



Making San Francisco Bay Better

November 22, 2006

United States Army Corps of Engineers
Regulatory Branch
San Francisco District
333 Market Street, 8th Floor
San Francisco, California 94105-2197
Attn: Justin Yee

SUBJECT: Docket Number COE-2006-0005, Proposed Reissuance,
U.S. Army Corps of Engineers Nationwide Permits;
BCDC File No. CN 6-83 and BCDC File No. MCMC 7402.386

I am responding on behalf of the San Francisco Bay Conservation and Development Commission to a consistency determination for the Corps of Engineers's reissuance of its nationwide permits as described in the *Federal Register* dated September 26, 2006 and the San Francisco District's Public Notice issued on October 4, 2006, and as described further in the District's letter dated November 6, 2006, received by BCDC on November 9, 2006. In those documents, the Corps notified the Commission that the Corps is proposing to reissue certain nationwide permits in January 2007 and requested that we agree with the Corps' determination that these nationwide permits would be consistent to the maximum extent practicable with the Commission's Management Program for the San Francisco Bay segment of the California Coastal Zone, that we identify any regional conditions that may be necessary to make the regionwide permits consistent to the maximum extent practicable, and that we identify those nationwide permits for which an individual consistency determination and Commission agreement will be required.

We have reviewed the relevant materials and have determined that the proposed reissued permits could cover a vast range of types of activities in very different locations and habitats. It would be very difficult to anticipate all of these and the potential impacts of the activities in advance. Therefore, we cannot agree with your consistency determination in all cases.

We agree with your consistency determination for any activity that requires a permit from the San Francisco Bay Conservation and Development Commission if, but only if, the nationwide permits contain a condition that states that the nationwide permit shall not become effective until the Commission has issued a Commission permit that authorizes the activity. We therefore ask that you include such language in the nationwide permits as they apply within the San Francisco District.

We also agree with your consistency determination for any activity that does not require a Commission permit and would not affect any land, water, or structure located with the San Francisco Bay segment of the California coastal zone.

However, we disagree for any activity that does not require a Commission permit but that might affect any land, water, or structure located within the San Francisco Bay segment of the California coastal zone, which is coextensive with the Commission's jurisdiction. For such an activity, we would prefer that the project sponsor either obtain a Commission determination that the proposed activity would not have any such effect or that the Commission determine that the proposed activity is fully consistent with the Commission's management program.

We therefore recommend that each nationwide permit also contain language that explains that if the proposed activity will occur outside of the Commission's jurisdiction, the nationwide permit shall not become effective until either (1) the Commission has determined in writing that the proposed activity will not affect any land, water, or structure located within the Commission's jurisdiction, (2) the Commission has determined in writing that the proposed activity is fully consistent with all enforceable policies contained in the Commission's Management Program for the San Francisco Bay segment of the California coastal zone, or (3) the project sponsor submits a statement that the proposed activity will not affect any land, water, or structure within the Commission's jurisdiction and the Commission fails to respond to that statement within 45 days of its receipt or such other time as the Commission and the project sponsor agree would be appropriate.

Thank you for your cooperation. Please feel free to call if you have any questions.

Sincerely,

WILL TRAVIS
Executive Director