

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdcd.ca.gov](mailto:info@bcdcd.ca.gov) | [www.bcdcd.ca.gov](http://www.bcdcd.ca.gov)

## BCDC Original

### PERMIT NO. 2006.010.05

(Originally Issued on September 27, 2007, and Amended Through December 4, 2019)

### AMENDMENT NO. FIVE

(Inclusive of Amendment No. Six)

Marina Village Associates, LLC  
1999 Avenue of the Stars, Suite 2850  
Los Angeles, CA 90067

On September 20, 2007, the San Francisco Bay Conservation and Development Commission, by a vote of 18 affirmative, 0 negative, and 0 abstentions, approved the resolution pursuant to which the original permit was issued. Moreover, on October 13, 2010 November 18, 2013, September 2, 2015, ~~and~~ July 24, 2017, and April 16, 2019, pursuant to Regulation Section 10822, the Executive Director approved Amendment Nos. One, Two, Three, ~~and~~ Four, and Six (time extension), respectively. On December 4, 2019, pursuant to Regulation Section 10822, the Executive Director approved Amendment No. Five, to which this amended permit is hereby issued:

#### I. Authorization

A. **Authorized Project.** Subject to the conditions stated below, the permittee, Marina Village Associates, LLC, is hereby granted permission to construct the following at the Loch Lomond Marina located at 110 Loch Lomond Drive, in the City of San Rafael, Marin County:

##### 1. In the Bay:

- a. Install and maintain approximately 740 cubic yards of rock riprap covering 21,600 square feet along 2,400 feet of the breakwater;
- b. Install, use, and maintain an approximately 200-square-foot floating dock for launching kayaks adjacent to the existing boat launch ramp;
- c. Install, use, and maintain an approximately 200-square-foot portion of a kayak launch ramp totaling 600 square feet at the eastern side of the project site near the terminus of the parking area; ~~and~~
- d. Repair or replace and maintain two existing 18-inch-in-diameter piles at the yacht club extending over the marina;
- e. Reconstruct a portion of an 1,880-square-foot section of the Boardwalk, seawall, and riprap, between Docks E and F that collapsed (after-the-fact) (Amendment No. Four); and



- ~~f. Plant 74 square feet of former tidal marsh with tidal marsh plants between Docks E and F (Amendment No. Four).~~
- f. Place, use, and maintain in-kind approximately 70 cubic yards (950 square feet) of rock riprap along approximately 105 linear feet of the northwest bank of the East Spit of Lot D (after-the-fact) (Amendment No. Five).

**2. Within the 100-foot shoreline band:**

- a. Construct, use, and maintain portions of eleven homes, including fences, porches, and steps, totaling approximately 15,070-square feet (modified by Amendment No. Four);
- b. Temporarily stockpile a maximum of 88,000 cubic yards of material at the West Spit to raise the elevation of the project site;
- c. Construct, use, and maintain an approximately 2,070-square-foot portion of a 13,250-square-foot grocery building;
- d. Construct, use, and maintain an approximately 1,950-square-foot Harbormaster Building, located next to the existing yacht club for use as a café, with a 500-square-foot outdoor dining area and a marina restroom facility (modified by Amendment No. Four);
- e. Replace an existing boat repair facility, at the west side of the project site, with a similar sized facility at a site located a minimum of 40 feet north of the existing location;
- f. Improve, use, and maintain 260 parking spaces at an approximately 40,946-square-foot area along the shoreline and at the East and West Spits for marina, commercial, and public access use;
- g. Install, use, and maintain public restrooms one located at the East Spit and one located at the entrance to the breakwater;
- h. Install, use, and maintain an approximately 400-square-foot portion of a gravel kayak launch ramp at the eastern side of the project site near the terminus of the parking area;
- i. Install and maintain approximately 1,000 cubic yards of rock riprap along an 1,100-foot-long section of the boardwalk, and 9 horizontal control points at the toe of the existing slope (partially after-the-fact) (modified by Amendment No. Four);

- j. Install and maintain approximately 6,300 cubic yards of rock riprap and engineered fill along an approximately 2,400-foot-long section of the breakwater;
- k. Install, use and maintain a six-foot-wide, 700-foot-long fence along the east end of the site between the residential units and a seasonal wetland;
- l. Install, use, and maintain a community plaza at the foot of the marina entrance road, and an approximately 600-foot-long, 55-foot-wide marina green with a five-foot-wide planter and a series of concrete seat walls along the northern edge;
- m. Expand, use, and maintain an existing eight-foot-wide public boardwalk along the marina green by approximately six feet to create an approximately 14-foot-wide boardwalk;
- n. Maintain and use an existing 8-foot-wide, 900-foot-long public access path along the shoreline to connect to the 14-foot-wide boardwalk southeast of the marina green, and an existing public access path from the boat launch ramp to the marina green;
- o. Install, use, and maintain an approximately 340-foot-long, 57-foot-wide public park, including an approximately 5-foot-wide, 400-foot-long asphalt trail, children's playground, picnic area, and benches at the East Spit, an approximately 25,000-square-foot public park, including an approximately 5-foot-wide, 250-foot-long, decomposed granite trail, picnic areas, approximately 13 public access parking spaces, and benches at the West Spit, and an approximately 50-foot-wide, 300-foot-long public park area, along the eastern end of the marina parking area, including a picnic and bird-viewing area by an adjacent seasonal wetland;
- p. Install, use, and maintain an approximately 6-foot-wide, 2,200-foot-long asphalt public access trail along the existing breakwater;
- q. Create and maintain an approximately 0.22-acre seasonal wetland, and enhance, preserve, and maintain an approximately 1.6-acre portion of an existing seasonal wetland;
- r. Install, use, and maintain a public fish cleaning station, with benches, picnic tables and fishing pole holders, located at the entrance to the breakwater and located at the southeast corner of the breakwater;

- s. Install, use, and maintain at a minimum 43 benches, signage, and trash cans in the public access areas at the spits, community plaza, breakwater, and adjacent to the boat launch ramp, seasonal wetlands, and bird viewing area;
- t. Install, use, and maintain an approximately 65-foot-wide public access, path and landscaping at the west end of the property to connect to the neighboring site;
- u. Place approximately 40,000 square feet of material on the West Spit, East Spit, and East end turnaround to raise the elevation of the site; ~~and~~
- v. Remove approximately 3,000 cubic yards of contaminated soil along the West Jetty in accord with California Regional Quality Control Board File No. 21-0067 (RAL) and replace the soil with clean imported soils;
- w. Reconstruct a portion of an 1,880-square-foot section of the Boardwalk, seawall, and riprap, between Docks E and F that collapsed (after-the-fact) (Amendment No. Four);
- x. Install, use, and maintain the following utilities (after-the-fact):
  - (1) A transformer located on the center of the landward side of the East Spit;
  - (2) A PG&E switchgear cabinet and concrete foundation pad located on the eastern landward side of the East Spit;
  - (3) A transformer located at the bayward southeast side of the east parking lot;
  - (4) Electrical equipment located at the southeast angle, bayward of the east parking lot and adjacent to the start of the breakwater trail; and
  - (5) Underground utilities throughout the site.
- y. Install, use, and maintain a permanent fence around the sewer lift station located at the landward end of the East Spit;
- z. Grade and plant an approximately 344-square-foot area of tidal marsh and an approximately 1,256-square-foot area of transitional mudflat/wetland on the southern end of the East Jetty, realign the adjacent public access path, and replace and relocate an approximately 4-foot-high fence and gate (Amendment No. Five);
- aa. Place approximately 360 cubic yards of fill to raise the elevation of the breakwater area from +7.2' NAVD88 to 9.7' NAVD88, vegetate an approximately 7,405-square-foot area adjacent to the public trail and boardwalk, install signage, temporarily remove and reinstall public access amenities such as benches, trash cans, and a fish cleaning station, and replace trails, pavement, curbs, sidewalks, and parking lot striping (Amendment No. Five);

- bb. Place approximately 537 cubic yards of fill to raise the elevation of portions of the East Spit from +7.2' NAV88 to +9.5' NAVD88, replace trails, install ADA-accessible stairs and ramps within the playground, install an approximately 42-inch-tall fence around the playground perimeter, install a sheet pile wall, temporarily remove and reinstall public access amenities such as benches, tables, and trash cans, install a check valve on the playground outfall, and install a pump within the playground (Amendment No. Five); and
- cc. Construct, use, and maintain in-kind an approximately 100-foot-long by 10-foot-wide boardwalk at elevation +9.7' NAVD88, supported by seven pairs of 12-inch-square concrete piers on 4-foot-square concrete spread footings and two concrete aprons (approximately 29 cubic yards of fill in total), with railings and an approximately 48-square-foot cantilevered platform for bird viewing (Amendment No. Five).

B. **Application Dates.** This amended permit is generally pursuant to and limited by the original application dated December 28, 2006, your letter dated September 27, 2010, requesting Amendment No. One, your letter dated April 25, 2013, requesting Amendment No. Two, the letter dated October 10, 2014, requesting Amendment No. Three, ~~and~~ the letter dated November 30, 2016, requesting Amendment No. Four, the letter dated June 30, 2017, requesting Amendment No. Five, and the letter dated June 4, 2018, requesting Amendment No. Six (time extension), including all accompanying and subsequently submitted correspondence and exhibits, and all conditions of this amended permit.

C. **Deadlines for Commencing and Completing Authorized Work.** Work authorized under the original authorization was required to commence prior to October 1, 2010 or the original permit was to lapse and become null and void. The work authorized under the original permit was required to be diligently pursued to completion and completed by October 1, 2013, unless an extension of time was granted by amendment of the permit.

Amendment No. One, a time extension, granted an extension of project commencement time to October 1, 2015 and completion time to October 1, 2018.

Amendment No. Two modified public access details and did not result in modifications to or additional project timing requirements.

The work authorized in Amendment No. Three was required to commence prior to December 31, 2016 or this amended permit was to lapse and become null and void. Such work must be diligently pursued to completion and be completed by July 1, 2019 unless an extension of time is granted by further amendment of the permit.

(Originally Issued on September 27, 2007, and Amended Through December 4, 2019)  
(Inclusive of Amendment No. Six)

The work authorized under Amendment No. Four not already in place (planting of 74 square feet of marsh vegetation) must commence prior to October 1, 2017 or this amended permit will lapse and become null and void. Such work must be diligently pursued to completion and be completed by October 1, 2018 unless an extension of time is granted by further amendment of the permit.

Amendment No. Six was issued on April 16, 2019 and granted an extension of completion time until December 1, 2019 for: a) Construction of an approximately 1,950-square-foot Harbormaster Building (Authorization I.A.2.d); b) Replacement of an existing boat repair facility, at the west side of the project site, with a similar sized facility at a site located a minimum of 40 feet north of the existing location (Authorization I.A.2.e); c) The widening of the 400-foot-long path located west of the community plaza from 13 feet up to 18 and 24 feet in width (Special Condition II.B.7.a); and d) Construction of an approximately 65-foot-wide public access path and landscaping at the west end of the site connecting to the neighboring site (Special Condition II.B.7.b).

The work authorized under Amendment No. Five must commence prior to December 31, 2020 or this amended permit will lapse and become null and void. Such work must be diligently pursued to completion and be completed by December 31, 2021 unless an extension of time is granted by further amendment of this amended permit.

- D. **Summary of Bay Fill.** The original project involves the placement of 21,600 square feet (740 cubic yards) of solid fill in the form of rock riprap for shoreline protection along an existing breakwater, 200 square feet of solid fill for a kayak boat launch, and 200 square feet of floating fill for a dock. Also, two piles supporting an existing yacht club ~~will be~~ were replaced or repaired. The original project ~~will~~ resulted in a net increase of 22,000 square feet of fill in the Bay. The work authorized by Amendment No. Five involves the placement of approximately 2,380 square feet (174 cubic yards) of solid fill in the form of rock riprap and an additional 170 square feet of solid fill for an expanded kayak boat launch, the placement of approximately 1,000 square feet of pile-supported fill in the form of a boardwalk, and the placement of approximately 48 square feet of cantilevered fill in the form of a bird viewing platform on the boardwalk. The overall project, as modified by Amendment No. Five will result in a net increase of 25,398 square feet of fill in the Bay, and as summarized in the table below.

Marina Village Associates, LLC  
 (Originally Issued on September 27, 2007, and  
 Amended Through December 4, 2019)  
 (Inclusive of Amendment No. Six)

Type of Fill (sq ft)	Removed	New	Total Net Fill (sq ft)
Solid	0	<u>24,150</u> <del>21,800</del>	<u>24,150</u> <del>21,800</del>
Floating	0	200	200
Pile-Supported	0	<u>1,000</u> <del>0</del>	<u>1,000</u> <del>0</del>
Cantilevered	0	<u>48</u> <del>0</del>	<u>48</u> <del>0</del>
<b>Total (sq ft)</b>	<b>0</b>	<b><u>25,398</u></b> <b><del>22,000</del></b>	<b><u>25,398</u></b> <b><del>22,000</del></b>

E. **Summary of Public Access.** The project will result in approximately 117,473 square feet of new public access in the Commission’s jurisdiction and approximately 23,490 square feet of new public access outside of the Commission’s jurisdiction, and improvements to the approximately 12,000 square feet of existing public access at the site. As a result of implementation of the project, the total public access affected area in the Commission’s jurisdiction will be 129,473 square feet along 4,470 feet of shoreline. The public area improvements include the new and existing boardwalk, the marina green, the East Spit, the West Spit, the path adjacent to seasonal wetland, the kayak launch ramp, the park, and four pathways that will also serve as view corridors.

Type of Public Access	Square Feet	Acres	Shoreline Length (miles)	Yes/ No
On-Site (new)	140,963	3.2	1.36	
Off-Site (new)	0	0	0	
Protected or Maintained	12,000	0.28	0.45	
View Corridor				Yes
<b>Total</b>	<b>152,963</b>	<b>3.5</b>	<b>1.63</b>	



## 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. Specific Plans and Plan Review

#### 1. Construction

a. **Original Permit Through Amendment No. Six (Exclusive of Amendment No. Five).** The final plans submitted pursuant to this condition shall generally conform with the plan entitled "The Village at Loch Lomond Marina Public Access Plan", dated June 27, 2007, prepared by the Guzzardo Partnership, except for the relocation of the boat repair building located at the west end of the site. Final plans for the shoreline protection improvements shall be prepared and submitted for BCDC review as described below. No changes to the design of the project shall be made without the prior written approval of the BCDC staff.

b. **Amendment No. Five.** The work authorized by Amendment No. Five shall generally conform with the plan set entitled "Project Drawings for Loch Lomond Marina Site Improvements," prepared by Noble Consultants and GEC and dated August 2, 2019. Final plans shall be submitted for review and approval pursuant to Special Condition II.A.2, below.

2. **Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, demolition, engineering, architectural, grading, landscaping, and best management practices plans and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.

a. **Site, Architectural, Grading, and Landscaping Plans.** Site, demolition, architectural, grading, public access, and landscaping plans shall include and clearly label the shoreline (Mean High Water Line or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if Marsh is present), the line 100 feet inland of the line of the shoreline, property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, details showing the location, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements. In addition to the



information listed above, the site plan shall provide a dimension line which marks the minimum distance between a proposed structure authorized by this permit and the Mean High Water Line (or, if marsh is present, the line 5 feet above mean sea level NGVD (National Geodetic Vertical Datum)). Additional dimension lines shall be provided, as necessary, to locate where this minimum dimension occurs in relation to either the property line, the top of bank, or some other fixed point upon the site.

- b. **Engineering Plans.** Engineering plans shall include a complete set of contract drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:

- (1) Evidence that the design complies with all applicable codes; and
- (2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made.

Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:

- (3) completeness and accuracy of the plans in showing the features required above, particularly the shoreline (Mean High Water Line or the inland edge of marsh vegetation up to 5 feet above Mean Sea Level if Marsh is present), property lines, and the line 100-feet inland of the shoreline, and any other criteria required by this authorization;
- (4) consistency of the plans with the terms and conditions of this authorization;
- (5) the provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this authorization;
- (6) consistency with legal instruments reserving public access and open space areas;
- (7) assuring that any fill in the Bay does not exceed this authorization and will consist of appropriate shoreline protection materials as determined by or on behalf of the Commission;



- (8) consistency of the plans with the recommendations of the Design Review Board;
- (9) assuring that appropriate provisions have been incorporated for safety in case of seismic event;
- (10) assuring that the placement of fill in the Bay will avoid or minimize impacts to sub-tidal marsh and wetland habitat; and
- (11) assuring that appropriate elevations have been met to prevent overtopping, flooding, and 100-year storm events in all public access areas.

Plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the plans to be reviewed.

3. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, signage, landscaping, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the Commission.
4. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.
5. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the permittee or any other interested party to the Design Review Board or, if necessary, subsequently to the Commission. Such appeals must be submitted to the Executive Director within 30 days of the plan review action and must include the specific reasons for appeal. The Design Review Board shall hold a public hearing and act on the appeal within 60 days of the receipt of the appeal. If subsequently appealed to the Commission, the Commission shall hold a public hearing and act on the appeal within 90 days of the receipt of the subsequent appeal.



6. **Board Review.** Preliminary engineering plans and engineering criteria shall be reviewed by or on behalf of the Engineering Criteria Review Board prior to submittal to the staff for final approval pursuant to Special Condition II-A. The specific drawings required depend on the type of project and shall be as determined by the staff engineer. Such materials shall demonstrate to the satisfaction of the Board that the permittee has adopted design criteria appropriate to the nature of the project and use of any structures constructed in connection therewith. Such criteria shall take into account the soil and foundation conditions at the site and potential earthquake-induced forces.

**B. Public Access**

1. **Area.** The approximately 152,963-square-foot area, along approximately 4,470-linear feet of shoreline, as generally shown on Exhibit A, shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. If the permittee wishes to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission.

The public access for this project includes:

- a. New public access within the 100-foot shoreline band: 117,473 square feet;
  - b. New public access located outside of the Commission's jurisdiction: 23,490 square feet; and
  - c. Existing public access (authorized in BCDC Permit No. M00-5): 12,000 square feet to be improved.
2. **Permanent Guarantee.** By March 31, 2016, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for the public to the 134,674-square-foot public access areas, as generally shown on Exhibit A. The instrument(s) shall create rights in favor of the public which shall commence no later than after completion of construction of any public access improvements required by this authorization and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of Marin County and shall include a legal description of the property being restricted and a map that clearly depicts the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if marsh is present), the property being restricted for public access, the legal description of the property subject to this permit and of the area being restricted for public access, other appropriate landmarks and topographic features of the site,



such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas, and a graphic scale and north arrow. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:

- a. Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this authorization;
  - b. Inclusion of an exhibit to the instrument including a legal description and map that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area and features described above; and
  - c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.
3. **Recordation of the Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument on all parcels affected by this permit and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
4. **Improvements Within the Total Public Access Area.** The permittee shall install the improvements identified below in Sections II.B.5 to II.B.8 within an area measuring 134,674 square feet, as generally shown on Exhibit A. The public access improvements shall be built in four stages as shown in Exhibit C.
5. **"The Backbone".** By March 31, 2016, the following improvements shall be completed and available for public access use:
- a. An approximately 400-foot-long, approximately 13-foot-wide path to be located west of the community plaza;
  - b. A 400-foot-long, six-foot-wide path at the eastern entrance of the marina to the community plaza;
  - c. An expansion of a 600-foot-long, 14-foot-wide boardwalk, expanded from the existing eight-foot-wide pathway, along the marina green;
  - d. A community plaza and a 600-foot-long marina green between the boardwalk Marina Drive and the parking area that shall be a minimum of 10 feet wide to a maximum 53 feet wide as measured from the edge of the boardwalk to the face of the curb (Amendment No. Two);



- e. A 600-foot-long, five-foot-wide planter with landscaping and a seat wall between the marina green and marina drive;
  - f. A 650-foot-long, five-foot-wide path along the East and West Spits;
  - g. A 340-foot-long, 57-foot-wide park, picnic area, benches, children's playground, and a five-foot-wide, 400-foot-long decomposed granite trail on the East Spit;
  - h. A public restroom at the entrance of the East Spit;
  - i. A 25,000-square-foot park, picnic area, benches, approximately 13 public access parking spaces, a five-foot-wide, 250-foot-long decomposed granite trail on the West Spit;
  - j. A 2,220-foot-long, six-foot-wide path along the breakwater;
  - k. A 300-foot-long, 50-foot-wide public park area along the eastern end of the marina, including public bird viewing areas, fish cleaning stations, benches, picnic tables and fishing pole holders;
  - l. A minimum of 43 benches, trash cans and 6 public access signs, and when appropriate, Bay Trail signs;
  - m. An approximately 35-foot-long, six-foot-wide path at the northwest corner of the site, connecting to the neighboring site; and
  - n. An approximately 830-foot-long and six-foot-wide pathway between the marina drive parking lot and the residential development.
6. By December 31, 2016, one of three (total) six-foot-wide, 400-foot-long pathways along view corridors through the residential development (Phase I) to the shoreline shall be completed and available for public access use.
7. By June 30, 2018, the ~~following~~ public access improvements described in Special Condition II.B.7.c, below, and by December 1, 2019, the public access improvements described in Special Conditions II.B.7.a and II.B.7.b, below, associated with the residential (2a)/commercial development shall be completed and available for public access use:
- (a) The widening of the 400-foot-long path located west of the community plaza from 13 feet up to 18 and 24 feet in width;
  - (b) An approximately 65-foot-wide public access, path and landscaping at the west end of the site connecting to the neighboring site; and
  - (c) The second of three six-foot-wide, 400-foot-long pathways along a view corridor through the residential development to the shoreline.

8. By July 1, 2019, the following public access improvements (associated with Phase 2b of the residential development) shall be completed and available for public access use:
- (a) Adjacent to Residential Areas 2a and 2b, a 1,500-foot-long, six-foot-wide pathway with a fence up to 36 inches high along the eastern side of the residential development and seasonal wetland prior to occupancy of the adjacent residential development; and
  - (b) The third of three six-foot-wide, 400-foot-long pathways along a view corridor through the residential development to the shoreline.

Such improvements shall be fully consistent with the plans approved pursuant to Special Condition II-A of this amended authorization and substantially conform to the plans entitled "The Village at Loch Lomond Marina Public Access Plan," dated June 27, 2007, prepared by the Guzzardo Partnership, except for the relocation of the boat repair building located at the west end of the site.

9. **Maintenance.** The areas and improvements within the total 152,963-square-foot area shall be permanently maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches and seat walls, drinking fountains, trash containers, playgrounds, pathways, wildlife viewing areas, picnic tables, fishing facilities, and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; assuring that the public access signs remain in place and visible; and repairs to any public access areas or improvements that are damaged by future flooding, including and subject to approval by or on behalf of the Commission, raising land elevations or redesigning public access features to protect and ensure the usability of the public access areas and improvements, where appropriate. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site.
10. **Assignment.** The permittee shall transfer maintenance responsibility to a public agency or another party acceptable to the Commission at such time as the property transfers to a new party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.

11. **Future Public Access Connections to Neighboring Parcel.** In accord with Special Condition II.B.7.c, above, the permittee shall enable the construction of future public access connections between its property and the neighboring parcel to the west to facilitate the completion of any shoreline path required by Special Condition II.B of BCDC Permit No. 1977.022.00, as amended.

- a. Prior to the sale of the first residential unit or by March 1, 2016, whichever is earlier, the permittee shall temporarily (until the permanent pathway connection is installed, see below) stripe a pathway connection on existing asphalt to connect the park area located on the West Spit to the neighboring public access (required under BCDC Permit No. 1977.027.00); and
- b. Prior to the use of the commercial development or by June 30, 2018, whichever is earlier, the permittee shall provide a permanent pathway connection in accord with Special Condition II.B.7.c.

The exact manner in which the connection is made shall be reviewed, and if adequate, approved by or on behalf of the Commission pursuant to Special Condition II-A. The permittee shall reasonably coordinate the design, construction, and maintenance with the permittee of the adjacent parcel to create a continuous and seamless transition between the public access areas, including landscaping.

12. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules will not significantly affect the public nature of the area, will not unduly interfere with reasonable public use of the public access areas, and will tend to correct a specific problem that the permittee has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

13. **Amendment No. Five Public Access Improvements.** By December 31, 2021, the following public access flooding adaptation improvements authorized by Amendment No. Five shall be completed and available for public use:

- a. **East Spit.** The following modifications to the public access improvements required in Special Conditions II.B.5.f, II.B.5.g, II.B.5.h, and II.B.5.i: Placement of fill to raise the East Spit to +9.5' NAVD88, reconstruction of a public trail, addition of stairs and ADA-accessible ramps to access the playground from the new curb elevation, installation of an approximately 42-inch-tall guardrail fence

around the playground perimeter, and reinstallation of any public access amenities (e.g., benches, trash cans) that were removed to allow for the increase in elevation of the East Spit area.

- b. **Breakwater Area.** The following modifications to the public access improvements required in Special Conditions II.B.5.j, II.B.5.k, and II.B.5.l: Placement of fill to raise the Western breakwater area, located east of the East Spit, to +9.7' NAVD88, construction of an approximately 100-foot-long pedestrian boardwalk with bird viewing platform, reconstruction of a public trail, re-installation of signage, replacement of pavement, curbs, sidewalks, and parking lot striping, and reinstallation of any public access amenities (e.g., benches, trash cans) that were removed to allow for the increase in elevation of the breakwater area.

14. **Amendment No. Six.** The work for which the time extension until December 1, 2019 was granted under Amendment No. Six must be conducted consistent with the application for the time extension, including (1) completing extension of the permanent pathway in the vicinity of the future Harbormaster Building site prior to beginning construction on the Harbormaster Building, except for the portions that will be flush with the Harbormaster Building; and (2) providing a public access detour route during construction as identified in the plan titled "Public Access Detour During Harbormaster Building Construction, Loch Lomond," prepared by Ruggeri-Jensen-Azar and dated December 17, 2018.

C. **Visual Access**

1. **Visual Access Areas.** As shown in Exhibit B, the permittee shall leave as open space and undeveloped for the life of the project a total of four view corridors: three, 400 feet long view corridors beginning at Point San Pedro Road to the shoreline, and the 100- to 150-foot wide, 400 feet long view corridor located from the main entrance of the marina to the shoreline, which the permittee owns and is the subject of this permit to allow visual access from the public street to the Bay. The view corridor area(s) is shown more precisely on Exhibit B to this amended permit. The permittee shall not allow any portion of the proposed structure or any appurtenant structure to intrude into the view corridor, and the permittee shall landscape the view corridor only with plants or shrubs that do not exceed three feet in height and that have been approved by or on behalf of the Commission pursuant to Special Condition II-A to this permit.



2. **Permanent Guarantee of View Corridor.** Prior to March 31, 2016, the permittee shall submit to the Commission's Executive Director a legal instrument that dedicates to a public entity other than the Commission or otherwise restrict in perpetuity as open space for visual access purposes, three, 400 foot long undeveloped areas and one, 100- to 150-foot-wide, 400 feet long undeveloped area on the west side of the property as required by Special Conditions II-B and II-C to this amended permit totaling 82,400 square feet and as shown as Exhibit B.

Such instrument shall be in a form that meets recordation requirements of Marin County and shall include a legal description of the property being restricted and a map that clearly depicts the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if marsh is present), the property being restricted for visual access, the legal description of the property subject to this amended permit and of the area being restricted for visual access, other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas, and a graphic scale and north arrow. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following:

- a. Sufficiency of the instrument to create legally enforceable rights and duties to provide the visual access area required by this amended authorization;
  - b. Inclusion of an exhibit to the instrument including a legal description and map that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area and features described above; and
  - c. Sufficiency of the instrument to create legal rights in favor of the public for visual access that will run with the land and be binding on any subsequent purchasers, licensees, and users.
3. **Recordation of the Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument on all parcels affected by this permit and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
4. **Maintenance of Landscaping.** The permittee or assignee shall maintain the view corridor. Maintenance shall include of the regular trimming of shrubs and any plants to prevent their exceeding three feet in height or tree canopies over 10 feet above the ground and clearing and replacing of any dead plants.

- D. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the amended permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.
- E. **Certificate of Occupancy or Use.** Prior to occupancy or use of any of the residential improvements authorized herein, the permittee shall submit the Notice of Completion and Compliance required herein and request in writing an inspection of the project site by the Commission staff. Within 30 days of receipt of the written request for an inspection, the Commission's staff will: (1) review all amended permit conditions; (2) inspect the project site; and (3) provide the permittee with written notification of all outstanding permit compliance problems, if any. The permittee shall not occupy or make use of any improvements authorized herein until the staff has confirmed that the identified permittee compliance problems have been satisfactorily resolved and has provided the permittee with a Certificate of Occupancy or Use. Failure by the staff to perform such review and inspection and notify the permittee of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the permit, but the permittee may occupy and use the improvements authorized herein.
- F. **Foundation Layout Inspection**
1. **Written Request.** Prior to constructing any building forms for any structure that will be located in or adjacent to BCDC's 100-foot-wide shoreline band or required public access or open space area, the permittee shall request in writing an inspection by the Commission staff of the foundation layout as it has been surveyed and staked in the field relative to MHW or 5 feet mean sea level in marshland.
  2. **Certificate of Foundation Layout Inspection.** Within five working days of receipt of the written request for an inspection, the Commission's staff will inspect the foundation layout as it has been surveyed and staked in the field for any structure that will be located in or adjacent to BCDC's 100-foot-wide shoreline band or required public access or open space area. The permittee shall not commence construction of the forms or pour the foundation until the staff has confirmed in writing that the foundation layout is consistent with the terms and conditions of the permit by providing the permittee with a Certificate of Foundation Layout Inspection.

3. **Responsibility of Permittee.** If the staff is unable to perform this inspection within the 5-day period, the permittee may commence such work, but the staff's inability to complete such an inspection does not relieve the permittee of the responsibility to provide public access areas and build any structures (the project) in accord with the approved plans.
- G. **Construction Timing.** All construction and removal activities in the Bay shall be confined to June 15 through November 30 to minimize impacts on listed salmonids and migratory waterfowl. All planned vegetation removal activities shall be confined to the months of September 1 through February 1 to minimized impacts to nesting birds, unless pre-construction surveys are conducted.
- H. **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.
- I. **Hold Harmless and Indemnify.** The permittee shall hold harmless and indemnify the Commission, all Commission members, Commission employees, and agents of the Commission from any and all claims, demands, losses, lawsuits, and judgments accruing or resulting to any person, firm, corporation, governmental entity, or other entity who alleges injuries or damages caused by work performed in accordance with the terms and conditions of this amended permit. This condition shall also apply to any damage caused by flooding of or damage to property that is alleged to be caused as a result of some action or lack of action by the Commission growing out of the processing of and issuance of this amended permit.
- J. **Commission Jurisdiction Over Fill Area.** Notice is hereby given that, under the McAteer-Petris Act, the area of the approved project that is within the Commission's jurisdiction under Section 66610(a) remains within that jurisdiction even after fill or substantial change in use, authorized by the Commission, may have changed the character of the area; so that the permittee or the permittee's successors in interest will require further action by or on behalf of the Commission prior to any future change of use or work within areas filled pursuant to this authorization.
- K. **Notice of Assignment**
  1. **Notice to Buyers.** Prior to entering into any agreement to transfer any interest in any property subject to this permit, the permittee, or any assignee(s) of this amended permit or any part of it, shall provide the third party with a copy of this permit and shall call his or her attention to all provisions regarding public access or

open space, the need to obtain approval of construction plans prior to the commencement of any construction, and the requirement for accepting an assignment of this amended permit.

2. **Assignment of Permit.** No more than ten days after transferring any interest in any property subject to this amended permit to another party, the transferor(s) shall (a) notify the Commission of the nature of the transfer, the name, address, and telephone number of the transferee, and the effective date of the transfer, and (b) shall also submit an assignment of this permit for the area transferred that has been executed by the transferor and the transferee(s) and that indicates that the transferor has transferred the amended permit as it applies to the property that was transferred and that the transferee(s) has read, understood, and has agreed to be bound by the terms and conditions of this amended permit.
3. **Assignment of Public Access Maintenance Responsibility.** Prior to conveying any portion of the property that is subject to this amended permit, the permittee shall submit for approval by or on behalf of the Commission a legal instrument that establishes a single entity responsible for maintaining all public access areas, improvements, and landscaping. The Executive Director shall approve the instrument only if it demonstrates to the Executive Director's satisfaction that the entity can and will meet the responsibilities for maintaining all of the public access areas, improvements, and landscaping required herein.
4. **Property Owners Association.** If the permittee proposes to establish an entity that has a membership, such as a homeowners' association, the instrument shall also: (1) refer to this amended permit and attach it as an exhibit; (2) establish the authority of the entity to impose charges on its members to assure that the entity has sufficient financial resources to maintain all of the public access and view corridor improvements and landscaping; (3) provide that the entity has the legal authority to take any and all actions necessary to maintain all of the public access and view corridor improvements and landscaping; (4) provide that each and every member is jointly and severally responsible with each and every other member to maintain all of the public access improvements and landscaping pursuant to this amended permit; (5) provide that the Commission may serve all notices, including notices on any members, on the entity only; and (6) provide that the entity has the authority to accept an assignment of the amended permit for the purposes described above.

- L. **Recording.** The permittee shall record this amended permit or a notice specifically referring to this amended permit on all parcels affected by this amended permit with Marin County within 30 days after execution of the amended permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.

M. **Riprap**

1. **Riprap Material.** Riprap material shall be either quarry rock or specially cast or carefully selected concrete pieces free of reinforcing steel and other extraneous material and conforming to quality requirements for specific gravity, absorption, and durability specified by the California Department of Transportation or the U. S. Army Corps of Engineers. The material shall be generally spheroid-shaped. The overall thickness of the slope protection shall be no more than three feet measured perpendicular to the slope. Use of dirt, small concrete rubble, concrete pieces with exposed rebar, large and odd shaped pieces of concrete, and asphalt concrete as riprap is prohibited. All rebar, asphalt, and large, odd shaped pieces of concrete shall be removed from the site.
2. **Riprap Placement.** Riprap material shall be placed so that a permanent shoreline with a minimum amount of fill is established by means of an engineered slope not steeper than two (horizontal) to one (vertical), with the exception of the riprap adjacent to the boardwalk located between Docks A and F, which shall maintain a slope not steeper than 1.45 (horizontal) to one (vertical). The slope shall be created by the placement of a filter layer protected by riprap material of sufficient size to withstand wind and wave generated forces at the site (Amendment No. Four).
3. **Riprap Plans**
  - a. **Design.** Professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes, should participate in the design of the shoreline protection improvements authorized herein.
  - b. **Plan Review.** No work whatsoever shall be commenced on the shoreline protection improvements authorized herein until final riprap plans have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The plans shall consist of appropriate diagrams and cross-sections that (1) show and clearly label the 5.53' NAVD 88 contour line (the mean high tide line), property lines, grading limits, and details showing the location, types, and dimensions of all materials to be used, (2) indicate the source of all materials to be used, and (3) indicate who designed the proposed shoreline protection improvements and their background in coastal engineering and



familiarity with the Commission's concerns. Approval or disapproval of the plans shall be based upon (1) completeness and accuracy of the plans in showing the features required above, (2) consistency of the plans with the terms and conditions of this permit, (3) assuring that the proposed fill material does not exceed this permit, (4) the appropriateness of the types of fill material and their proposed manner of placement, and (5) the preparation of the plans by professionals knowledgeable of the Commission's concerns, such as civil engineers experienced in coastal processes. All improvements constructed pursuant to this permit shall conform to the final approved plans. No changes shall be made thereafter to any final plans or to the constructed shoreline protection improvements without first obtaining written approval of the change(s) by or on behalf of the Commission (Amendment No. Four).

4. **Riprap Maintenance.** The shoreline protection improvements authorized herein shall be regularly maintained by, and at the expense of the permittee, any assignee, lessee, sublessee, or other successor in interest to the project. Maintenance shall include, but not be limited to:
  - a. Collect any riprap materials that become dislodged and reposition them in appropriate locations within the riprap covered areas;
  - b. Replace in-kind riprap material that is lost;
  - c. Repair the required filter fabric as needed; and
  - d. Remove debris that collects on top of the riprap.
5. **Horizontal Control Point Installation and Annual Monitoring of the Stability of the Boardwalk Riprap Located between Docks A and F (Amendment No. Four).**
  - a. By August 30, 2017, pursuant to staff approved plans entitled "As Built Rock Rip Rap," prepared by Ruggeri-Jensen-Azar Engineers, dated November 30, 2016, the permittee shall install nine (9) horizontal control points (pipes made of PVC) to designate the existing toe of the riprap slope (after-the-fact).
  - b. No later than January 31 of each year, pursuant to staff approved plans entitled "As Built Rock Rip Rap," prepared by Ruggeri-Jensen-Azar Engineers, dated November 30, 2016, the permittee shall 1. inspect the tidal habitat located bayward of the horizontal control points (HCPs) and remove all rocks located bayward of the HCPs, and 2. submit a monitoring report to BCDC staff, that identifies the location and quantity of rock that dislodged from the slope and fell into the Bay that was removed, and includes dated photographs taken at low tide before and after all rock removal.

- c. If upon review of each annual monitoring report, which shall occur within 45 days of receipt, staff determines that not all of the rocks Bayward of the HCPs have been removed, the permittee shall correct any deficiency noted by the staff within 30 days after notification and submit evidence of having done so by providing an updated annual report as described above.
  - d. If five continuous years of monitoring demonstrate that no rock is falling from the riprap slope into the Bay, the permittee may submit a written request to the Executive Director requesting that s/he modify this requirement.
- N. **Temporary Stockpiling of Earth Material on the West Spit.** On the West Spit, during construction, the permittee may temporarily stockpile no more than 88,000 cubic yards of earth fill and no more than 2,000 cubic yards of earth material each day. The material shall be removed to an area outside of the Commission's jurisdiction.
- O. **Water Quality Protection.** The permittee shall employ Best Management Practices during construction activities authorized herein to prevent the erosion of construction material and the release of non-point source pollution into the Bay and associated water quality impacts. Further, prior to project commencement, the permittee shall provide the Commission with a copy of the approved Storm Water Pollution Prevention Plan and an Erosion Control Plan, as required by the San Francisco Bay Regional Water Quality Control Board and, when available, a copy of the Marin County Storm Water Pollution Prevention Program.
- P. **Mitigation for Tidal Marsh Impacts Between Docks E and F and at Lot D (Amendment Nos. Four and Five).** The permittee shall mitigate for tidal marsh impacts caused by two separate events, one located between Docks E and F (2014 "mudwave") and one located at Lot D (2015 construction action), by implementing the following measures. Minor modifications to the below requirements may be proposed in writing and approved by the Executive Director in writing upon a finding that the modified requirements continue to provide adequate mitigation (at a ratio of no less than 2:1) for the two events, and that they are no less protective of Bay resources.
1. **Mitigation Plan.** By ~~October 1, 2017~~ December 31, 2020, consistent with the plan entitled "~~Mudwave Impacts and Mitigation Plan for Loch Lomond Marina,~~" "Lot D Wetland Mitigation and Monitoring Plan," prepared by WRA Environmental Consultants, and dated ~~November 2, 2016~~ September 2018, the permittee shall conduct grading and planting to create at least 344 square feet of tidal wetland at a mitigation area located on the west side of the southern end of the East Jetty ~~plant~~

~~an area of at least 74 square feet between Docks E and F with tidal marsh plant species. Any changes to the mitigation and monitoring plan shall be submitted and approved by or on behalf of the Commission pursuant to Special Condition II.A.~~

2. **Grading and Planting.** ~~The permittee shall conduct grading and planting at designated elevations adjacent to the toe of the riprap slope as specified in the mitigation plan referenced in Special Condition II.P.1, with plants consisting of pickleweed (*Salicornia virginica*), salt grass (*Distichlis spicata*), and marsh gum plant (*Grindelia stricta*) and jaumea (*Jaumea carnosa*). The plants shall be spaced at 1.5 feet~~ 2-3 feet on center and there will be at least 90 plants.
3. **Reference Site.** ~~The planting area will be laid out at elevations similar to marsh vegetation zones in a reference tidal marsh located approximately 640 feet northwest of the mitigation area west of the D/E dock and east of the B/C dock.~~
4. **Success Criteria.** ~~The success criteria were developed based on the conditions at the reference site. The criteria that will be used to determine the success of the mitigation site include the following, as outlined further within the mitigation plan referenced in Special Condition II.P.1 will be:~~
  - a. **Year One:** ~~total tidal marsh vegetation absolute percent cover should be average at least 20% of the total vegetation absolute percent cover in the reference tidal marsh 74 square feet and the percent absolute cover of non-native species should not exceed 150% of the non-native vegetation percent absolute cover in the reference tidal marsh. Invasive plants (Cal-IPC "A" List and Cal-IPC High Priority List) should not exceed 5% cover, and no excessive erosion or slope stability issues should be present.~~
  - b. **Year Two:** ~~total tidal marsh vegetation absolute percent cover should average at least 30% of the total vegetation absolute percent cover in the reference tidal marsh and the percent absolute cover of non-native species should not exceed 140% of the non-native vegetation percent absolute cover in the reference tidal marsh. Invasive plants (Cal-IPC "A" List) should not exceed 5% absolute cover, and no excessive erosion or slope stability issues should be present.~~
  - bc. **Year Three:** ~~total tidal marsh vegetation absolute percent cover should be average at least 50% of the total vegetation absolute percent cover in the reference tidal marsh 74 square feet and the percent absolute cover of non-native species should not exceed 125% of the non-native vegetation percent absolute cover in the reference tidal marsh. Invasive plants (Cal-IPC "A" List) should not exceed 5% absolute cover, and no excessive erosion or slope stability issues should be present.~~



- d. **Year Four:** total tidal marsh vegetation absolute percent cover should average at least 75% of the total vegetation absolute percent cover in the reference tidal marsh and the percent absolute cover of non-native species should not exceed 110% of the non-native vegetation percent absolute cover in the reference tidal marsh. Invasive plants (Cal-IPC "A" List) should not exceed 5% absolute cover, and no excessive erosion or slope stability issues should be present.
- ee. **Year Five:** total tidal marsh vegetation absolute percent cover should be average at least 90% 85% of the total vegetation absolute percent cover in the reference tidal marsh 74 square feet and the percent of non-native species should not exceed 100% of the non-native vegetation percent cover in the reference tidal marsh. Invasive plants (Cal-IPC "A" List) should not exceed 5% absolute cover, the mitigation area should meet the three Army Corps of Engineers wetland criteria, and no excessive erosion or slope stability issues should be present.
5. **Monitoring and Annual Reporting.** Every year, starting within one year after completion of planting November 30, 2018, for a five-year period, the permittee shall report to staff on the effects of the project in restoring tidal marsh. Vegetation monitoring shall be conducted in the fall of each year, and the reports shall be submitted by January 31 following each monitoring year, with the first monitoring year commencing the calendar year after completing the mitigation project. The Monitoring reports shall, at a minimum, include the following shall identify: an introduction, methods, photo-documentation, summary of monitoring results and identification of whether the success criteria established by the mitigation plan and required by Special Condition II.P.4 have been met, and, if necessary, a discussion of problems with achieving the specified success criteria. The final monitoring report (Year 5) shall describe the overall performance of the mitigation project in meeting the success criteria.
6. **Adaptive Management.** Should adverse conditions be identified during, or at the end of, the five-year monitoring period, the permittee shall make recommendations for implementation of adaptive management measures to achieve the success criteria, based on an analysis of the project and the monitoring data. Adaptive management measures shall be subject to review and approval by or on behalf of the Commission pursuant to Special Condition II.A. The permittee shall implement approved adaptive management measures to achieve success criteria for the mitigation project. The monitoring period may be extended based on the success of the mitigation project and any approved adaptive management measures.

7. **Adverse Impacts.** If any unforeseen adverse impacts occur to any areas as a result of the activities authorized herein that are not included in the mitigation plan referenced in Special Condition II.P.1, the permittee shall notify the Commission's staff and prepare an amended mitigation and monitoring plan detailing remedial actions. Further, the permittee, at a minimum shall restore the area to its previous condition, including returning disturbed areas to original elevation and soil composition, and monitor the same for re-establishment of marsh plant communities for two years. If the marsh plant community does not independently re-establish within two years, additional measures, such as seeding or planting may be required. Results of monitoring any impacted area shall be included in the annual monitoring reports described in Special Condition II.P.5.
- a. ~~the percentage of the site that is revegetated;~~
  - b. ~~whether the success criteria established by the Mitigation Plan and required by Special Condition II.P.4 has been met;~~
  - c. ~~problems with flooding, sedimentation, vandalism and/or other general causes of poor plant survival rates; and~~
  - d. ~~approximate percentage representation of different plant species.~~
  - e. ~~Once the mitigation site is at least 90% vegetated and meets the Year Five success criteria, a final report shall describe the performance of the mitigation in meeting the success criteria.~~
  - f. ~~If success criteria are not satisfied, the permittee shall make recommendations to achieve successful rates of tidal salt marsh vegetation cover for staff review and approval and subsequently implement and monitor the success of all approved corrective measures.~~
  - g. ~~All mitigation wetland monitoring and reports will be conducted and prepared by a qualified wetland biologist with experience in wetland vegetation mitigation monitoring.~~

**Q. Minimizing Impacts on Aquatic Species, Subtidal Areas, and Water Quality During Work Authorized Under Amendment No. Five (Amendment No. Five).**

1. **Water Quality Protection.** The permittee shall construct the project authorized by Amendment No. Five consistent with the requirements of the water quality certification dated August 13, 2019, issued by the Regional Water Quality Control Board (RWQCB), San Francisco Bay Region, unless it is modified by the RWQCB. The permittee shall submit any amendment or modification to the RWQCB water quality certification to the Commission.



2. **National Marine Fisheries Service.** The permittee shall construct the project authorized by Amendment No. Five consistent with the Endangered Species Act (Section 7(a)(2)) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response from the National Marine Fisheries Service (NMFS), dated February 22, 2019, unless it is modified by NMFS. The permittee shall submit any amendment or modification to the NMFS consultation to the Commission.

R. **Flooding and Adaptation (Amendment No. Five)**

1. **Flood Reports.** If any portion of the public access areas required herein is subject to flooding that results in its closure in whole or in part for any amount of time, the permittee shall notify the Commission of the flooding event within three days after the flooding and submit to the Commission a written report within 30 days after the flooding with documentation of: the date and duration of the closure; the location of the affected site; the recorded water levels during the closure period; the source of flooding (e.g., coastal flooding or stormwater backup or overland flow); the resulting damage or cleanup; and illustrative photographs with site details. Coastal flooding is defined as Bay overtopping of the shoreline during tides, storms, or both.
2. **Near-Term Flooding Management at East Spit Playground.** By December 31, 2020, the permittee shall install a check valve on the outfall in the East Spit playground to prevent tidal backflow. If, after the installation of the check valve, the East Spit playground takes more than six hours to drain and to be returned to a useable condition following any flooding event, the permittee shall install a pump to remove water from the playground during and after flooding. By December 31, 2020, the permittee shall also install signage to alert the public to potential intermittent flooding within the playground area, including contact information for the responsible party so the public can report flood events.
3. **Longer-Term Adaptation Planning Process.** The permittee shall initiate a sea level rise adaptation planning process for the public access areas required herein, including the East Spit playground and trail and the breakwater trail and boardwalk, that will ensure the provision of shoreline access into the future as long as any use authorized by this amended permit remains in place. Within 180 days of flooding that causes the playground area to take more than one hour to drain following any flooding event after installation of the pump required in Special Condition II.R.2 or the first occurrence of coastal flooding that results in closure of any portion of the public access through overtopping of the shoreline, as described in the flood reports required by Special Condition II.R.1, or earlier at the discretion of the permittee, the permittee shall submit for Commission review and approval a sea level rise

adaptation plan that conforms to the requirements in Special Condition II.R.4, below. The plan shall be reviewed by or on behalf of the Commission pursuant to Special Condition II.A.2. Depending on the actions required to implement the sea level rise adaptation plan, the permittee may be required to obtain a permit or permit amendment from the Commission.

4. **Longer-Term Adaptation Plan Requirements.** According to the schedule in Special Condition II.R.3, above, the permittee shall submit for Commission review and approval a sea level rise adaptation plan that achieves the following objectives:
- a. Measures shall be developed that will address impacts to the project that arise as a result of flooding for the period during which the authorized uses will remain in place. The required public access areas, including the East Spit playground and trail and the breakwater trail and boardwalk, shall be protected from flooding through raising the elevation of the public access, installing a flood protection device, or by another method acceptable to the Commission. Alternatively, the permittee may propose alternative, equivalent public access area that provides maximum feasible public access consistent with the project. This may include relocating the playground to an alternative location farther upland.
  - b. A timeline shall be established to implement the required adaptation measures to ensure that the project addresses the impacts of flooding and storm activities and that the required public access remains viable and is not subject to regular flooding events.
  - c. The adaptation plan shall incorporate sea level rise and storm projections based on the current best available science at the time it is developed and/or updated.

### III. Findings and Declarations

This amended authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- A. **Use.** The project site is not designated for priority use. The Commission, therefore, finds that the project is consistent with Bay Plan Map No. 4.

**B. Amendments to Original Permit**

1. **Amendment No. One.** Amendment No. One authorized an extension of project commencement time, to October 1, 2015, and completion time, to October 1, 2018. As such, the modification authorized under Amendment No. One does not constitute a material alteration of the originally authorized project, consistent with Regulation Section 10800, for which the Executive Director may issue an amendment consistent with Regulation Section 10810 and Government Code Section 66632(f).
2. **Amendment No. Two.** Amendment No. Two clarifies and slightly revises details and the schedule for completing public access requirements contained in the original authorization. As such the modifications authorized under Amendment No. Two do not constitute a material alteration of the originally authorized project, consistent with Regulation Section 10800, for which the Executive Director may issue an amendment consistent with Regulation Section 10810 and Government Code Section 66632(f).
3. **Amendment No. Three.** Amendment No. Three involves authorization of various activities within the Commission's 100-foot shoreline band jurisdiction, including the placement of additional riprap along a breakwater, and the implementation of soil remediation. In addition, as a part of Amendment No. Three, various special conditions have been modified to clarify timing requirements for required public access improvements. The activities authorized through this amendment involve the placement of small amounts of inert, inorganic material with no effect on public access or on Bay resources and, thus, are considered "minor repairs or improvements" in accord with the Commission's Regulation Section 10601(b)(1). Further, the modifications and clarification of special conditions do not constitute a material alteration of the amended permit nor will result in reduced public benefits, in accord with Commission Regulation Section 10800. Thus, the Executive Director may issue an amendment to a major permit pursuant to Regulation Section 10822 and Government Code Section 66632(f).
4. **Amendment No. Four.** The permittee requested Permit No. 2006.010.04 pursuant to the requirement of Section II.H of BCDC Cease and Desist and Civil Penalty Order CDO 2016.04, issued by the Commission on November 3, 2016 ("Order"), to resolve permit violations and the placement of unauthorized fill in the Bay and shoreline band, including in required public access areas.

Permit No. 2006.010.04 provides: time extensions for phases of the development project authorized by 2006.010.03 that are not on schedule; authorization for and the requirement to mitigate for the loss of 37 square feet of tidal marsh by planting tidal salt marsh plant species 2:1 and the success of the mitigation; the requirement for long-term monitoring of the stability of un-engineered riprap; and after-the-fact authorization for unauthorized fill in the shoreline band.

In March 2015, staff observed that the riprap located between Docks A and F along the boardwalk appeared to not be engineered and placed at a slope steeper than 2:1 and partially located Bayward of the mean high tide, in violation of Special Condition II.M (Riprap). In December 2015, staff decided that the toe of the riprap in this location constitutes the boundary between the Bay and shoreline band even though the MHT line is located landward of the toe of the slope.

On September 20, 2014, the permittee performed unauthorized stockpiling in the shoreline band of materials. The weight of the materials was too heavy for the earth below the stockpile and created a bank failure and a near shore "mudwave" that buried tidal marsh habitat between Docks E and F. A portion of the boardwalk collapsed in a curve shape approximately 16 feet towards the Bay, destroying the seawall, boardwalk, riprap, 37-square-feet of tidal marsh habitat, and breaking the water pipe running along the boardwalk. Without notifying BCDC staff of the bank failure and securing an amendment, in September and October 2014, the permittee reconstructed the destroyed seawall, boardwalk, waterline, and placed new riprap.

San Francisco Bay Plan Shoreline Protection Policy 3 states that authorized protective projects should be regularly maintained according to a long-term maintenance program to assure that the effects of the shoreline protection project on natural resources during the life of the project will be the minimum necessary. The installation of horizontal control points for the long-term monitoring of the riprap placed adjacent to the boardwalk will ensure that although the 1.45 to 1 slope was not built consistent with San Francisco Bay Plan Shoreline Protection Policy 2, which requires riprap to be placed according to accepted engineering practice (at a slope of 2 to 1), it is stable and will protect the boardwalk from tidal erosion and flooding. All riprap not placed adjacent to the boardwalk must still meet Shoreline Protection Policy 2.

Permit No. 2006.010.04 resolves the unauthorized placement of un-engineered riprap adjacent to the boardwalk by authorizing it after-the-fact at its as-built slope, which is steeper than is optimal and potentially unstable (See Section I.2.i). As such, Special Condition II.M.4 requires monitoring of the stability of the riprap using nine (9) horizontal control points (HCPs) to designate the existing toe of the riprap slope.

All rock that may dislodge from the slope and land bayward of the HCPs must be removed and the permittee must submit annual monitoring reports for at least five years or until the permittee is able to demonstrate that although the riprap is not engineered, it is not adversely affecting the Bay.

San Francisco Bay Plan Mitigation Policy 7 states, in relevant part, a mitigation program should describe the proposed design, construction and management of mitigation areas and include: (a) clear mitigation project goals; (b) clear and measurable performance standards for evaluating the success of a mitigation project, based on measures of both compensation and function, and including the use of reference sites; (c) a monitoring plan designed to identify potential problems early and determine appropriate remedial actions. Monitoring and reporting should be of adequate frequency and duration to measure specific performance standards and to assure long-term success of the stated goals of the mitigation project; (d) a contingency plan to ensure the success of the mitigation project, or provide means to ensure alternative appropriate measures are implemented; and (e) provisions for long-term maintenance, management and projection of the mitigation site.

The mitigation plan for the negatively impacted tidal marsh is consistent with this policy. The mitigation will be monitored for five years and the permittee must demonstrate through annual monitoring reports that the project is meeting the proposed success criteria and if it isn't, what modifications have been met to improve success in achieving success. The plan establishes: the clear goal of revegetating the impacted area with native tidal salt marsh plant species; success criteria based on an adjacent reference site; annual reporting criteria; a contingency plan; and provisions for long term success.

Permit No. 2006.010.04 addresses the destruction of the marsh habitat by providing after-the-fact authorization for the reconstruction of the destroyed boardwalk (See Sections I.1.e and I.2.w) and by imposing Special Condition II.P, which requires the permittee to mitigate the habitat impacts to the 37 square feet of tidal marsh at a 2:1 ratio, consistent with the requirements of the San Francisco Bay Plan.

Permit 2006.010.04 resolves the unauthorized placement of the following utilities in the dedicated public access area located in the shoreline band by authorizing the placement of the utilities after-the-fact (See Section I.2.x). These utilities include: (1) a transformer located on the landward end of the East Spit; (2) a switchgear cabinet and unauthorized concrete foundation pad upon which the switchgear cabinet sits, at the eastern landward edge of the East Spit, which extends beyond the built edge of the spit and may be located in the Bay; (3) a transformer located at the southeast angle bayward of the east parking lot adjacent to the start of the



breakwater trail; and (4) electrical equipment located at the southeast angle bayward of the east parking lot adjacent to the start of the breakwater trail.

The permanent public access connection between the west end of the site and the neighboring San Pedro Cove property is behind schedule because the access cannot be built until Andy's Market is completed. Residential Phases 2a and 2b and the commercial development are also behind schedule due to delays in opening Andy's Market. Therefore, Permit No. 2006.010.04 provides time extensions for these development phases. This is not a diminution of public access because there is an open temporary public access connection to San Pedro Cove, and Residential Phases 2a and 2b are still under construction and not yet occupied or suitable for public access. These time extensions include: (1) extending from December 31, 2018, to July 1, 2019, the due date for the work authorized in Permit No. 2006.010.03 (Section I.C); (2) extending from June 30, 2017, to June 30, 2018, the due date for the 65-foot-wide public access path and landscaping at the west end of the site connecting to the neighboring site (Special Condition II.B.7(c)); (3) extending from June 30, 2017, to June 30, 2018, the due date for the public access improvements associated with the residential 2a/commercial development (Special Condition II.B.7); (4) extending from December 31, 2018, to July 1, 2019, the due date for the public use of the public access improvements associated with Phase 2b of the residential development (Special Condition II.B.8); and (5) extending from June 30, 2017, to June 30, 2018, the due date for a permanent pathway connection to be provided in accord with Special Condition II.B.7.c (Special Condition II.B.11(b)).

As defined in Regulation Sections 10601(a)(2), 10601(a)(8), and 10601(b)(1), Permit No. 2006.010.04 involves activities that: repair existing riprap using the minimum amount of fill necessary and the horizontal projection covers less than 10,000 square feet; improve public access; and place small amounts of inert inorganic fill in the shoreline band that have no greater adverse impact on the Bay than the original project or no significant adverse effect on maximum feasible public access to the Bay. The activities authorized and required by this amendment satisfy the definition of "minor repairs or improvements" for which the Executive Director may issue a nonmaterial amendment to a permit pursuant to Government Code Section 66632(f) and Regulation Sections 10820 and 10822.

5. **Amendment No. Five.** Amendment No. Five was requested by the permittee pursuant to the requirement of BCDC Stipulated Cease and Desist and Civil Penalty Order No. CCD 2016.04, as amended, originally issued by the Commission on November 3, 2016, and amended by the Executive Director on April 14, 2017, to resolve permit violations and violations of the McAteer-Petris Act and, in lieu of



penalties, it required the permittee to address flooding at two required public access areas: 1) the East Spit, including the playground and path; and 2) the breakwater public access trail. Amendment No. Five involves the following components:

a. **Wetland Mitigation and Monitoring for Lot D Riprap Placement and Mudwave.**

As described in Findings Section III.B.4, above, in 2014, a bank failure and resultant "mudwave" buried approximately 37 square feet of tidal marsh vegetation between Docks D and E within the Marina, west of the East Spit. Amendment No. Four included Special Condition II.P to address the tidal marsh impacts from the mudwave, and the permittee completed initial work towards this requirement. However, the work completed to offset the mudwave impacts did not provide sufficient habitat value nor meet the required success criteria. Therefore, the permittee agreed to an alternative approach to mitigate the tidal marsh impacts from the mudwave, through the provision of mitigation for the mudwave impacts as part of the mitigation required to offset impacts from the Lot D riprap, below.

In 2015, approximately 65 cubic yards (470 square feet along 102 linear feet) of riprap were placed at Lot D (on the northern side of the East Jetty) without authorization, as part of construction activities to stabilize Lot D and a new sidewalk, which impacted approximately 135 square feet of wetland vegetation. Amendment No. Five authorizes the placement of this riprap after-the-fact.

To address tidal marsh habitat impacts from both the 2014 mudwave and the 2015 Lot D riprap, the project authorized under Amendment No. Five will include the grading and restoration of an approximately 344-square-foot area of tidal marsh – a 2:1 mitigation ratio for the total of 172 square feet of tidal marsh habitat impacted (74 square feet of mitigation for the mudwave and 270 square feet of mitigation for the Lot D riprap). The project will also create an additional 1,256 square feet of transitional mudflat/wetland to repair the eroding shoreline. The mitigation area is located approximately 315 feet south of Lot D, on the southern end of the East Jetty. The project will involve grading and laying back the slope at the mitigation area, realigning a public trail to accommodate the marsh and transitional habitat, and relocating a fence farther upland. Anticipated plantings include salt grass (*Distichlis spicata*) and marsh gum plant (*Grindelia stricta*).

Marina Village Associates, LLC  
(Originally Issued on September 27, 2007, and  
Amended Through December 4, 2019)  
(Inclusive of Amendment No. Six)

Special Condition II.P has been modified to require that this mitigation be implemented, monitored, and meet specified success criteria. Special Condition II.P requires that the mitigation be monitored for a period of five years, and that the permittee demonstrate through annual monitoring reports that the project is meeting the success criteria identified within the approved mitigation and monitoring plan and required herein. If the mitigation efforts are not meeting the required success criteria, Special Condition II.P requires the implementation of adaptive management measures to achieve success.

The Lot D riprap placement and wetland mitigation and monitoring components of the project authorized under Amendment No. Five involve the installation of new protective works that constitute the minimum amount necessary to stabilize existing dikes and banks, as defined in Regulation Section 10601(a)(2); the placement of small amounts of inert inorganic fill, the extraction of small amounts of materials, or a substantial change of use that does not have a significant adverse effect on present or possible future maximum feasible public access to the Bay consistent with the project, on present or possible future use for a designated priority water-related use, and on the environment, as defined in Regulation Section 10601(b)(1); and routine repairs, reconstruction, replacement, removal, and maintenance that do not involve any substantial enlargement or any substantial change in use, as defined in Regulation Section 10601(b)(5). Thus, the Lot D riprap placement and wetland mitigation and monitoring components of the project constitute "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. Addressing Public Access Flooding.**

- i. Authorized Project at the East Spit.** To address regular flooding and maintenance issues related to the required public access at the East Spit, including the playground and trail, the project authorized under Amendment No. Five includes placing approximately 537 cubic yards of fill within the 100-foot shoreline band to raise the elevation of the public access trail, the curb surrounding the playground, and the picnic table area on the East Spit from +7.2' NAVD88 to +9.5' NAVD88. The project will also include the reconstruction of trails on the East Spit, the addition of stairs and ADA-accessible ramps to access the playground from the new curb elevation, installation of a sheet pile wall and 42-inch-tall guardrail fence around the playground perimeter, temporary removal and reinstallation of public access amenities such as benches and trash cans, and the relocation of a fence at

the end of the East Spit to allow for the tidal marsh vegetation planting discussed above. Special Condition II.B.13 has been included to ensure that these public access improvements are installed in a timely manner. The project also includes the installation of a check valve on the playground outfall and future pump within the playground, as required by Special Condition II.R.2, and discussed further in Findings Section III.B.5.b.iii, below.

The project components to address flooding at the East Spit involve the placement of small amounts of inert inorganic fill, the extraction of small amounts of materials, or a substantial change of use that does not have a significant adverse effect on present or possible future maximum feasible public access to the Bay consistent with the project, on present or possible future use for a designated priority water-related use, and on the environment, as defined in Regulation Section 10601(b)(1); and routine repairs, reconstruction, replacement, removal, and maintenance that do not involve any substantial enlargement or any substantial change in use, as defined in Regulation Section 10601(b)(5). Thus the project components at the East Spit constitute "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).

- ii. **Authorized Project at the Breakwater Area.** To address regular flooding and maintenance issues related to the required public access at the breakwater area, the project authorized under Amendment No. Five includes constructing a pile-supported public access boardwalk at an elevation of +9.7' NAVD88, placing approximately 360 cubic yards of fill to raise the existing grade on either end of the boardwalk from +7.2' NAVD88 to +9.7' NAVD88, and vegetating an approximately 7,405-square-foot area under and around the boardwalk. The boardwalk will include a cantilevered bird-viewing platform. The project also includes the replacement of a public trail along the breakwater, temporary removal and reinstallation of public amenities such as benches, installation of signage, and the replacement of pavement, curbs, sidewalks, and striping at a parking lot turnaround area to accommodate the raised elevation.

The project components to address flooding at the breakwater area involve the installation of new protective works that constitute the minimum amount necessary to stabilize existing dikes and banks, as defined in Regulation Section 10601(a)(2); minor fill for improving public access, as defined in Regulation Section 10601(a)(8); the placement of small amounts

of inert inorganic fill, the extraction of small amounts of materials, or a substantial change of use that does not have a significant adverse effect on present or possible future maximum feasible public access to the Bay consistent with the project, on present or possible future use for a designated priority water-related use, and on the environment, as defined in Regulation Section 10601(b)(1); and routine repairs, reconstruction, replacement, removal, and maintenance that do not involve any substantial enlargement or any substantial change in use, as defined in Regulation Section 10601(b)(5). Thus the project components at the breakwater area constitute "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).

- iii. **Flooding and Sea Level Rise Adaptation.** The project components at the East Spit and breakwater areas are intended to address flooding and public access maintenance issues that in part led to the issuance of BCDC Stipulated Cease and Desist and Civil Penalty Order No. CCD 2016.04, as amended, by increasing the elevation of these public access areas. However, this work is anticipated to be an interim solution to flooding within these public access areas, given current sea level rise projections. In analyzing a project's risk of flooding as a result of future sea level rise, at the time of issuance of Permit No. 2006.010.05 the Commission relies on the sea level rise estimates provided in the 2018 State of California Sea Level Rise Guidance from the Ocean Protection Council and Natural Resources Agency ("2018 State Guidance"), which represents the best available science. These projections correspond to projects for which a "low risk," "medium-to-high risk," or "extreme risk" aversion planning scenario is called for. The analysis here relies on the State's projections for projects where a "medium-to-high" level of risk aversion is called for, given that the public access areas must remain viable for as long as the development authorized by this permit remains in place, and given the limited adaptive capacity of the public access areas due to their location.

With the increase in elevation of the playground curb and trail at the East Spit to +9.5' NAVD88 and the increase in elevation of the breakwater area and boardwalk to +9.7' NAVD88, neither area is anticipated to experience flooding due to overtopping under current conditions. However, the playground area drains via an outfall at approximately elevation +4.0' NAVD88. At water levels lower than +4.0' NAVD88, the outfall is anticipated

to drain water from tidal inundation or rainfall from the playground via gravity; at water levels at or greater than +4.0' NAVD88 (approximately mean high water or greater tidal and storm events), the outfall would not discharge water. Special Condition II.R.2 is therefore included to address near-term flooding issues within the playground. Special Condition II.R.2 requires that the permittee install a check valve on the outfall to prevent tidal backflow, and if, after installation of the check valve, the playground takes more than six hours to drain due to tidal recession and be returned to a useable condition, Special Condition II.R.2 requires that the permittee install a pump to address these flooding conditions. Special Condition II.R.2 further requires the permittee to install signage alerting the public to potential flooding and providing contact information for the responsible party in order for the public to be able to report flood events.

Under the 2018 State Guidance, the playground curb and trail at the East Spit and the breakwater area are anticipated to experience flooding from sea level rise at 2050 beginning with the 5-year storm (approximately 5.0 inches at the East Spit and 2.6 inches at the breakwater area), and nearly 2 feet of flooding in a 100-year storm (approximately 1.9 feet at the East Spit and 1.7 feet at the breakwater area).

At the end of the century, under a low-emissions scenario, both the East Spit and breakwater area are anticipated to experience flooding beginning with mean high water (approximately 1.7 feet at the East Spit and 1.5 feet at the breakwater area), over 4 feet of flooding in a 5-year storm event, and over 5 feet of flooding in a 100-year storm event. At the end of the century, under a high-emissions scenario, both the East Spit and breakwater area are anticipated to experience flooding beginning at mean tide level (MTL) and mean sea level (MSL) (approximately 8.6 inches at the East Spit and 6.2 inches at the breakwater area), over 5 feet of flooding in a 5-year storm event, and over 6.5 feet of flooding in a 100-year storm event.

Given this anticipated flooding and the importance of maintaining functionality of the public access areas, Special Condition II.R is therefore included to ensure the viability and adaptation of the East Spit and breakwater public access areas with sea level rise, consistent with the Bay Plan policies on Climate Change and Public Access. Special Condition II.R.1 requires the permittee notify the Commission of flood events and that a flood report be submitted to the Commission following closure of any portion of the public access areas due to flooding, which will document key

information about the flood event including the source of flooding. Special Condition II.R.3 requires that the permittees submit a sea level rise adaptation plan for review and approval within 180 days of flooding that causes the playground area to take more than one hour to drain following any flooding event after pump installation, or the first occurrence of coastal flooding that results in closure of any portion of the required public access through shoreline overtopping. This is intended to provide for the timely development of adaptation actions for the site as soon as sea level rise begins to impact the project during tides, storms, or both.

Special Condition II.R.4 requires that the adaptation plan achieve the objective to protect the required public access areas from flooding through necessary adaptation measures. Such measures may involve raising the elevation of the public access, installing a flood protection device, or by another method acceptable to the Commission. Alternatively, the permittee may propose an equivalent public access area that provides maximum feasible public access consistent with the project, which may include relocating the playground to an alternative location farther upland. As part of the application, the permittee indicated that the structural safety of the boardwalk would be maintained if the boardwalk were to be raised up to 3 feet above the elevation authorized in Amendment No. 5 (+9.7' NAVD88), to address future sea level rise.

Special Condition II.R.4 further requires that the adaptation plan establish an implementation timeline to ensure the project's adaptability to sea level rise and that the required public access remains viable and not subject to regular flooding events. The adaptation plan shall be based on the best available science at the time it is developed.

Special Condition II.Q has been included to ensure that the project authorized under Amendment No. Five is consistent with the approvals issued by the Regional Water Quality Control Board and Natural Marine Fisheries Service and therefore incorporates measures for protection of Bay resources and water quality during construction, consistent with the Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife, Subtidal Areas, and Water Quality. Special Condition II.A.1.b, which requires final plan review, is included to ensure that the project authorized under Amendment No. Five is constructed consistent with the application and with the requirements of this amended permit.

As conditioned, the project authorized by Amendment No. Five is consistent with the McAteer-Petris Act and San Francisco Bay Plan in that it will not adversely affect the Bay nor public access to and enjoyment of the Bay.

6. **Amendment No. Six.** Amendment No. Six was issued on April 16, 2019 and granted an extension of completion time until December 1, 2019 for: a) Construction of an approximately 1,950-square-foot Harbormaster Building (Authorization I.A.2.d); b) Replacement of an existing boat repair facility, at the west side of the project site, with a similar sized facility at a site located a minimum of 40 feet north of the existing location (Authorization I.A.2.e); c) The widening of the 400-foot-long path located west of the community plaza from 13 feet up to 18 and 24 feet in width (Special Condition II.B.7.a); and d) Construction of an approximately 65-foot-wide public access path and landscaping at the west end of the site connecting to the neighboring site (Special Condition II.B.7.b).

### C. Bay Fill

1. The Commission may allow fill only when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part: (a) the public benefits from the fill must clearly exceed the public detriment from the loss of water areas; (b) fill in the Bay should be limited to water-oriented uses, such as wildlife refuges or minor fill for improving shoreline appearance or for public access; (c) no alternative upland location exists for the fill; (d) the fill should be the minimum amount necessary to achieve the purpose of the fill; and (e) the nature, location, and extent of any fill should minimize harmful effects to the Bay including the water volume, circulation, and quality, fish and wildlife resources, and marsh fertility. The proposed project will result in the placement of fill within tidal areas of the Bay.
  - a. **Public Benefits v. Public Detriment.** Approximately 21,600 square feet (740 cubic yards) of solid fill will be placed along a 2,400-foot-long section of the breakwater in order to repair it and stabilize the shoreline at the site. Additionally, 200 square feet of solid fill and 200 square feet of floating fill will be placed in the Bay to construct portions of a kayak launch ramp and dock. Furthermore, minor fill will be placed in the Bay to repair two existing 18-inch-in-diameter piles that support the yacht club building.

Currently, the breakwater at the site serves to protect the marina from wind-wave action and is used by the public as an informal trail. This breakwater frequently overtops during storm events in the winter and erosion is causing it to deteriorate. To repair the breakwater and to protect the marina and the



public access improvements to be installed as authorized herein, on top of the breakwater, approximately 740 cubic yards of rock riprap will be placed in the Bay. Repair of the breakwater will ensure that the access along the breakwater is maintained as a unique experience, allowing the public to be surrounded by the Bay on three sides and remains available, useable, and safe. Additionally, repair of the breakwater will ensure that the boating activities associated with the marina will be protected.

The placement of fill for the launch ramp and dock will improve access to the Bay for kayakers. Informal access to the Bay for kayakers currently exists via an existing boat launch ramp or from the shoreline. However, the informal access is difficult and requires kayakers to drag boats across concrete or unimproved shoreline. The kayak dock and launch ramp authorized herein will improve access for kayakers by providing them protection of their boats and allowing them to enter and leave the water safely.

The existing yacht club at the project site, a portion of which is supported by piles, was originally constructed in the 1960s. The permittee's structural engineer recommended that two of the piles supporting this building be repaired to maintain the structural integrity of the club. Damaged portions of the piles will be removed and repaired with concrete and fiberwrap, and therefore will not result in any new net fill in the Bay. Reinforcing these piles will ensure continued use of the yacht club, thereby promoting water-oriented activities and affording views of the Bay from the facility. The project will result in approximately 22,000 square feet of new fill in the bay to protect the marina, provide public access, and to provide opportunities to view and use the Bay. The majority of the new fill, approximately 21,600 square feet, is replacement fill along the existing breakwater and 200 square feet is for a floating dock, therefore, only 200 square feet of new fill for the launch ramp may impact the Bay resources. It has been determined that the 200 square feet of new fill for the launch ramp is insignificant and will not impact the Bay resources; therefore, the detriment of the Bay fill authorized herein is minimal compared to the benefits.

The Commission finds that the public benefits of the fill exceed the associated public detriments.

- b. **Water-Oriented Use.** The fill will provide shoreline protection for the marina and public access areas, boat access, and structural support for the yacht club building. The fill associated with the riprap and piling repairs will protect and support marina and boating activities, public access, and enjoyment and





appreciation of the Bay, all water-oriented uses. Additionally, the fill associated with the kayak launch ramp and floating dock will involve a minor amount of fill for water-oriented, recreational and public access purposes.

The Commission finds that the fill is for water-oriented uses.

- c. **Alternative Upland Location.** The purpose of the fill authorized herein is to protect the shoreline and breakwater from erosion, provide improved kayak access to the Bay, and stabilize a pile-supported structure that is constructed partially over the Bay. These purposes cannot be achieved on land.

The Commission finds that there is no alternative upland location for the fill.

- d. **Minimum Amount Necessary.** The 740 cy of fill for the project is the minimum amount necessary to repair the breakwater and stabilize the shoreline in a safe and effective manner, while minimizing the impacts to existing habitats and wildlife. Fringe tidal marsh habitat exists on the inboard side of the breakwater; in order to avoid impacts, all breakwater repairs will be conducted to avoid this habitat.

Additionally, the 400 cy of fill for the kayak launch ramp and floating dock is the minimum amount necessary to allow for safe boating access to the Bay. Finally, the fill for the repairs to the piles will be the minimum amount necessary in that it is an in-kind repair and replacement of a select group of existing piles and will not result in any new net fill.

The Commission finds that the fill is the minimum amount necessary to complete the project.

- D. **Minimizing Impacts to Water Volume and Circulation and Natural Resources.** The Bay Plan policies on fish, other aquatic organisms and wildlife state, “[t]o assure the benefits of fish, other aquatic organisms and wildlife for future generations, to the greatest extent feasible, the Bay’s tidal marshes, tidal flats, and subtidal areas should be conserved, restored and increased.” The policies further state that, “[t]he Commission should consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species...(and) give appropriate consideration of (their) recommendations in order to avoid possible adverse impacts of a proposed project on fish, other aquatic organisms and wildlife habitat.” The Bay Plan policies on tidal marshes and tidal flats state that, “[t]idal marshes and tidal flats should be conserved to the fullest extent

possible.” The policies further state that, “[a]ny proposed fill, diking or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible avoid any harmful effects.”

The Bay Plan policies on subtidal areas state, in part, that: “[a]ny proposed filling... in a subtidal area should be thoroughly evaluated to determine the local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic plants; and (e) the Bay's bathymetry. Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects.” These policies further state: “Subtidal areas that are scarce in the Bay or have an abundance and diversity of fish, other aquatic organisms and wildlife (e.g., eelgrass beds, sandy deep water or underwater pinnacles) should be conserved. Filling...in these areas should therefore be allowed only if: (a) there is no feasible alternative; and (b) the project provides substantial public benefits.”

A portion of the fill placed in the Bay as authorized herein will result in repairs to an existing breakwater to ensure the safety of the marina. The placement of 740 cubic yards of riprap will not change water circulation or water volume in the Bay because the affected area has previously been covered with riprap material. The installation of the kayak dock and launch ramp authorized herein will result in 200 cubic yards of floating fill and 200 cubic yards of solid fill in the Bay. The resulting floating fill will have a minimal effect on water circulation and water volume in the Bay; because the volume of solid fill is small—200 cubic yards, its effect on water circulation and water volume will also be nominal. Further, the repairs to the existing yacht club piles will not result in any new net fill and, therefore, will not impact water surface area or circulation of the Bay.

The location of the kayak launch ramp does not support tidal marsh and, therefore, the construction of this feature will not impact wetland habitat. Tidal marsh habitat exists at the inboard side of the breakwater. To avoid impacts to the tidal marsh and wildlife species that use this habitat, the majority of the breakwater repairs authorized herein will be conducted at the outboard side of the levee, as required in Special Condition II-A of this permit.

The installation of the kayak dock and launch ramp will result in minimal and temporary turbid conditions in the Bay. The Section 7 consultation with National Oceanic Atmospheric Administration (NOAA) Fisheries states that this work could have the potential to impact several listed species of salmonids that may occur seasonally in the project area, including the Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook Salmon, Central Valley steelhead, and Central California Coast



steelhead, but will not adversely affect listed salmonids or their designated critical habitat. Special Condition II-G † of this permit ensures that potential impacts to the listed salmonids and also to migratory waterfowl will be minimized by limiting construction and removal activities to June 15 through November 30. Special Condition II- G also ensures that potential impacts to the listed salmonids and migratory waterfowl will be minimized by limiting vegetation removal activities to September 1 through February 1 unless pre-construction surveys are conducted. Standard Condition IV-O provides further protection to these species during maintenance activities authorized herein by requiring such activities to occur only during approved months to avoid potential impacts to fish and wildlife.

The fill associated with the project authorized herein has the potential to impact Essential Fish Habitat (EFA) for various life stages of fish species managed within the Fishery Management Plans (FMP) under the Magnuson-Stevens Fishery Conservation and Management Act, specifically Pacific Groundfish, Coastal Pelagics, and Pacific Coast Salmon. However, NOAA Fisheries determined that the construction activities associated with the project will either be within the footprint of an existing structure (e.g., the breakwater and the piles supporting the yacht club) or within a small area that will not significantly change the character of the subtidal or tidal habitat (in the case of the kayak launch ramp and float), and will not have a significant adverse impact on EFH for the above-listed fish species.

Special Conditions II-A and II-O require the permittee to submit plans to the Commission regarding the fill activities authorized herein and obtain plan approval prior to project commencement. Plan review will provide an opportunity to assess the source of fill material and assure that it will not result in the introduction or spread of invasive species. As stated previously, the project will not adversely affect water circulation or volume in the Bay or aquatic organisms at the project site. As discussed in earlier sections, the fill authorized herein has no feasible upland alternative and, further, its public benefits outweigh any detriments associated with the project.

The Commission finds that the fill authorized herein, as conditioned, will not result in impacts to the Bay's water volume or circulation and, further, will not adversely affect fish, other aquatic organisms and wildlife of the Bay, tidal marshes and tidal flats, and subtidal areas.

- E. **Public Access.** Section 66602 of the McAteer-Petris Act states that "...existing public access to the shoreline and waters of the...[bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Further, the McAteer-Petris Act provides, in part, that the Commission "may deny an application for a permit for a proposed project only on the grounds that the project fails to provide



maximum feasible public access, consistent with the proposed project, to the bay and its shoreline." The Bay Plan Public Access Policy No. 2 states, in part: "...maximum feasible access to and along the waterfront...should be provided in and through every new development in the Bay..." The Bay Plan Public Access Policy No. 5 states, in part: "[w]henver public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed." The Bay Plan Public Access Policy No. 6 states, in part: "[p]ublic access improvements provided as a condition of any approval should be consistent with the project and the physical environment...and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline should permit barrier free access for the physically handicapped...include an ongoing maintenance program, and should be identified with appropriate signs." The Bay Plan Public Access Policy No. 8 also states, in part: "[a]ccess to and along the waterfront should be provided by walkways, trails, or other appropriate means to connect the nearest public thoroughfare where convenient parking or public transportation may be available." The Bay Plan Public Access Policy No. 11 states, in part: "[t]he Design Review Board should advise the Commission regarding the adequacy of the public access proposed." The Bay Plan Public Access policies further state that, "[p]ublic access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife are sensitive to human intrusion. For this reason, projects in such areas should be carefully evaluated in consultation with appropriate agencies to determine the appropriate location and type of access to be provided..." The policies also state, "...[p]ublic access should be sited, designed and managed to prevent significant adverse effects on wildlife..."

In assessing whether a project provides maximum feasible public access consistent with the project, the Commission relies on the McAteer-Petris Act and the policies of the Bay Plan.

The Bay Plan policies on Appearance, Design and Scenic Views state, "[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas...". The policies further state that, "[v]iews of the Bay from vista points and from roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water."

The project site currently includes an eight-foot-wide public access pathway along the shoreline. This public access area was authorized by BCDC Permit No. M00-5 and included improvements to Loch Lomond Marina, including an approximately eight-foot-wide, 1,770-foot-long, public access pathway along the marina basin shoreline, benches, trash cans, dog mitt stations, public access signs, landscaping and lighting within the public access area. In addition, an informal public access pathway exists at the eastern side of the project site, starting at Point San Pedro Road, extending between two discrete seasonal wetland areas, to the waterfront. Currently, no formal public access connection exists at the western boundary of the project or from the entrance of the site to the shoreline, and the property is in disrepair, cluttered with boat and trailer storage, underutilized paved and unpaved parking lots, and old commercial buildings.

In assessing whether a project would provide the maximum feasible public access consistent with the project, the Commission is guided, in part, by the court decisions contained in *Nollan et. al. v. California Coastal Commission* and *Dolan et. al. v. City of Tigard*. In these decisions, the U. S. Supreme Court held that a public agency must show a nexus, or essential connection, between a permit condition and the public burden created by a private development project and that the condition must be roughly proportional to the burden. In this case, the project site was previously in disrepair, cluttered, and underutilized; access to the shoreline was informal and access along the shoreline was minimal. As a result of the construction of 82 new residential units and new commercial buildings of the subject project, existing site uses would intensify along with heightened demands for access at the shoreline associated with both residential and commercial users at the site. The permittee will implement public improvements, as described below, to offset the increased demand on the shoreline.

In order to enhance the site to provide the maximum feasible public access, the project authorized herein includes expanding, improving, maintaining, and permanently guaranteeing public access at the site. The public access associated with the subject Village at Loch Lomond Marina project includes: public access pathways along both sides of the main entrance of the marina; four view corridors from the road to the shoreline; an expanded and improved boardwalk and path along the shoreline; a community plaza and marina green; a public pathway adjacent to the seasonal wetland; an improved path along the breakwater; a park and path along the West Spit and the East Spit; fishing areas, bird viewing mounds, and a park at the east end of the site and along the breakwater; a kayak launching float and a kayak launching ramp and float; and a path that will connect to the adjacent San Pedro Cove residential community. The 140,963 square feet of new public access areas and the enhancement of the existing

12,000 square feet public access areas will provide an approximately 152,963-square-foot area of public access, along approximately 4,470-linear feet of shoreline. The new public access areas and the existing areas that will be improved as authorized herein will significantly enhance public access to the shoreline.

The public access will also provide passive and active recreational opportunities such as sitting, hiking, biking, picnicking, boating, fishing, wildlife-observation, and viewing of the Bay, and be ADA-compliant. It will create clear physical and visual connections to the shoreline from Point San Pedro Road and, with the development of the marina green and community plaza, it will establish a more attractive, inviting, and interesting shoreline experience. The project authorized herein will also involve improving parking at the site.

In order to provide access from the public thoroughfare to the shoreline, an earlier iteration of the plan proposed that the informal public access pathway between the seasonal wetlands on the eastern side of the project site be formalized into a four-foot-wide pedestrian pathway. However, during the City of San Rafael's review of the project, it was determined that having a pathway in this location conflicted with the City's requirement of a 50-foot setback between all development and wetland habitats. Furthermore, the Department of Fish and Game (DFG) raised concerns that development in this location would have the potential to impact listed species documented as having used the tidal marsh just north of the seasonal wetland, including the endangered California clapper rail and black rail. DFG stated that this area would likely increase the activity of people and pets adjacent to tidal and non-tidal wetland habitat, which could degrade habitat suitability and value, as well as cause the disturbance of habitats known to be home to special status species. In response to these concerns, the permittee has relocated portions of the development and the public access pathway in order to maintain a 50-foot buffer between the residential and public uses and the wetland habitats. The public access path is now an approximately 750-foot-long, six-foot-wide path, located between the residential units and seasonal wetland. In order to minimize impacts to sensitive habitats and wildlife from humans and pets, habitat fencing no higher than 36-inches will be installed between the public and private uses and wetland.

Additionally, the existing recreational trail separating the two seasonal wetlands on the site will be removed and these areas will be connected to create one large seasonal wetland habitat totaling 2.6 acres. By lowering an existing berm that currently separates the two seasonal wetlands, expanding the eastern portion of the wetland area and removal of non-native vegetation, the permittee will create 0.22 acres of new seasonal wetlands on the project site. While 0.8 acres of this seasonal wetland habitat



(totaling 2.6 acres) will be outside of the Commission's jurisdiction, the 1.6 acre area in the Commission's jurisdiction will provide an expanded and more diverse habitat at the project site that will support a variety of wildlife and plant species, enhance the connectivity of habitats, and contribute to the overall health and habitat complexity of the Bay ecosystem. By moving the public access trail, installing a fence, and providing new wetland habitat, this project is consistent with the Bay Plan policies because it provides public access yet the access is designed to prevent significant adverse effects on wildlife and sensitive habitat.

New public access on the site includes an 18- to 24-foot-wide pathway and six-foot-wide pathway from the main entrance at the Marina to the shoreline; in addition, three six-foot-wide, pathways and view corridors will be provided throughout the residential development in order to ensure a connection to the nearest public thoroughfare and the shoreline. No formal public access connection exists at the western boundary of the project site to connect to the open space area and pathway required by BCDC Permit No. 27-77. Section I.A.2.e authorizes the existing boat repair building to move at least 40 feet north of its existing location to provide a 65-foot-wide connection. This connection will include a path and low lying landscaping in order to provide a clear visual and physical connection to the required open space on the neighboring parcel. This ensures that the western connection will provide the maximum feasible future public access to the neighboring parcel.

The Environmental Impact Report (EIR) for the project extensively analyzed the traffic and parking impacts of the project. The analysis included counts of cars entering and leaving the site and parked cars during peak-usage days, such as the 4<sup>th</sup> of July. The analysis also included estimates of traffic volumes and parking demand generated by the proposed project and its various uses. The EIR concluded that the project will provide adequate parking for members of the public utilizing the boat launch ramp, the public access trails, and the other site amenities, as well as for those people taking advantage of the marina, commercial, and residential uses at the site.

While the DRB was basically pleased with the revised design of the project, it had several concerns that it requested be addressed. These included: (1) widening the width of the trail on the breakwater; (2) removing or revising the landscaping along the greenbelts (view corridors) within the residential portions of the project to avoid impacting views to the waterfront; (3) removing the sculpture in the Community Plaza; (4) revising the design of the waterfront lighting to ensure down lighting; (5) installing landscaping along the wetland buffer fence; (6) installing fish cleaning station at the

entry to the breakwater; and (7) relocating the existing boat maintenance building in order to create a clear view corridor and useable connection from the shoreline to the adjacent property to the west.

In response to the DRB's recommendations, the permittee revised its plan to include a 6-foot-wide pathway along the breakwater, no trees and either low hedges or shrubs along the greenbelts, deletion of a sculpture element, landscaping along the buffer fence, and a second fish cleaning station at the entry to the breakwater. After review with the Commission staff, it was determined that the lighting of concern to the DRB will be only for the community plaza and not for the entire waterfront. Therefore, these lighting fixtures are appropriate in this discrete location to provide a focal point and destination from the entry road. Bollard lighting would be installed along the waterfront pathways. The final recommendation from the DRB, regarding relocation of the boat maintenance building to create a better connection to the property to the west, has also been implemented.

Special Condition II-B ensures that the improved public access will be permanently guaranteed and maintained, consistent with the plans approved pursuant to Special Condition II-A. The obligation for maintenance rests with the property owners and assignees to this amended permit.

In order to ensure maintenance of the public access area, the City of San Rafael required that a public access easement be recorded on the property to preserve in perpetuity access to and along the project's shoreline. The City plans on implementing a Mello-Roos District special tax on all the project's property owners in order to maintain the public access. A Mello-Roos District is a special district that will be established for the project site and will be taxed by the City of San Rafael. In order to ensure that the public access area is maintained, the City of San Rafael has required that an owner's association be created, so that all property owners will contribute to the maintenance of the site. Further, Special Condition II-K will ensure that a notice to buyers and an assignment of permit will be required when any part of the property is sold.

One view corridor, ranging from 100 feet wide at the project's entry to 150 feet wide near the waterfront at the western portion of the site will provide a physical and visual connection to the marina and waterfront at the main entrance to the project site. Three additional landscaped view corridors, each measuring six feet wide and 400 feet long, will provide additional pedestrian connections for visitors and residents from Point San Pedro Road to the waterfront. In order to ensure the view corridors will not be developed, Special Condition II-C requires the view corridors to be restricted or dedicated, and maintained.



The Commission finds that, as conditioned, the project provides the maximum feasible public access consistent with the project. As conditioned, the Commission also finds that the project will be consistent with the Bay Plan's policies on appearance, design, and scenic views.

- F. **Water Quality.** The Bay Plan policies on water quality state that "[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board's Basin Plan and should be protected from all harmful or potentially harmful pollutants. The policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board and the Regional Board, should be the basis for carrying out the Commission's water quality responsibilities." Finally, the policies also state that "[n]ew projects should be sited, designed, constructed, and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay by: (a) controlling pollutant sources at the project site; (b) using construction materials that contain nonpolluting materials; and (c) applying appropriate, accepted, and effective best management practices; especially where water dispersion is poor and near shellfish beds and other significant biotic resources."

The project will involve the placement of a total of 88,000 cubic yards of material to raise and surcharge the project site, which will involve the temporary placement of a maximum of 2,000 cubic yards of fill at any one time at the West Spit. The material will be placed mainly outside of the Commission's jurisdiction, but some will be placed in the Commission's jurisdiction along the marina green and adjacent to parking lot, and at the residential units. Pursuant to Special Condition II-N & the permittee will not place more than 2,000 cubic yards of material at the West Spit per stockpiling event. Once the 88,000 cubic yards have been moved off the West Spit, it will be used for public access improvements only.

The placement of the fill material next to the Bay at the West Spit creates the potential for erosion of sediments into the Bay. Because nearly all of the areas proposed for surcharge will eventually be landscaped, paved or covered by buildings, this activity will result in minimal risks to water quality from sedimentation once construction is complete. Post-construction, non-point source pollutants will be the primary threat to water quality as pollutants are washed by rainwater from rooftops, landscaped areas, and impervious parking areas into the on-site drainage system and into the Bay.

On August 6, 2007, the Regional Water Quality Control Board (RWQCB) issued a Water Quality Certification for the Village at Loch Lomond Marina project. The certification requires that erosion control measures be utilized throughout all phases of project construction where sediment runoff from exposed slopes threatens to enter the Bay.



Additionally, the certification requires that all exposed/disturbed areas within the project site be stabilized with erosion control measures such as straw wattles, straw mulch, and hydro-seeding. The permittee will employ Best Management Practices during and after construction and will also prepare a Storm Water Pollution Prevention Plan and an Erosion Control Plan. These plans will identify critical areas with high erosion potential, erosion control measures, soil stabilization techniques, types and sources of stormwater pollutants, and control measures to eliminate significant impacts on receiving water quality from stormwater runoff. Finally, the permittee will incorporate site features that will clean water in accordance with the RWQCB and the Marin County Stormwater Pollution Prevention Program standards before water entered the San Rafael Bay. These features could include bioswales, stormwater treatment units, filters placed within drainage inlets, and landscaping. Standard Condition N ensures that the permittee will employ the Best Management Practices during construction to prevent erosion.

Further, in order to minimize water quality impacts from excess debris, Standard Condition IV-N-1 ensures that all construction debris shall be removed to an authorized location outside of the Commission's.

The Commission finds that, as conditioned, the project will not adversely affect water quality and is consistent with the Commission's laws and policies.

- G. **Sea Level Rise and Safety of Fills.** The Bay Plan policies on the safety of fills state in part that, "[t]o prevent damage from flooding, structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by competent engineers." Additionally, the policies state that, "[t]o minimize the potential hazard to Bay fill projects and bayside development from subsidence, all proposed development should be sufficiently high above the highest estimated tide level for the expected life of the project or sufficiently protected by levees...". Finally, the policies state that, "[l]ocal governments and special districts with responsibilities for flood protection should assure that their requirements and criteria reflect future relative sea level rise and should assure that new structures and uses attracting people are not approved in flood prone areas or in areas that will become flood prone in the future, and that structures and uses that are approvable will be built at stable elevations should assure long-term protection from flood hazards." Section 66632 of the McAteer-Petris Act authorizes the Commission to deny a permit application only if the proposed project fails to provide maximum feasible public access consistent with the project.

The Loch Lomond project includes public access and recreation areas on the West and East spit and a public access boardwalk along the entire length of shoreline, including the breakwater. The project includes the placement of material where housing will be located to raise the elevations to be consistent with FEMA standards. There will be negligible subsidence of the site after it has been surcharged and no significant change to the hydrodynamics of the project site are expected to occur as a result of constructing the project. However, over a fifty-year period following the project implementation, extensive areas of public access may be at risk of flooding in the event of anticipated future sea level rise.

Analyzing the impacts of future sea level rise on an individual project site is still an imprecise science with many unknown variables. The two major unknowns are future global greenhouse gas emissions and the future stability of the Greenland and Antarctic ice sheets. The State of California Climate Action Team, a conglomeration of the state Energy Commission, Environmental Protection Agency and Resources Agency, has engaged premier scientists to downscale global climate change models, and analyze and report on the impacts of climate change in California.

For the Loch Lomond project, three scenarios of sea level rise were used to analyze the impacts of climate change on the project site over a fifty-year period. The rates of sea level rise are generally consistent with the range of scenarios included in the 2006 California Climate Action Team Report to California's Governor. The sea level rise scenarios include: (1) a low rate of 0.08 inches (2 mm) per year or 4 inches over 50 years; (2) a medium rate of 0.18 in (4.6 mm) per year or 9 inches over 50 years; and (3) a higher rate of 0.33 in (8.4 mm) per year or 16.5 inches over 50 years. The scenarios were analyzed using data from a survey of the project site in conjunction with a digital surface model with vertical accuracy between 20-30 centimeters. The low rate of sea level rise in the first scenario was discarded because it assumes that the historic rate of rise in San Francisco Bay would not accelerate in the next 50 years.

Under the medium and high rates of rise, the tidal marsh, seasonal wetland area, and the east end turnaround at the project site will be inundated during high tides. Without space for upland migration, the tidal marsh will be permanently inundated if sea level rise were above elevation 5.0 feet NGVD 29, which occurs under both the medium and high scenarios. At current elevations, the east end turnaround adjacent to the breakwater and the East Spit will also be inundated at high tide, yet the placement of material at the east end turnaround and on the East Spit should raise the elevation high enough to avoid inundation. As for the breakwater, portions of the site will be filled with riprap and earth material as authorized herein to raise the elevation, but portions of the breakwater may still be inundated under the medium and high rates scenario.



Under any climate change scenario, shoreline impacts are more likely to occur from the increased frequency and intensity of storm events associated with a rise in sea level than from inundation due to a gradual rise in sea level. Storm-induced flooding is also more likely to occur within a shorter time frame than fifty years. The increased thermal expansion from El Nino events, combined with high tides, precipitation and wind could have grave impacts on low-lying shoreline areas around San Francisco Bay. The vulnerable, low-lying areas at the Loch Lomond project site include: the breakwater; the east end turnaround and parking area; the East Spit recreation and parking area; and the tidal marsh and seasonal wetlands along the eastern portion of the project site.

Special Condition II-B is included in the authorization to ensure that the maximum feasible public access consistent with the project is maintained and endures for the life of the project. In addition, Special Condition II-A requires engineering plan review to ensure that fill to raise the breakwater is designed at an appropriate elevation to prevent overtopping and is engineered to withstand a 100-year storm event. Special Condition II-I is included to ensure that the Commission is not responsible for property damage related to future flooding.

The Commission finds that with this amended permit's special conditions that require maintenance of public access on the site and plan review by an engineer, the project is consistent with its policies regarding safety of fills and provides maximum feasible public access consistent with the project.

- H. **Review Boards.** The Commission's Design Review Board (DRB) reviewed an earlier public access proposal on January 10, 2005, and on June 11, 2007, reviewed a revised plan for the project. As mentioned in Section II-B-3, the DRB was generally pleased with the project, and the permittee worked with staff to revise the project in order to incorporate the DRB's concerns.
- I. **Environmental Review.** On August 6, 2007, the City of San Rafael certified the FEIR for the proposed project. In accordance with Section 15090 of the State CEQA Guidelines, the FEIR for the project has been completed in compliance with CEQA.

On August 6, 2007, the San Rafael City Council ("San Rafael") certified an environmental impact report (EIR) for the project and adopted CEQA findings as part of associated project approvals [Resolution No. 12330]. The Commission has reviewed and considered the environmental effects of the project as shown in the EIR. The CEQA findings adopted by San Rafael ("Findings") are incorporated herein by reference. The Findings include the adoption of mitigation measures, including various Findings that address environmental topics pertaining to activities subject to the BCDC Permit. Those include: noise, natural resources, wetland habitat, water quality, flood hazards, historic

resource, air quality, land use and recreation and marine transportation. San Rafael's adopted mitigation measures addressing these topics, implemented through the associated and approved mitigation monitoring program, avoid or substantially lessen each potentially significant effect as identified in the EIR, reduce any potential impacts of the aspects of the project that are within the Commission's jurisdiction to a level of insignificance and are hereby approved.

- J. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the *San Francisco Bay Plan*, the McAtter-Petris Act, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

#### IV. Standard Conditions

- A. **Permit Execution.** 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.
- 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 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 amended permit, the permittee/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 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.
- 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 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 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 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 amended permit shall be removed by the permittee or its assignee 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 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.
- L. **Permission to Conduct Site Visit.** The permittee 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.



Marina Village Associates, LLC  
(Originally Issued on September 27, 2007, and  
Amended Through December 4, 2019)  
(Inclusive of Amendment No. Six)

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

LJG/EL/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  
City of San Rafael Planning Department

\* \* \* \* \*

**Receipt acknowledged, contents understood and agreed to:**

Executed at LOS ANGELES, CA

Marina Village Associates, LLC, a Delaware  
**Applicant** limited liability company

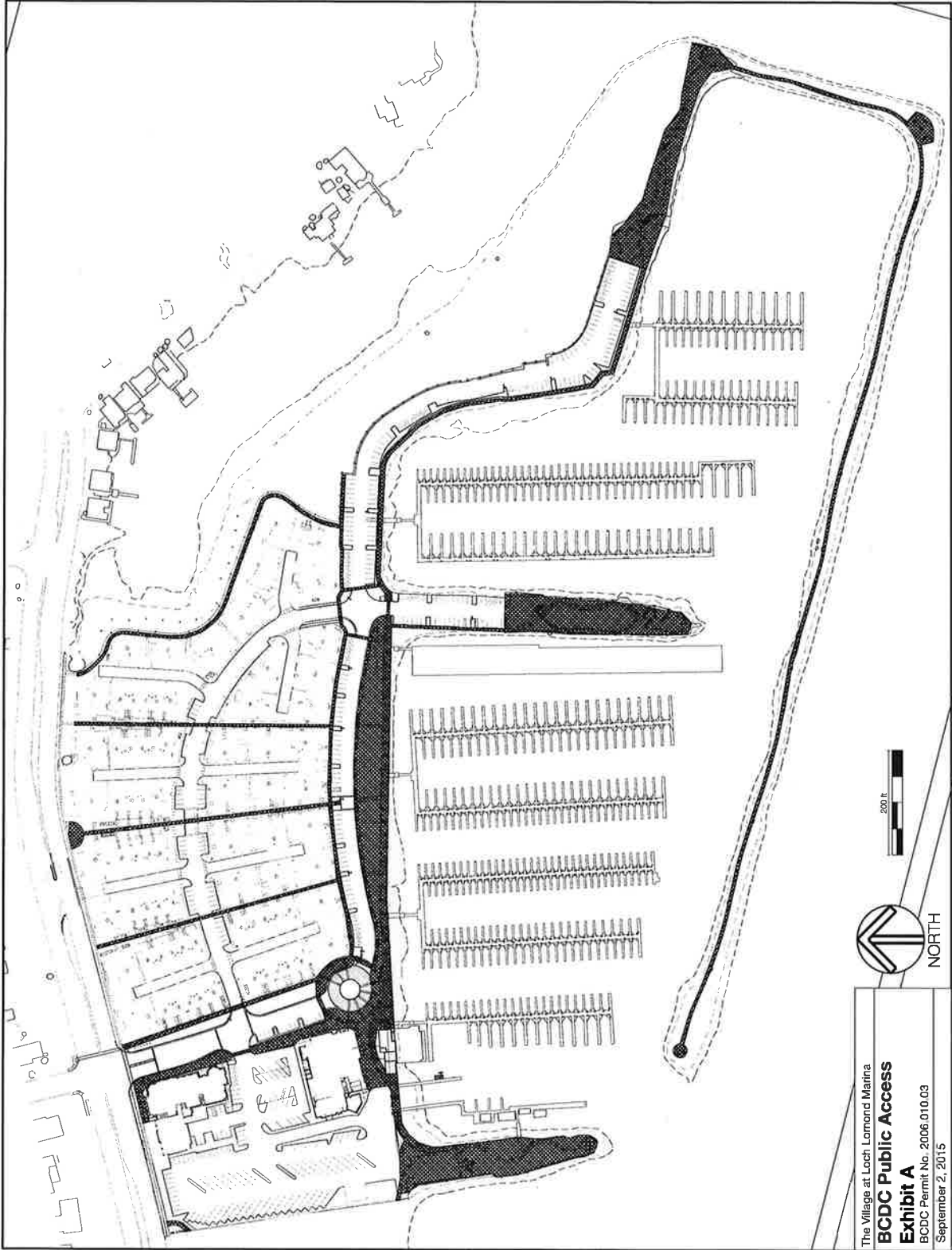
On December 12, 2019

By:

Rick Arambulo, Authorized Signatory  
**Print Name and Title**







The Village at Loch Lomond Marina

**BCDC Public Access**

**Exhibit A**

BCDC Permit No. 2006.010.03

September 2, 2015

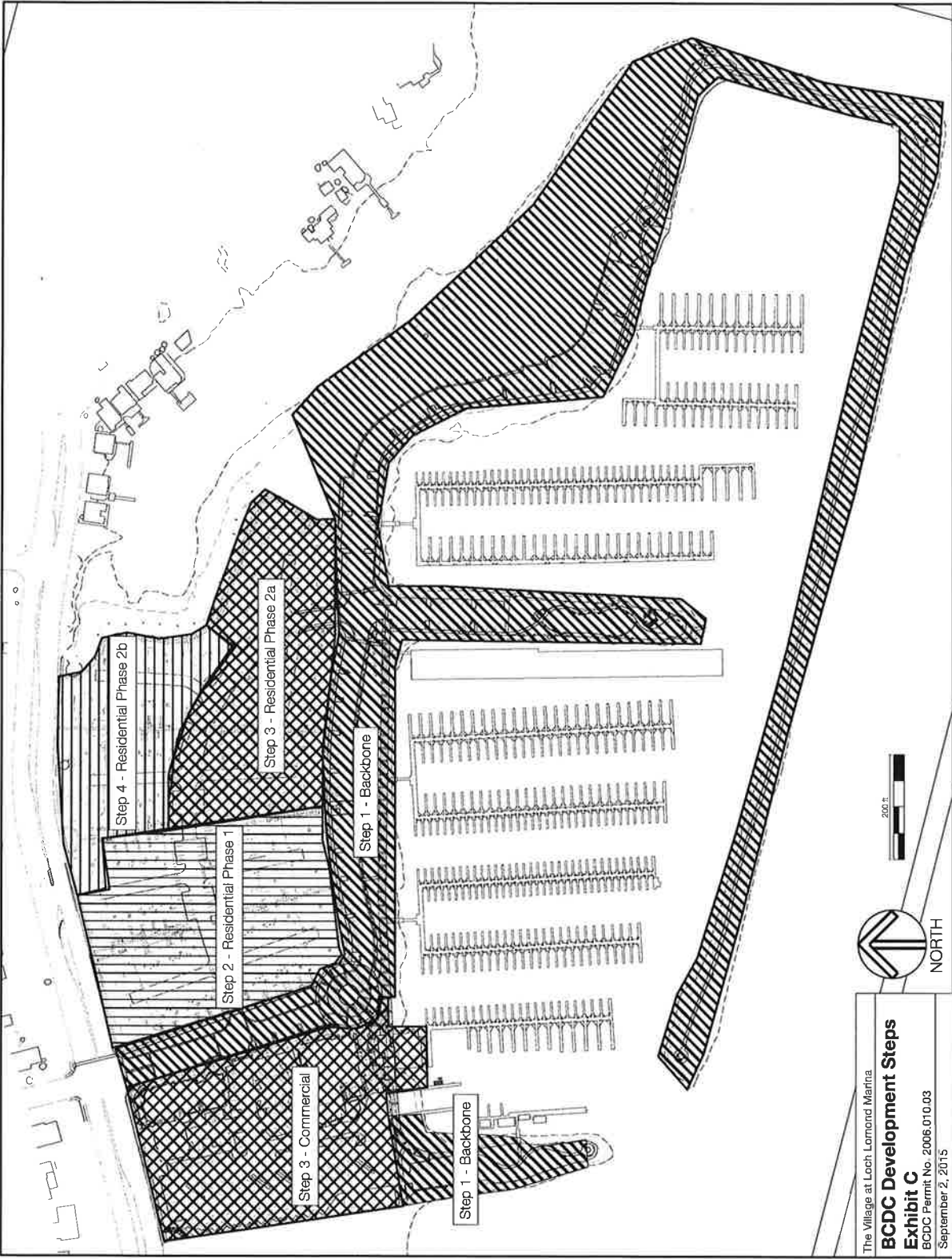




VIEW CORRIDORS



The Village at Loch Lomond Marina  
**BCDC View Corridors**  
**Exhibit B**  
BCDC Permit No. 2006.010.03  
September 2, 2015



The Village at Loch Lomond Marina  
**BCDC Development Steps**  
**Exhibit C**  
 BCDC Permit No. 2006.010.03  
 September 2, 2015