groundwater monitoring piezometers in the Bay and shoreline band at West Stege Marsh that will provide data on the effectiveness of the Biological Active Permeable Barrier (BAPB) that was installed in 2003, an activity which involves (1) the placement of small amounts of inert inorganic fill and the extraction of small amounts of materials in the shoreline band that does not have a significant adverse effect on present or possible future maximum feasible public

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access to the Bay or on the environment, as defined in the Regulation Sections 10601(b)(1), and (2) an activity in the Bay that is similar to but with no greater adverse impact to the Bay as defined by Regulation Section 10603(e)(3) than the above-described activity, and is thus a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).

~~D. F. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or 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.~~

~~E. G. **California Environmental Quality Act.** The lead agency, the University of California, certified a Mitigated Negative Declaration/ Initial Study for the project on July 17, 2003. On September 17, 2014, the University of California determined that the work authorized in Amendment No. Three is categorically exempt from CEQA under the category of information collection.~~

~~F. H. **Administrative Listing.** Pursuant to Regulation Section 10620, the original project (activities authorized in BCDC Permit No. ~~M01-52~~ M2001.052.00) was listed with the Commission on May 16, 2002.~~

IV. Standard Conditions

~~A. 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.~~

~~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. 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.~~

~~D. 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.~~

~~E. 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~~

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~~amended permit, the permittee/transferor and the transferee shall execute and submit to the Commission an amended 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 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.~~

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

~~G. 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.~~

~~H. 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.~~

~~I. 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 permit shall be removed by the permittee or its assignee if the amended permit has been assigned.~~

~~J. 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.~~

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~~K. 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.~~

~~L. 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.~~

~~M. 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.~~

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

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

C. **Permit Assignment.** The rights, duties, and obligations contained in this amended permit are assignable. When the permittee(s) transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this amended permit, the permittee(s)/transferors and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the amended permit and agree to be bound by the terms and conditions of the amended permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the amended permit.

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

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

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

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

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

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

J. Violation of Permit May Lead to Permit Revocation. Except as otherwise noted, violation of any of the terms of this amended permit shall be grounds for revocation. The Commission may revoke any amended permit for such violation after a public hearing held on reasonable notice to the permittee(s) or their assignees if the amended permit has been effectively assigned. If the amended permit is revoked, the Commission may determine, if it

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deems appropriate, that all or part of any fill or structure placed pursuant to this amended permit shall be removed by the permittee(s) or their assignees if the amended permit has been assigned.

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

L. Permission to Conduct Site Visit. The 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.

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

N. Best Management Practices

- 1. 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 in any area within the Commission's jurisdiction, the permittee(s), its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
- 2. Construction Operations.** 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(s) shall immediately retrieve and remove such material at its expense.

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O. In-Kind Repairs and Maintenance. Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay. Work shall occur during periods designated to avoid impacts to fish and wildlife. The permittee(s) shall contact Commission staff to confirm current restricted periods for construction.

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

By:



ROBERT J. BATHA
Chief of Permits

RJB/RS/ra


* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at Berkeley, CA

UNIVERSITY OF CALIFORNIA
Applicant

On January 26, 2015

By: 
MARK FREIBERG

Print Name and Title

- cc: U. S. Army Corps of Engineers, Regulatory Section
- San Francisco Bay Regional Water Quality Control Board, Certification Section
- U.S. Environmental Protection Agency, Compliance and Enforcement Section
- City of Richmond Planning Department
- Contra Costa County Environmental Health Department