

## SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 CALIFORNIA STREET, SUITE 2600  
SAN FRANCISCO, CALIFORNIA 94111  
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# Permittees' Copy

PERMIT NO. M77-113  
(Issued on February 9, 1978, As  
Amended Through July 21, 2000)  
AMENDMENT NO. TWO

Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, California 95110

ATTENTION: Jeanette L. Micko, Acting Group Manager

Ladies and Gentlemen:

## I. Authorization

A. You are hereby authorized, at various locations in and adjacent to Coyote Creek, Mayfield, Charleston, Mountain View, Guadalupe and Alviso Sloughs, and any unnamed tidal sloughs in Santa Clara County, to perform on-going repair and maintenance of water control structures, stream banks, existing levees, and wells, and other miscellaneous maintenance activities related to flood control and water conservation facilities ~~for a period of ten (10) years.~~

B. This amended authority is generally pursuant to and limited by your application dated November 28, 1977, and your letters dated July 19, 1999 (received in our office on July 23, 1999), and November 9, 1999 (received in our office on January 7, 2000) requesting Amendment No. Two, including accompanying exhibits, particularly the exhibit entitled "Items of Work for general Permit," and all conditions of this amended permit.

C. Authorization for work herein shall remain in effect until ~~December 31, 1987~~ June 1, 2005, at which time this amended permit will expire. This amended permit may be renewed for successive five-year periods by or on behalf of the Commission where application for renewal is made prior to the expiration of this amended permit.

## II. Special Conditions

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

A. Report. The permittee shall submit a written report to the Commission by January 31, of each year for any work which may have been undertaken the previous year pursuant to this amended authorization, describing in narrative form the type and extent of work performed ~~and the approximate cost allocated to the maintenance work that had been performed.~~ The report shall include the following information:

1. A narrative description of the work undertaken within the Commission's jurisdiction in the previous calendar year. This section shall include a channel-by-channel description of:

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- a. Length of channel dredged:
  - b. Amount, in cubic yards, of sediment dredged:
  - c. Dredging method employed (i.e., dragline, backhoe, front-end loader, and/or hydraulic dredge):
  - d. Dredged material disposal site used:
  - e. Amount of cubic yards of material imported to raise, repair, stabilize or armor existing, levees and the length of the levee maintained:
  - f. Size and type of water control structure repaired or replaced; and
  - g. Cost of the dredging and disposal operations.
2. A narrative description of the work proposed in the current calendar year. The information required in Special Condition II-A- 1 above shall also be provided in this section of the report.
  3. A description of any tidal or diked wetlands inadvertently lost as a result of unanticipated events such as slippage or erosion of sediment temporarily placed on levees into marsh areas. This section of the report shall also include a discussion of:
    - a. How and when the material will be removed from such areas;
    - b. The measures proposed to restore such areas to the conditions existing prior to unauthorized dredged material disposal; and
    - c. The measures taken to prevent the reoccurrence of such events.
  4. Any work proposed after submittal of the annual report shall be submitted to the Commission in a format similar to the annual report no less than 30 days prior to the date when work is proposed to be started. Within 30 days of the date BCDC receives either the annual report or subsequent proposal(s) for work within that calendar year, BCDC shall notify the permittee of any proposed work which does not conform to the intent, terms, or conditions of this amended permit. Such notification shall constitute denial of the work under this amended permit. A separate BCDC application can be made for any such denied work (Amendment No. Two).

B. Report. All repair and maintenance activities shall be performed in such a manner so that no salt pond, managed wetland or marsh area is reduced in area or permanently damaged and to assure that the marshes and mudflats in all areas not slated to be dredged are not disrupted by dredging and disposal or construction activities (Amendment No. Two).

C. Dredged Spoils Material. All dredged spoil material shall be removed to an area outside of the Commission's jurisdiction except for those spoil materials which would be used for levee repair. Spoils may be temporarily stored at any project site only in such a manner so as not to destroy any marsh vegetation. Dredged material may be temporarily stored on levees adjoining

project sites only if the materials are placed in such a manner so as to preclude the possibility of marsh vegetation or mudflats being lost as a result of erosion, slippage, or settlement of the materials. Any dredged material placed in any wetlands within the Commission's jurisdiction, including managed wetlands, salt ponds, tidal marsh, or diked wetlands shall be removed within 60 days of notification by BCDC staff, or such other reasonable time approved by or on behalf of the Commission. All dredged material left permanently within the Commission's jurisdiction shall be placed and/or graded so as to preserve the opportunity for use of the site for public access (Amendment No. Two).

D. Public Access. At such time that suitable arrangements for operating, maintaining, and policing public access areas can be made with local park districts, the U.S. Fish and Wildlife Service, or other appropriate public agencies, as determined by the Commission, the permittee shall make its lands along the channels described in Section I-A above available without cost for public access purposes, including walking, sitting, picnicking, bicycling, viewing, etc. (Amendment No. Two).

E. Best Management Practices. The permittee shall employ "best management practices" in repairing and maintaining levees, tidal control structures, pumps, and drainage pipes, to minimize impacts on the adjoining tidal wetlands and wildlife. At locations that have experienced little subsidence, construction shall be confined to the levee crest and landward slope and, wherever possible, a small berm or "choker" shall be constructed on the levee crest prior to placing earth fill to minimize material slipping into the tidal wetlands. At locations where subsidence has led to pronounced differences in elevation between the marsh plain and adjoining land and the levee must be widened to effect repairs, material may be placed on the bayward slope of the levee provided that fill and equipment incursions into tidal areas is kept to a minimum, that every reasonable effort is made to minimize erosion or slippage of material into tidal areas, and that existing marsh vegetation is protected to the maximum extent practicable. (Amendment No. Two).

F. Construction Activities. All construction activities shall be performed to prevent construction and excavated materials from falling 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 (Amendment No. Two).

G. Marsh and Upland Plant Protection. The work authorized by this amended permit shall be performed in a manner that will prevent any significant adverse impact on any tidal marsh, other sensitive wetland resources, and existing 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 or plant all disturbed areas with appropriate marsh vegetation after receiving approval of a restoration plan by or on behalf of the Commission. Such restoration plan must be implemented within two years of the initial disturbance (Amendment No. Two).

D. H. Partial Assignment. The permittee may make a full or partial assignment of the rights and/or duties under this amended permit provided that the assignee is acceptable to the Commission. The assignment shall be made in writing and clearly indicate which portions of the permit rights and/or duties are assigned and which portions remain the unassigned. The assignee shall sign a written statement to the effect that he has read and understands the conditions of the permit, agrees to be bound by all terms and conditions and that he understands that no amendments

deleting or reducing the burden of any duties imposed by this amended permit will be favorably considered by or on behalf of the Commission without full justification; joinder of all parties to this amended permit and clear indication that the amendment will not reduce the degree of protection afforded to the public by the conditions of this amended permit.

I. Future Five-Year Permit Extension. The maintenance activities described herein are authorized for a period of five years beginning June 1, 2000. At the conclusion of this five-year period, the Executive Director, based on the evaluation of the annual reports submitted to date summarizing the work completed pursuant to this amended permit, the effectiveness of best management practices in minimizing disturbance to existing habitat, and reported impacts to special status species, may extend this amended permit for another five-year period. Such extension may include modifications to the best management practices and modifications to construction windows, based upon monitoring results and experience with methods to minimize habitat disturbance and harmful effects to special status species. Any proposed modification shall be approved, disapproved or approved with modifications by or on behalf of the Commission following Commission staff consultation with interested agencies, other organizations, and individuals.

### III. Findings and Declarations

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

A. The project authorized this permit involves routine maintenance activities to facilities flood control and water conservation that would have no greater adverse impact on the Bay than the specific activities described in paragraphs (a), (b), and (c) of regulation Section 10122, as defined in Regulation section 10122(d) (2), and thus is a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation section 10530(a). The project authorized by this permit involves both maintenance dredging and new dredging of 100,000 cubic yards or less completed within a five-year period, as defined by Regulations Section 10602(a) and 10602(b), respectively, and the placement of small amounts of inert inorganic fill in such a way as to not have a significant adverse effect on present or possible future maximum feasible public access consistent with the project and the repairs to existing protective works in the minimum amount necessary to stabilize existing dikes and banks, as defined in Regulation Sections 10601 (b)(1) and 10601(b)(4), respectively, and thus is 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) (Amendment No. Two).

B. The project authorized by this permit is consistent with the McAteer-Petris Act and the San Francisco Bay Plan in that adequate measures will be taken to protect marshland, managed wetland, and salt pond areas during performance of the work, and in that it will not adversely affect the Bay nor public access to and enjoyment of the Bay.

1. Dredging and Dredged Material Disposal. The Bay Plan authorizes the maintenance dredging of flood control channels provided that conditions are imposed to minimize the environmental impacts of the dredging and the disposal. Further, the Bay Plan authorizes the disposal of dredged material at upland locations assuming other criteria are met. In this amended permit, conditions require the avoidance of any damage to wetland or marsh vegetation within BCDC jurisdiction and the removal of any dredged material that may inadvertently be placed in such areas. Outside of BCDC jurisdiction, however, the Commission has no control over the disposal of dredged material.

2. Water Quality. Special Conditions II-E and II-F, which require that all dredging operations be performed to minimize the roiling of waters, and that all disposal operations be carried out to assure that no dredged material erode into tidal waters, assure that the project will not adversely affect the quality of Bay waters.
3. Marsh Protection. The San Francisco Bay Plan requires that marshes and mudflats be maintained to the fullest possible extent and that habitats that are needed to maintain threatened or beneficial species be protected. To minimize the project's adverse impact on fish and wildlife resources in San Francisco Bay, this amended permit contains conditions that: (1) require that dredged material shall not be placed on marsh vegetation, or placed in such a manner that dredged material is likely to move into a marsh through slippage or erosion (Special Condition II-B, E, F and G); and (2) specify that dredging and disposal operations only disturb marsh vegetation in those reaches of the channel slated for dredging (Special Condition II-D).
4. Public Access. The permittee has allowed public access to be developed on many of the properties under its control. This amended permit, although not requiring the permittee to provide any specific public access areas or improvements at this time, does require the permittee to provide its land along the channels for public access purposes when other public agencies, such as local park districts or the United States Fish and Wildlife Service, are able to operate and maintain them. Without such a condition and the representations of the permittee that it will continue to make its land available for public access purposes as it has in the past, the Commission could not find that the project provides the maximum feasible public access consistent with the project.
5. Grading Ordinances. This amended permit authorizes the permittee to continue maintenance dredging of various flood control channels throughout Santa Clara County. As conditioned, the amended permit assures that such maintenance dredging and spoil disposal shall be carried out in such a manner to minimize the adverse impacts of such activity on wildlife resources. However, by the very nature of the project, which involves dredging of channels where marshes and mudflats have become reestablished, the various projects authorized will result in the destruction of significant wildlife habitat. The Bay Plan states that the Commission should encourage increased efforts by soil conservation districts and public works agencies to continuously reduce soil erosion as much as possible. In light of the facts that dredged material disposal sites are in increasingly short supply, and because some of the remaining disposal sites are diked wetlands and contain significant wildlife resources, the Commission strongly encourages the permittee to work with other local government agencies in an effort to reduce the sediment entering such channels as a result of new construction and grading activities (Amendment No. Two).

C. The Commission further finds, declares, and certifies that 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. Santa Clara Valley Water District, the permittee and lead agency, has determined that the project is categorically exempt under Section 40 of its Guidelines from the requirement to prepare an environmental impact report.

E. Pursuant to Regulation Section 10542, this project was listed with the Commission on January 19, 1978.

#### 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 derived from this amended permit are assignable as provided herein. An assignment shall not be effective until the assignee shall have executed and the Commission shall have received an acknowledgment that the assignee has read and understood the applications for this amended permit itself 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 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 amended permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.

G. Unless otherwise provided in this permit, the terms and conditions of this 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 permit, any work authorized herein shall be completed within the time limits specified in this 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 a permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this permit shall be removed by the permittee or its assignees 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 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 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 assignees if their permit has been assigned.

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J. This amended permit shall not take effect unless the permittee executes the original of this 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 permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

M. Unless the Commission directs otherwise, this 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 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.

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: \_\_\_\_\_

  
STEVEN A. McADAM  
Deputy Director

SAM/BB/ra

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, W-3-3  
State Lands Commission

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Receipt acknowledged, contents understood and agreed to:

Executed at San Jose, California

Santa Clara Valley Water District

On July 28, 2000

By:

P. Kay Whitlock  
Applicant

Acting Chief Executive Officer/  
General Manager  
Title