



Making San Francisco Bay Better

Recorder's Copy

PERMIT NO. M01-52(b)
(Issued on June 27, 2002, As
Amended Through October 17, 2003)
AMENDMENT NO. ONE

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:



CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2003-0597887-00

Wednesday, DEC 10, 2003 12:42:28
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Irc/R9/1-10

I. Authorization

A. 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 Zeneca Richmond Facility, 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 as mandated by the San Francisco Bay Regional Water Quality Control Board, including:

Phase I Activities:

(1) Within Subunit 2A: (a) excavating 12,000 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; (2 b) backfilling the 7,500-square-foot
area in West Stege Marsh with approximately 12,150
10,900 cubic yards of clean fill to return the area to its
former elevation to achieve optimum pickleweed growth
raise the area to an elevation approximately six inches
higher than current elevations to prevent water from

higher than current elevations to prevent water from ponding in this area; (3 c) regrading the east bank of West Stege Marsh to create a less abrupt slope to foster the growth of transitional marsh plants; and (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.]

B. This authority is generally pursuant to and limited by ~~your~~ 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, including its accompanying exhibits and all conditions of this permit.

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C. Work authorized herein must commence prior to 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 of commencement, or by June 25, 2005, whichever is earlier, unless an extension of time is granted by further amendment of thise 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.

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 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

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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 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.

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. 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.

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F. G. 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.

G. H. 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. 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 that is solely the responsibility of the University of California. The land on which the activities will occur is primarily owned by the University of California, although a small portion of the remediation work will occur on lands owned by the Richmond Redevelopment Agency (RRA). An access agreement from the RRA has been granted to the University to perform the work on its property. To more accurately reflect the property ownership respective to the phasing of the remediation project the original permit, has been split into Amended Permit Nos. M01-52(a) and M01-52(b). Amended Permit No. 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 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. 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

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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.

~~C.~~ D. 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.

~~D.~~ E. The lead agency, the University of California, certified a Mitigated Negative Declaration/ Initial Study for the project on July 17, 2003.

~~E.~~ F. Pursuant to Regulation Section 10620, the original project (activities authorized in BCDC Permit No. M01-52) 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.

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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 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

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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.

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.

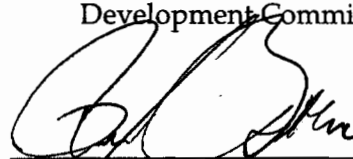
L. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this amended permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

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.

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

WILL TRAVIS
Executive Director
San Francisco Bay Conservation and
Development Commission

By:



ROBERT J. BATHA
Chief of Permits

RJB/MBL/ra

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF San Francisco)

On October 17, 2003 before me, Reyna Amezcua, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Robert J. Batha

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Reyna Amezcua (SEAL)
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION

~~THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.~~

~~TITLE OR TYPE OF DOCUMENT _____~~

~~DATE OF DOCUMENT _____ NUMBER OF PAGES _____~~

~~SIGNER(S) OTHER THAN NAMED ABOVE _____~~

~~SIGNER'S NAME _____ SIGNER'S NAME _____~~

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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 Richmond Planning Department
 Brad Olson, East Bay Regional Parks District
 Bruce Beyaert, Trails for Richmond Action Committee
 Dianne Mimms, Blasland, Bouck & Lee, Inc.

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at Berkeley, CA

[Signature]
 Applicant

On October 29, 2003

By: [Signature]
 Executive Assistant to the Vice Chancellor
 Title

