

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Amendment to Title 18 (Marina Regulations) of the Municipal Code

DATE: July 19, 2018

City Council Goals:

To develop recreational facilities and promote recreation, educational and cultural programs and passive uses related to parks. (#6)

Purpose:

To consider revising the City's marina regulations found in the Municipal Code to allow for live aboards.

Recommendation:

1. Introduce Ordinance No. 629, waiving first reading, amending Title 18 of the Brisbane Municipal Code concerning "Marina Regulations".
2. Approve the "Rules and Regulations" that will be attached to the "Addendum to License Agreement - Live Aboard", and authorize staff to make future changes to these as approved by the City Attorney.
3. Direct staff to schedule a public hearing at a later date to establish a "Live Aboard License Fee".

Background:

In summer 2017, the City Council's Infrastructure, Utilities & Franchise Subcommittee directed staff to pursue modifications to our existing marina permit with the Bay Conservation and Development Commission (BCDC) to allow for live aboards. Staff subsequently had several conversations with BCDC staff, and submitted a permit modification request in August 2017. The modified permit allowing up to fifty-eight (58) live aboard berths was issued 5/30/18.

Staff has worked with the City Attorney's office to develop the attached ordinance, the Addendum to License Agreement - Live Aboards, and the Rules and Regulations.

Discussion:

The attached permit modification allows, but does not require, the City to permit live aboards at the Marina. As noted in page 18 et seq. of the BCDC permit, the primary purpose for liveaboards is to further recreational boating by providing enhanced security.

If Council approves the three recommended action items, the following steps remain prior to allowing live aboards at the Marina:


- A second hearing on Ordinance 629
- A public hearing on the live aboard license fee
- A Resolution approving the live aboard license fee
- Submittal of a berthing plan to BCDC showing the proposed distribution of vessels
- Submittal of the berthing agreement and rules to BCDC

Fiscal Impact:

There will be some minor impact to the marina facilities maintenance schedule due to increased use by live aboards. The cost of this impact is expected to be covered in full by a "live aboard license fee" to be decided at a future meeting.

Attachments:

Ordinance No. 629
"Redline" version Title 18 Chapters 18.02 and 18.10
Addendum to License Agreement
Rules and Regulations
BCDC Permit No. 1978.014.011



Director of Public Works/City Engineer



City Manager

ORDINANCE NO. 629

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING TITLE 18 OF THE MUNICIPAL CODE
PERTAINING TO MARINA REGULATIONS**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Chapter 18.02 “Definitions” of Title 18 of the Municipal Code is amended to read as follows:

§18.02.010 - Generally.

For the purposes of this title, certain words and terms used in this title are defined in this chapter. Words used in the present tense include the future; words in the singular number include the plural; and words in the plural number include the singular unless the natural construction of the wording indicates otherwise. The word "shall" is mandatory.

§18.02.012 - Berth.

“Berth” means the place in which a vessel is moored or secured.

§18.02.020 - Brisbane Marina.

"Brisbane Marina" means the area designated as such on that map so entitled, incorporated herein by reference, which map is on file in the office of the city clerk.

§18.02.040 - Harbormaster.

"Harbormaster" means the officer designated in charge of vessel movement, safety, security, and environmental issues within the Brisbane Marina, or her/his duly authorized representative.

§18.02.050 - Licensee.

“Licensee” means the person(s) in whose name a specific berth at the Brisbane Marina is assigned by the Harbormaster pursuant to a Marina License Agreement.

§18.02.060 - Live aboard.

"Live aboard" means the use or occupancy of a boat for overnight accommodations for more than three (3) nights in a seven (7) day period.

§18.02.061 - Live aboard boat and live aboard vessel

"Live aboard boat" and "live aboard vessel" is a boat or vessel that is not a transient boat, that is capable of being used for active self-propelled navigation, and that is occupied as a residence as that term is defined in California Government Code section 244.

§18.02.062 - Marina License Agreement

"Marina License Agreement" means a maritime contract for private wharfage between the City of Brisbane and the licensee

§18.02.070 - Slip

"Slip" means berth.

§18.02.080 - Vessel.

"Vessel" means every type of watercraft used or capable of being used as a means of transportation on the water.

§18.02.082 - Wharfage

"Wharfage" means the provision of berthing services for a vessel.

SECTION 2: Chapter 18.10 "Live Aboards" of Title 18 of the Municipal Code is amended as follows:

§18.10.010 - Live aboards restricted.

When live aboards are permitted by the San Francisco Bay Conservation and Development Commission, the City Council shall establish rules and regulations and the Harbormaster shall establish policies and an application for live aboard status, and an Addendum to the Marina License Agreement permitting a live aboard vessel. All live-aboard vessels shall be in compliance with all applicable requirements of BCDC Permit No. 1978.014.11 as the provisions of that permit may change from time to time, the requirements of all other regulatory authorities the provisions of this ordinance, the rules and regulations adopted by the City Council and the provisions of the Addendum to the License Agreement. The policies, rules, regulations and documents prepared by the Harbormaster pursuant to this section shall

provide for good order and discipline within the marina and shall require that prior to issuance of the live aboard addendum and at all times thereafter, the live aboard vessel be found to be in compliance with the provisions of this Title.

§18.10.020 - Appeal of denial of live aboard application.

A. An applicant may appeal to the Director of Public Works/City Engineer any decision of the Harbormaster concerning the application. The applicant must file such appeal with the city clerk not more than ten (10) days after the date on which the Harbormaster has made a final decision. The appellant may also appeal the decision of the Director of Public Works/City Engineer to the City Manager by filing a notice of appeal with the city clerk not more than ten (10) days after the date on which the Director of Public Works/City Engineer has made a final decision.

B. The appellate authority may uphold, reverse or modify the decision which is the subject of the appeal, and may refer the matter to the Director of Public Works/City Engineer or Harbormaster for such further action as may be directed by the appellate authority.

§18.10.050 - Special provisions for marine toilets.

A. All live aboard vessels shall have a numbered seal placed on the “overboard” outlet of the head’s toilet diverting valve, and shall have marine water holding tank fluorescent visual dye tablets placed in the holding tank. The placement of both of these items shall be performed under the supervision of the Harbormaster, and continued compliance with these requirements shall be subject to inspection upon a schedule deemed necessary by the Harbormaster, or upon demand.

B. Live aboard vessels shall be required to log their pumpout dates, and shall be required to present these logs to the Harbormaster upon a schedule as determined by the Harbormaster, or upon demand.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

W. Clarke Conway, Mayor

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



"Redline" Chapters 18.02 & 18.10

- **Chapter 18.02 - DEFINITIONS**

- **18.02.010 - Generally.**

For the purposes of this title, certain words and terms used in this title are defined in this chapter. Words used in the present tense include the future; words in the singular number include the plural; and words in the plural number include the singular unless the natural construction of the wording indicates otherwise. The word "shall" is mandatory.

- **18.02.012 - Berth.**

"Berth" means the place in which a vessel is moored or secured.

- **18.02.020 - Brisbane Marina.**

"Brisbane Marina" means the area designated as such on that map so entitled, incorporated herein by reference, which map is on file in the office of the city clerk.

- **18.02.040 - Harbormaster.**

"Harbormaster" means the ~~Brisbane Marina Services Director or the harbormaster's duly authorized representative~~ officer designated in charge of vessel movement, safety, security, and environmental issues within the Brisbane Marina, or her/his duly authorized representative.

- **18.02.050 - Licensee.**

"Licensee" means the person(s) in whose name a specific berth at the Brisbane Marina is assigned by the Harbormaster pursuant to a Marina License Agreement.

- **18.02.060 - Live aboard.**

"Live aboard" means the use or occupancy of a boat for overnight accommodations for more than three (3) nights in a seven (7) day period.

18.02.061 - "Live aboard boat" and "live aboard vessel" is a boat or vessel that is not a transient boat, that is capable of being used for active self-propelled navigation, and that is occupied as a residence as that term is defined in California Government Code section 244.

- **18.02.062 - Marina License Agreement**

“Marina License Agreement” means a maritime contract for private wharfage between the City of Brisbane and the licensee.

- **18.02.070 - Slip**

“Slip” means berth.

- **18.02.080 - Vessel.**

“Vessel” means every type of watercraft used or capable of being used as a means of transportation on the water.

- **18.02.082 - Wharfage**

“Wharfage” means the provision of berthing services for a vessel.

- **Chapter 18.10 - LIVE ABOARDS**

- **18.10.010 - Live aboards restricted.**

~~— No vessel moored within the Brisbane Marina shall be used as a place of residence except by persons employed by the city to provide security services for the marina. No person shall use a vessel for overnight lodging more than three (3) nights in a seven (7) day period without the written approval of the harbormaster. When live aboards are permitted by the San Francisco Bay Conservation and Development Commission, the City Council shall establish rules and regulations and the Harbormaster shall establish policies and an application for live aboard status, and an Addendum to the Marina License Agreement permitting a live aboard vessel. All live-aboard vessels shall be in These documents shall provide for compliance with all applicable requirements of conditions imposed by BCDC Permit No. 1978.014.11 as the provisions of that permit may change from time to time, the requirements of all other regulatory authorities the provisions of this ordinance, the rules and regulations adopted by the City Council and the provisions of the Addendum to the License Agreement. The policies, rules, regulations and documents prepared by the Harbormaster pursuant to this section, and shall provide for good order and discipline within the marina and shall require that prior to issuance of the live aboard addendum and at all times thereafter, the live aboard vessel be found to be in compliance with the provisions of this Title.~~

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A. An applicant may appeal to the Director of Public Works/City Engineer any decision of the Harbormaster concerning the application. The applicant must file such appeal with the city clerk not more than ten (10) days after the date on which the Harbormaster has made a final decision. The appellant may also appeal the decision of the Director of Public Works/City Engineer to the City Manager by filing a notice of appeal with the city clerk not more than ten (10) days after the date on which the Director of Public Works/City Engineer has made a final decision.

B. The appellate authority may uphold, reverse or modify the decision which is the subject of the appeal, and may refer the matter to the Director of Public Works/City Engineer or Harbormaster for such further action as may be directed by the appellate authority.

- **18.10.050 - Special provisions for marine toilets.**

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B. Live aboard vessels shall be required to log their pumpout dates, and shall be required to present these logs to the Harbormaster upon a schedule as determined by the Harbormaster, or upon demand.

Addendum to License Agreement– Live-Aboard

WHEREAS, a written month-to-month Marina License Agreement (hereinafter the “License Agreement”) currently exists between the City of Brisbane and _____ (hereinafter “Licensee”), and

WHEREAS, Licensee desires, in accordance with the terms herein contained, to live aboard his/her vessel, identified in the live aboard application (hereinafter the “Vessel), while she is docked at the Marina’s premises; and

WHEREAS, the Vessel to be permitted for living aboard shall at all times meet the definition of “Live Aboard Boat” as found in 14 CCR §10128; and

WHEREAS, the Marina agrees to permit the Licensee to live aboard his/her Vessel, identified in the License Agreement, pursuant and subject to the below conditions.

IT IS THEREFORE UNDERSTOOD AND AGREED AS FOLLOWS:

1. Addendum Supplements and Prevails Over License Agreement. This Addendum to the Marina License Agreement is additional to and supplements the Marina License Agreement, which is fully incorporated herein by this reference. To the extent the License Agreement and this Addendum to Maritime License Agreement are or might be inconsistent or redundant, this Addendum to Maritime License Agreement shall control and be effective.

2. Terms In License Agreement Remain Effective. To the extent not inconsistent with the terms herein contained, all terms and conditions contained in the License Agreement shall remain in full force and effect.

3. Additional Monthly Consideration for Live Aboard. In consideration of the grant to Licensee of live aboard privileges, the monthly License Fee shall be increased by an additional \$_____ above and additional to the License Fee required by the License Agreement, as amended, said additional sum being due the same day as the License Fee is due pursuant to the License Agreement. It is understood and agreed that Licensee and his/her Vessel shall be liable for payment of this live aboard fee for all periods during which any person(s) is living or has actually lived aboard the Vessel, irrespective of whether an Addendum to the License Agreement has been executed.

4. Number of Persons Permitted to Live Aboard. Marina shall be entitled in its unfettered discretion to restrict the number of persons living aboard any vessel located at its premises, at the time of execution of this document or at any time thereafter while this Addendum to the License Agreement is in effect, and Licensee agrees that with respect to living aboard his Vessel, in addition to the Licensee, no more than two other persons, named immediately below, shall be permitted to live simultaneously aboard the Vessel:

Name of Live Aboard

Name of Live Aboard

Licensee agrees to indemnify, protect and defend the Marina and its owners, employees, officers and agents from and against all actual or potential liability arising from, relating to or occasioned by the presence of Licensee's pet(s) or any pet(s) brought onto the Marina's property by Licensee's partner(s), guests, agents, or invitees.

Notwithstanding the below term governing termination of live aboard privileges, the living aboard of any person not identified above shall be grounds for immediate termination of the License Agreement and this Addendum thereto. The Marina reserves the unrestricted rights to decline a request to live aboard and to terminate live aboard privileges for any reason, including where the Marina has concerns pertaining to a Licensee's pet.

6. Marina May Terminate Live Aboard Privileges If License Agreement Breached. Living aboard a vessel at the Marinas docks is a privilege which, in the event of Licensee's breach of any term or condition contained herein or in the License Agreement, may be revoked at the Marinas sole discretion after 30 days advance written notice (by mail, email, personal service or overnight service) to Licensee, and upon two days written notice if in the sole opinion of the Marina the breach adversely impacts the health, welfare or safety of persons on Marina property.

7. Termination of License Agreement. In the event no breach has occurred, the License Agreement and/or this Addendum thereto may be terminated by either party, provided 30 days advance written notice is provided to the other party by mail, email, personal service or overnight service. Termination of the License Agreement shall result in the termination of this Addendum effective on the date the License Agreement is terminated.

8. No Pro-Rating of Wharfage Fees. Payments due pursuant to the License Agreement and this Addendum thereto shall not be prorated, and hence wharfage is due through the end of the month, even if the Vessel is permanently removed from her slip prior to the last day of the month.

9. Floating Home Residency Law Inapplicable. It is agreed the Floating Home Residency Law (California Civil Code sections 800 *et seq.*) has and shall have no application to the License Agreement or this Addendum thereto, as the Licensee represents the Vessel has a mode of power of her own, is not designed to be used as a stationary waterborne residential dwelling and has no permanent continuous hookup to a shore side sewage system, and therefore is not a "floating home" as defined by that law.

10. No Residential Tenancy Created. This is a commercial contract. The central collective purpose of the License Agreement and this Addendum thereto is the provision of wharfage or docking services, and not to create a residential tenancy of any kind, and therefore neither the License

Agreement nor this Addendum shall under any circumstance be deemed to create a residential tenancy.

11. Application of Admiralty Law/Choice of Forum. The License Agreement and this Addendum thereto are maritime contracts for the provision of maritime “necessaries,” as defined in the Commercial Instruments and Federal Maritime Lien Act and the General Maritime Law, and they shall be enforced and construed solely in accordance with the general maritime law of the United States, the Federal Maritime Lien Act and other applicable federal statutes. Any litigation concerning the License Agreement and/or this Addendum shall occur in a court of competent jurisdiction in San Mateo County, California.

12. Entitlement to Vessel Arrest for Nonpayment of Wharfage Fees. In the event of nonpayment for wharfage services rendered or commission of a maritime tort resulting in liability or loss by the Marina, the Marina shall (in addition to other available remedies at law and/or equity) be entitled to avail itself of all rights available in admiralty, including seizure of the Vessel, under order of a United States District Court, to satisfy the Marina’s maritime lien(s), in which event Licensee understands U.S. Marshals will order ashore anyone found aboard the Vessel (including live aboards) and costs of arrest will be borne solely by Licensee.

13. Rights Not Transferrable. Neither the rights created in the License Agreement nor those contained herein are transferrable without the express prior written approval of both the Marina and the Licensee.

14. Evidence of Insurance. Upon execution of this Addendum Licensee shall provide evidence of insurance, as detailed in the License Agreement.

15. Liability and Indemnity

The below liability and indemnity provisions shall be binding and enforceable, and shall prevail over and supercede the Indemnification and Release of Liability provisions contained in the License Agreement.

a. Except as otherwise herein provided, during the term of this Agreement or while the Vessel remains on the Marina's premises or in the possession of the Marina or its assignee, all risk of loss or damage to property and of personal injury and/or death shall be upon the Licensee. Additional to all other liability limitation and indemnity provisions herein contained, Licensee, as a material part of the consideration to be rendered to the Marina under this Agreement, hereby waives, except as otherwise herein provided, all claims against Marina and its officers, agents and employees for interruption of or interference with utilities, claims for damage to the Vessel, her gear and her equipment, or any goods, wares, or equipment in, upon, or about the Vessel or the Common Areas, and for injuries or death to persons including, but not limited to, Licensee's family, agents, licensees or invitees, including those occurring on, in or about the Vessel or the Common Areas from any cause whatsoever arising at any time including, but not limited to, theft, fire, storm, riots, strikes, collision, insufficiencies involving the electrical and other utility systems, chaffing, sinking, Marina negligence or otherwise. Licensee agrees to indemnify, protect and defend the Marina from and against all such claims. Solely for the purpose of this Paragraph, the term "Common Areas" shall include but not be limited to all areas in, on or around the Vessel, the slip, the dock areas, the walks, floats, ramps,

gangways, convenience facilities, parking areas, walkways, and roads in, around and leading to and around Marina's premises.

b. **In the absence of gross negligence or willful misconduct by the Marina, which shall not be presumed and must be affirmatively established, neither it nor its respective officers, directors, agents, affiliates or employees shall under any circumstances whatsoever be charged with or liable for direct, consequential or any other damages sustained, no matter how occurring, by Licensee or his/her family, employees, invitees, charterers or underwriters, including but not limited to loss of or damage to the Vessel or any other personal property caused by theft, fire, collision, chafing, dock maintenance or faulty repair, or by reason of any other cause, or for personal injury or death, even if occasioned by the negligence of the Marina or its employees, officers or agents.** Licensee agrees to indemnify, protect and defend the Marina from and against any and all actual or potential liability arising or potentially arising from any such damage, injury, death or other loss by Licensee and/or his her/family, employees, invitees, charterers and/or underwriters. In the event Licensee does not wish to be bound by the exonerations from and limitations of liability inuring to the benefit of the Marina hereunder, the Marina shall and does agree not to enforce any such provisions herein, provided Licensee agrees to and does pay wharfage fees in a sum equal to the transient rates currently in effect, or twice the current usual wharfage fees for non-transient vessels, which ever fee is higher. If the Licensee elects to pay the higher fee and opt out of the said exoneration and limitation terms, Licensee must so notify the Marina in writing, and in such event it is understood all other terms and conditions herein shall remain fully enforceable, including the right to terminate this Agreement without cause upon providing 30 days advance notice. Nothing in this Agreement is intended to or shall be construed as exonerating the Marina from liability based on harm directly caused by its willful misconduct or gross negligence.

c. The Marina contracts for wharfage and sets wharfage rates only based on the insurance and limited liabilities as set forth herein. It is therefore agreed that in the event any exoneration or limitation of liability provided herein in favor of the Marina is determined by a Court of competent jurisdiction to be unenforceable, the Marina's liability shall then be strictly limited to a sum equal to the per occurrence limit of the policy of insurance which the Licensee is required hereunder to obtain naming the Marina as an additional insured. Licensee accepts the above described risks of property damage/loss, personal injury and death occasioned by the acts or omissions of the Marina or its agents, employees, officers, directors, owners or affiliates, and Licensee agrees to purchase and maintain such insurance against such risks as Licensee deems prudent and shall look only to said insurance for compensation or damages related to any such loss regardless of the legal or physical responsibility therefor. As to all such policies of insurance and all claims made thereon, for himself/herself/itself and his/her/its insurers, Licensee specifically waives all right of subrogation against the Marina and its agents, employees, officers, directors, owners or affiliates. Nothing in this Agreement is intended to or shall be construed as exonerating the Marina from liability based on harm directly caused by its willful misconduct or gross negligence.

16. Use of Alcohol Stoves/Ovens Prohibited. Licensee shall not use, and shall prevent all aboard his/her Vessel from using, any alcohol stove or oven while the Vessel is located at the Marina's premises.

17. Discharge of Prohibited Materials. In the event Licensee discharges, or permits the

discharge, of human waste, oil, gasoline or any other noxious or hazardous material from his/her Vessel, Licensee shall immediately take all necessary action to clean up such discharge in accordance with applicable laws. In the event of such a discharge, both the License Agreement and this Addendum thereto shall be regarded as fundamentally breached, in which event the Marina shall be entitled to immediately and without notice terminate all wharfage services and recover from Licensee any and all clean-up and associated costs incurred, including attorney's fees.

18. No Operation of Business from Vessel. Licensee shall not operate any business from his/her Vessel while she is located at the Marina's premises without the prior written approval of the Marina.

19. Delivery of Mail. Licensee shall maintain an independent means for delivery of mail, such as a post office box, and shall not cause any mail addressed to him/her to be delivered in care of the Marina without the express prior written approval of the Marina.

20. No Mounting of Satellite Dishes on Marina Property. Licensee shall not affix or cause to be affixed a satellite dish or any other object to pilings or other Marina property, without the express written consent of the Marina.

21. Whole Contract/Modifications Must Be In Writing. The terms herein contained and in the License Agreement accurately reflect the complete understanding of the parties, and any modifications thereto must be written and executed by all parties hereto to be effective.

22. No General Waiver. Waiver of any provision or condition herein by the Marina shall not be deemed to be a continuing waiver or a waiver of any other provision or condition.

23. Understanding of and Assent to All Terms. Licensee has been afforded ample opportunity to fully read this Agreement and Attachment A, "Rules and Regulations", and to consult with counsel prior to executing it, and by executing it he/she attests that he/she has read, understands and agrees to abide by each and every term herein contained.

24. Licensees Legal Capacity. Licensee attests that he/she is legally entitled to bind the Vessel to all terms of this Agreement, that he/she is not, at the time of reviewing/executing this Agreement, under the influence of alcohol or any legal or illicit drug, and that he/she has reached the legal age of majority and is not legally incapacitated or otherwise unable to fully understand and appreciate each and every term contained in this Agreement.

Licensee

Date: _____

Harbormaster or Authorized Representative

Date: _____

ATTACHMENT A

RULES AND REGULATIONS

Note: These Rules and Regulations constitute an integral part of the Addendum to the Marina License Agreement. All Live Aboard Licensees shall be in compliance with the provisions of these Rules and Regulations at all times. These Rules and Regulations are for the benefit of the Marina and all of all those who maintain a vessel at the Marina. Boat owners and Licensees are required to notify the Marina of any accidents or unsafe or hazardous conditions that come to their attention.

1. Water and Power Lines. Neither water nor power lines shall cross main head walks. To conserve water, automatic shut-off nozzles must be attached to hoses. Hoses present on a dock can constitute a trip hazard, and hoses can burst if deteriorated and the water is turned on. Hoses therefore may not be connected or placed on docks unless they are actively being used. When not in use they must be stored aboard the Owner/Licensee's vessel or in any dock box that the Marina might provide. In accordance with applicable Fire Codes and Regulations, all connections made to the Marina receptacles shall be grounded and U.L. approved. Shore power cables not being actively used must be stowed aboard the vessel or, if provided by the Marina, in a dock box.
2. Safe Mooring. All vessels shall be moored in a safe manner, and Vessel Owner/Licensees shall comply with all directions or recommendations made by the Harbormaster pertaining to the securing or mooring of Vessels.
3. Vessel Inspections. The Marina reserves the right to inspect all boats to determine if they are properly identified and equipped for safe operation in accordance with Coast Guard Regulations and other applicable regulations.
4. Seaworthiness of Live Aboard Vessels. Live aboard vessels shall be maintained in seaworthy condition, and as specified by BCDC permit must be capable of "active self-propelled navigation". Live aboard vessels shall demonstrate this condition at any time upon request of the harbormaster, and shall exit their assigned slip and the Marina under their own power no less than twice annually. The biannual movement plan/date shall be provided to the Marina staff in advance of the scheduled movement for logging. Failure to comply with this requirement may result in termination of live aboard privileges.
5. Fishing/Swimming. Fishing or swimming from Marina premises shall not be permitted.
6. Bicycles/Skates, Etc. No person shall roller skate, roller blade, skateboard, ride bicycles, motor scooters or motorcycles on the docks or gangways located at the Marina.
7. Projections Beyond End of Berth. Unless the Marina otherwise agrees in writing, no

vessel or part of any vessel (including all extensions such as swim steps, booms, bait tanks, etc.) may project beyond the end of the berth into the waterway, and in no event may any vessel pose a risk to safe navigation of other vessels. No part of the boat, including any bowsprit, bow plank, anchor, and anchor rollers may overhang the walkway(s).

8. Children. Children under 16 years are not permitted on docks without the immediate presence of their parents or other responsible adults. Non-swimmers or toddlers are requested to wear life jackets when on the docks or boat decks. Children under 18 must have adult supervision while on the Marina docks.

9. Hazardous Activities/Barbecues. All high-risk fire hazards, *i.e.*, refueling boats and transferring fuel at dock side, storing flammable material on docks, *etc.* is strictly prohibited. Barbecues are strictly prohibited on all dock areas. Use of charcoal barbecues is not allowed on vessels. Gas fired barbecues are permitted, but only if they are located aboard a vessel.

10. Discharges from Vessels/Disposal of Liquids. No tenant shall throw, discharge or deposit from any boat or float any refuse matter, oil, spirits, inflammable liquid, oily bilge water or other contaminants into the water or Marina premises. All such substances shall be deposited at appropriate disposal sites. Vessels with automatic bilge pumps shall be maintained in such a manner as to prevent the discharge of contaminants overboard. Marina prohibits the use of detergents and emulsifiers on fuel or oil spills. Marina requires tenants to use oil-absorbing materials in vessel bilges and in boat slips. In the event of a discharge of oil or other contaminant, the Vessel Owner/Licensee is required to immediately notify the Marina, the U.S. Coast Guard and all other agencies, as required by law. Owner/Licensee shall also immediately take all necessary actions to remove spilled substances from the water and from all pilings, vessels and other surfaces impacted by the spill. The Owner/Licensee shall if necessary retain the services of a professional pollution response company. Marina prohibits open containers of paints or other maintenance supplies on the docks. Liquids must be stored only in sealed containers aboard the Owner/Licensee's vessel or off the Marina's premises.

11. Use of Chlorinators. Use of boat toilets not equipped with chlorinators or effluent treatment or storage devices shall not be permitted within the Marina. The Marina reserves the right to inspect all boats for installation and proper operation of such sanitation devices.

12. Laundry. There shall be no laundering or drying of wearing apparel or towels other than in the interior of vessel. Drying of clothes or other items on deck or in a vessel's rigging is prohibited.

13. Noise and Conduct. Disorder, depredations or indecorous conduct by tenant or his visitors that might injure a person, disturb other berth tenants, cause damage to the property or harm the reputation of the Marina shall be just cause for immediate termination of the Marina License Agreement. Owner/Licensee shall not make or allow any disturbing noises on the docks or anywhere on the premises, with particular emphasis between the hours of 7 p.m. and 9 a.m.,

either by Owner/Licensee or his/her family or guests, nor shall Owner/Licensee permit such persons to engage in any conduct which will interfere with the rights, comforts or convenience of others. The activities and conduct of Owner/Licensee and/or Owner/Licensee's family and Owner/Licensee's guests while on the Marina's property must be reasonable at all times. Except for entering or leaving the slip or as necessary in an emergency, main engines, power-generation equipment, or other noise-making machinery shall not be operated between the hours of 7 p.m. and 7 a.m. without prior permission from Marina. Halyards shall be secured to eliminate noise. Owner/Licensee assumes full responsibility for his/her guests' conduct and agrees to be held jointly and severally liable for all consequences of his/her guests actions or misconduct. Owner/Licensees are not permitted to have parties on the dock without prior consent of the Marina.

14. Engine Operation. Engines may not be operated in gear while boats are secured to dock. Engines shall not be operated for more than 15 minutes at any given time while the vessel is in her slip.

15. Speed Limit. The speed limit within Marina is steerage only, with no wakes and not greater than 5 miles per hour.

16. Improper Vessel Handling. Improper or unsafe boat handling that is, in the Harbormaster's unfettered discretion unsafe or otherwise improper, shall be just cause for immediate termination of the Marina License Agreement.

17. Use of Floats. The use of docks/floats to store or place supplies, materials, accessories, or gear of any kind shall not be permitted within the Marina.

18. Boarding Steps and Other Dock Obstructions. Anything left on docks or other areas of the Marina pose potential hazards to all on the premises. The safety of those on Marina property is a matter of paramount importance. Therefore, apart from boarding steps that have been approved by the Marina, nothing may be left on the docks or other places located on the Marina's premises. Only one boarding step (if approved) may be used per vessel. If not stored aboard Owner/Licensee's Vessel, water hoses may be placed on the dock, but must be neatly coiled and situated immediately adjacent the Vessel, in a manner that it will not present a trip hazard. Hoses must be disconnected from the dockside connection and the vessel at all times when not actively being used. Temporary, removable, non-affixed, non-secured dock steps used for ingress to and egress from a vessel shall not be wider than one-half of the width of the finger to which the Vessel is moored, and no more than three feet in length. The steps must be of a light weight construction, must blend in with the decor and must be approved in advance of placement by the Marina. The Marina reserves the right to prohibit storage within boarding steps.

19. Working on Vessel. Apart from ordinary maintenance, no work involving the Vessel may be accomplished while at the dock or otherwise on Marina property. Prohibited work includes, but is not limited to, hull painting, engine repair, transmission repair, heavy sanding,

use of paint remover, spray guns, or the burning of paint on the topsides or above the decks. Vessel Owner/Licensees are required to recover and dispose of all sanding dust. Contractors hired by Owner/Licensee to work on the Vessel must be approved by the Marina prior to the commencement of such work, must sign a Premises Access Agreement at the Marina Office, and each such contractor must maintain and provide proof of liability insurance in an amount of at least \$500,000, and worker compensation coverage for employees. Owner/Licensee further agrees to comply with all posted Rules and Regulations of the Marina and/or all other governmental entities insofar as such rules and regulations pertain to mooring, berthing and other uses of facilities and waters in the Marina area.

20. Damage to Marina Property. Each tenant will be held responsible for any damage to the Marina premises and/or structures (including docks, ramps, electrical pedestals and/or utilities) caused by tenants, his guests, agents and/or employees. Owner/Licensee is required to immediately clean up any oil, paint or other materials that are spilled, dripped or otherwise applied to the docks or other Marina property. Such damage will be repaired or corrected solely by Marina at the expense of the tenant.

21. Solicitations. No person may solicit business or offer for sale goods, wares, merchandise or services, or solicit orders for such sales on the premises of the Marina.

22. Posting of Signs. Unauthorized advertising signs, for sale signs or notices are prohibited aboard any boat in the Marina or on Marina premises.

23. Commercial Use of Vessel. Use of any boat moored at the Marina for commercial purposes is not permitted without the prior written approval of the Marina.

24. Responsibility for Damages. The Marina is not responsible for any losses on or damage to boats at the Marina. Each tenant will be held responsible for damage which he and/or his boat may cause to other boats or structures in the Marina.

25. Small Boat Storage. Dinghies, sabots, inflatables, kayaks, canoes and other auxiliary craft must be stored on the Vessel and not in the slip, unless the Marina otherwise so approves in writing, in advance.

26. Amended of Rules/Statutes/Regulations. Vessel Owner/Licensees are required to comply with not only existing ordinances, statutes and Rules and Regulations, but also to abide by all amendments to such rules, statutes and regulations and all newly adopted ones.

27. Television Antennas. Digital television antennas, including satellite dishes of no more than 24" in diameter may be utilized on vessels if approved by the Harbormaster. Approved dishes and antennas shall be mounted only upon the vessel.

28. Unauthorized Moorage. No vessel may be moored at Marina unless a current Marina

License Agreement is in effect between the Owner/Licensee of the Vessel and the Marina.

29. Use of Approved Equipment/Alterations to Docks & Premises. All equipment used on floats by tenants (dock wheels, boarding ladders, etc.) must be of a type approved by Marina. Vessel Owner/Licensees may not install additional dock lockers, fenders, bumpers, rub rails, rollers or in any way make alterations to the dock and fingers. All installations must be approved by the Marina on an individual basis.

30. Maintenance of Slip and Surrounding Areas. Owner/Licensee agrees to maintain the slip, the dock box, the walks, floats, ramps, gangways and docks in, about and surrounding the slip in a neat, clean and unobstructed condition at all times. Should it become necessary for Marina to maintain the area in said condition, it will be done at Owner/Licensee expense.

31. Disposal of Refuse. Owner/Licensee shall not deposit into any garbage can or other receptacle located on Marina property any of the following: (1) paint, varnish, thinner, non-edible oil or other flammable or hazardous materials; (2) vessel parts, including but not limited to batteries, engine machinery parts, interior parts, fastenings or upholstery; or (3) any item weighing in excess of 20 pounds.

32. Pets. Pets are permitted, subject to the following conditions. Cats must be carried to vessels and must remain aboard until they are carried from the vessel later in the day. Dogs must be leashed at all times they are not aboard vessels. Owner/Licensees are required to clean up all pet droppings and dispose of them properly. Pets may not be left unattended aboard vessels. Excessive barking and general nuisances caused by pets, which determination shall be within the Marina's sole discretion, will not be permitted and might result in termination of the Marina License Agreement. Owner/Licensees must maintain their pets in their presence at all times when they are on the Marina's premises, and may not leave pets unattended aboard their vessels. Owner/Licensee agrees that upon request by the Harbormaster or his/her subordinates, in response to a complaint or complaints made by others at the Marina, Owner/Licensee shall immediately remove any pet to a location off of the Marina's premises.

33. Flammable Materials & Fuel Leaks. Owner/Licensee agrees that in the event his or her Vessel experiences the leak or spill of any fuel or other combustible liquid within the interior of the Vessel, he or she shall immediately contact the Fire Department and the Marina Office to report such leak or spill. If the Marina Office is closed the Owner/Licensee shall immediately call the after-hours emergency phone number: _____. Owner/Licensee further agrees in the event of such leak or spill to immediately contact an emergency vessel towing service to arrange for the removal of the Vessel from the Marina, provided it has been determined this can be safely accomplished. Owner/Licensee shall, before returning the Vessel to the Marina, arrange to have the problem(s) causing any leak permanently corrected.

34. Fishing and Fish Cleaning. Fishing is not allowed in the Marina under any circumstances from boats or docks. No fish cleaning is permitted on the docks or in the slips. If fish are cleaned

aboard a vessel, the waste products may not be deposited into the water.

35. Storage of Equipment. Owner/Licensee shall not store or leave any items on the floats, docks, fingers or landings, including plants, bicycles, dinghies and other items. Bicycles must be stored on the Vessel or on any dedicated bike rack, if the Marina elects in its sole discretion to provide one.

36. Restricted Access Through Gates. In the interests of security, safety and privacy, vessel owner/Licensees and their guests are not permitted to open gates for any individual not personally known to be a Marina tenant.

37. Dock Carts. Dock carts owned by Vessel Owner/Licensees are to be stored aboard Owner/Licensee's Vessel or vehicle when not in use, and not left on docks or other Marina property. The Marina may but is not required to provide dock carts for use by Vessel Owner/Licensees. If it elects to do so, Vessel Owner/Licensees shall return dock carts after use to the area designated by the Marina for dock cart storage.

38. Maintenance Best Management Practices. Owner/Licensee and Owner/Licensee's contractors shall adhere to the following procedures. The Marina is a certified "Clean Marina." A failure to follow these policies /procedures might result in immediate termination of the Owner/Licensee's Contract for Private Wharfage.

39. General Environmental Policies.

1. All contractors, independent contractors and self-employed boat workers hired by Owner/Licensee must maintain proof of insurance in the minimum amount of \$500,000, a current business license, worker compensation coverage for employees and register with and receive prior approval from the Marina before beginning work on the Marina's premises. They must also execute a Premises Access Agreement at the Marina Office. The Marina requires the use of Best Management Practices for a clean environment.

2. Owner/Licensees may undertake basic boat projects as needed to maintain their Vessel's safety, appearance and utility, as specified above.

3. New or substantial work must be approved by the Marina prior to undertaking the project.

4. All Owner/Licensees are reminded that the Marina is a recreational area and not a boat yard or repair facility.

40. Engines and Bilges/Disposal of Contaminants, Parts, Etc.

1. Use absorbent bilge pads to soak up oil and fuel.

2. Do not discharge bilge water if there is a sheen to it.

3. Recycle oil and fuel products properly.

4. Dispose of absorbent pads and filters properly.

5. Commonly encountered waste products such as used oil, oil pads and oil filters may

be accepted at the Marina's oil recycling facility during regular working hours. These products shall not be left unattended at the onsite recycling facility.

6. Do not dispose of any fuel, paint, oil, other liquid waste, absorbent pads/rags, batteries, engine parts, or other contaminated materials into the Marina's trash dumpster. These materials must be removed from the Marina's premises and disposed of properly at a facility authorized to dispose of such materials.

41. Painting, Varnishing and Bottom Paint.

1. Limit the amount of open solvents or paints on the docks to one (1) gallon at a time.
2. Always mix paints and epoxy over a tarp.
3. Always use a pan or drop cloth.
4. Use up remaining bits of paint by spreading it on an old board.
5. Spray painting is not allowed in the marina.
6. Do not dispose of any paint, oil, varnish, absorbent pads/rags or other contaminated material into the Marina's trash dumpster.
7. Marina recommends the use of non-toxic, biocide free bottom paints.
8. Bottom cleaning must utilize Best Management Practices to minimize discharge of bottom paint.
9. Vessel Owner/Licensees are encouraged to use environmentally friendly hull cleaning companies who use Best Management Practices and monitor their divers.

42. Surface Preparation.

1. Use biodegradable soaps, cleaners and teak cleaners approved for ocean waters.
2. Liberally use tarps to capture all scrapings, debris and drips. No material may enter the water.
3. Use vacuum power sanders, vacuum all dust and debris. No material may enter the water.

43. Sewage.

1. Untreated sewage must never be discharged into the harbor waters.
2. Store sewage in holding tanks and dispose of sewage properly at pump-out stations.
3. Never discharge Type I sewage while moored in the Marina.
4. Use shore-side restrooms as often as possible, rather than toilets aboard vessels.

44. Solid Waste Disposal.

1. Dispose of all garbage in proper shore-side dumpster.
2. Let empty cans dry thoroughly before disposing of them into trash dumpster.
3. Please recycle green, brown and clear glass, newspapers and aluminum products.

45. Chemical Storage.

1. Purchase only the amount of chemicals/paints you need for a project.
2. Review storage of paints, varnishes, solvents, and chemicals every six months.
3. Properly dispose of old or unnecessary products.
4. Do not store more than two gallons (total) of these products on your Vessel.

5. Never store any of these products in a dock step.

46. Contact the Marina Office for Recycling Locations, Pump-Out Station Locations, and Commercial Pump-Out Services

Owner/Licensee's Initials or Signature: _____

Co-Owner/Co-Licensee's Initials or Signature: _____

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

May 30, 2018

City of Brisbane
50 Park Place
Brisbane, California 94005-1310

ATTENTION: Randy Breault, Director of Public Works/City Engineer

SUBJECT: BCDC Permit No. 1978.014.011 - Brisbane Marina Live-Aboard Boats

Mr. Breault:

Enclosed please find an original of BCDC Permit No. 1978.014.011, stamped "BCDC Original," and one copy, stamped "Permittee's Copy," both executed by the Executive Director, incorporating the amendment requested in your letter dated August 24, 2017. In the amended permit, deleted language has been ~~struck through~~ and added language has been underlined.

I am issuing this amendment, which is included in the attached amended permit, on behalf of the Commission and upon the following findings and declarations:

1. This amendment to the permit is issued pursuant to Regulation Section 10810 upon the same criteria provided for the issuance of administrative permits in that the project authorized by this amendment, is a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).
2. The amendment to the permit is consistent with the San Francisco Bay Plan and the McAteer-Petris Act because the proposed project will not adversely affect the Bay nor public access to and enjoyment of the Bay consistent with the project.

You must (1) **complete** the acknowledgment section of the amended permit stamped "BCDC Original," which indicates that you have read and that you understand all of the terms and conditions of the amended permit, and (2) **return** that entire executed "BCDC Original" to the Commission's office within the ten-day time period. The copy stamped "Permittee's Copy" should be retained by you for your records along with the Notice of Completion and Declaration of Compliance form, which you must return to the Commission upon project completion.

Furthermore, your permit contains special conditions which require you to take certain specific actions. Please understand that **no** work may commence on the project until the permit stamped "BCDC Original" is executed and returned to the Commission. Until the Commission receives the executed permit, the permittee does not have the necessary authorization for the



Randy Breault, Director of Public Works/City Engineer
City of Brisbane
May 30, 2018
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work authorized under the permit. The commencement of any work within the Commission's jurisdiction without the necessary authorization from the Commission is a violation of the McAteer-Petris Act and could subject you to substantial fines.

If you should have any questions regarding the amended permit or the procedure outlined above, please contact me at 415-352-3645 or erik.buehmann@bcd.ca.gov.

Very truly yours,



Erik Buehmann
Chief of Federal Consistency and Permits

EB/ra
Enc.

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

PERMIT NO. 1978.014.11

(Originally Issued on January 9, 1979, as
Amended Through May 30, 2018)

AMENDMENT NO. ELEVEN

City of Brisbane
50 Park Place
Brisbane, California 94005

On December 15, 1978, the San Francisco Bay Conservation and Development Commission, by a vote of 17 affirmative, 0 negative, approved the resolution pursuant to which the original permit had been issued. On September 26, 1979, and April 8, 1980, pursuant to Regulation Section 10822, the Executive Director approved Amendment Nos. 1 and 2 to the original permit. On October 2, 1980, the San Francisco Bay Conservation and Development Commission, by a vote of 15 affirmative, 5 negative, approved the resolution pursuant to which Amendment No. Three was issued to the original permit. On August 13, 1982, April 26, 1985, April 1, 1986, January 28, 1991, November 20, 1997, July 29, 2005, ~~and~~ March 23, 2006, and May 30, 2018, pursuant to Regulation Section 10822, the Executive Director approved Amendment Nos. Four, Five, Six, Seven, Eight, Nine, ~~and~~ Ten, and Eleven, respectively, to which this amended and corrected permit is hereby issued:

I. Authorization

A. **Authorized Project.** Subject to the conditions stated below, the permittee is granted permission to do the following within and along the eastern shore of Sierra Point and the eastern side of the Brisbane Lagoon, in the City of Brisbane, in San Mateo County.

1. In the Bay:

- a. Dredge 275,000 cubic yards of material at the marina basin, the approach channel, and the existing Oyster Point Channel, to a depth of -8 feet Mean Lower Low Water (MLLW) and dispose of the dredge materials at the federally-designated disposal site off Alcatraz Island;
- b. Place, use, and maintain floats and piles for ~~600~~ 580 small boat berths (not houseboats ~~or live-aboard boats~~), two breakwaters, a public hoist dock, a fuel and pump-out dock, a public fishing pier, and a boat launching ramp covering approximately 2.8 acres of Bay surface area as shown on plans entitled "Preliminary Study, Sierra Point Marina," dated March 14, 1980;
- c. Install and maintain approximately 4,000 pilings, riprap, breakwaters, and bulkheads to protect the eastern edge of the Sierra Point fill;



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- d. Install and maintain 20 cubic yards of riprap around the abutments of the culvert structure at the Lagoon, north of Sierra Point (Amendment No. Four); ~~and~~
- e. Repair and maintain all facilities on an in-kind basis with no overall increase in size or Bay fill (Amendment No. Nine); and
- f. Use a maximum of 10% of the 580 existing berths (58 berths or 10% of existing berths, whichever is fewer) at the marina for live-aboard boats (Amendment No. Eleven).

2. Within the 100-foot Shoreline Band:

a. At Sierra Point

- (1) Construct, use, and maintain a two-story, approximately 12,000-square-foot combination bait shop/restaurant;
- (2) Construct, use, and maintain a three-story, approximately 10,000-square-foot combination community hall/restaurant;
- (3) Construct, use, and maintain a two-story, approximately 6,400-square-foot coffee shop;
- (4) Construct, use, and maintain a two-story, approximately 8,000-square-foot restaurant;
- (5) Construct, use, and maintain 13 parking spaces;
- (6) Construct, use, and maintain a two-story, approximately 2,200-square-foot harbormaster building;
- (7) Construct, use, and maintain a portion of a boat repair yard and associated facilities covering not more than 0.33-acre;
- (8) Provide approximately 3.75 acres of landscaped public access including a minimum width of 15 feet from the shoreline to the structures with a 10-foot-wide pathway along the approximately 2,000 lineal feet of eastern shoreline of Sierra Point;
- (9) Construct, use, and maintain concrete stairs between the lower and upper parking lots at dock gate 5 (Amendment No. Nine);
- (10) Construct, use, and maintain an approximately 510-square-foot footprint, eight to 15-foot-tall, peak-roofed restroom, shower, and laundry facility for boaters with slips in the marina, adjacent to Gate 3 (Amendment No. Ten); and

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- (11) Repair and maintain all facilities at Sierra Point on an in-kind basis (Amendment No. Nine).

b. **At Brisbane Lagoon:**

- (1) Construct, use, and maintain a 115-foot-long retaining wall over the existing culverts that provide tidal action to the Lagoon from the Bay (Amendment No. Four);
- (2) Construct, use, and maintain a 5,850-foot-long, 24-foot-wide asphalt/concrete roadway known as Sierra Point Parkway (Amendment No. Four);
- (3) Construct, use, and maintain two, 5,850-foot-long, 8-foot-wide bicycle lanes on the road known as Sierra Point Parkway (Amendment No. Four);
- (4) Provide approximately 6,350 square feet of public access improvements including 12 paved parking spaces south of the culverts, with 2,525 square feet of landscaped public access including benches and trash receptacles, all as shown on plans entitled "Landscaped Plan, Fisherman's Park," dated June 9, 1982, prepared by Royston, Hanamoto, Alley and Abey, Landscape Architects, and "City of Brisbane, Local Improvement District 79-1, Sierra Point Parkway and Lagoon Way, Second Increment," dated May 17, 1982, prepared by James F. Carroll and Associates, Consulting Civil Engineers and Surveyors (Amendment No. Four); and
- (5) Repair and maintain all facilities at Brisbane Lagoon on an in-kind basis (Amendment No. Nine).

B. **Application Dates.** This amended authority is generally pursuant to and limited by (1) the original application dated September 14, 1978; (2) ~~your~~ the letters dated August 22, 1979 and August 27, 1979, requesting Amendment No. 1; (3) ~~your~~ the letter dated March 14, 1980, requesting Amendment No. 2; (4) ~~your~~ the letter and application dated July 8, 1980, and subsequent amendments and explanatory materials, requesting Amendment No. 3; (5) ~~your~~ the letter dated June 16, 1982, including ~~your~~ the letter of clarification dated August 4, 1982, requesting Amendment No. 4; and (6) ~~your~~ the letters dated March 4, 1985, March 27, 1986, December 18, 1990, October 31, 1997, June 24, 2005, ~~and~~ December 23, 2005, and August 24, 2017, requesting Amendment Nos. Five, Six, Seven, Eight, Nine, ~~and~~ Ten, and Eleven, respectively, and all subsequently submitted correspondence and exhibits, but subject to the modifications required by conditions hereto.

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C. **Deadlines for Commencing and Completing Authorized Work.** Work authorized herein was to commence prior to October 1, 1980, or the original permit, as amended and corrected, was to lapse and become null and void. Such work was also to be diligently ~~prosecuted~~ pursued to completion and was to be completed within five (5) years of commencement or by January 1, 1985, whichever was earlier, unless an extension of time ~~is~~ was granted by a further amendment of this amended and corrected permit. Four time extensions were granted for this original permit, through Amendment Nos. Five, Six, Seven, and Eight.

The work authorized under Amendment No. Nine ~~must~~ was to commence by August 31, 2006 and be completed by August 15, 2007, unless further extensions of time are ~~was~~ granted.

The work authorized by Amendment No. Ten ~~must~~ was to commence by April 15, 2007 and be diligently pursued to completion and ~~must be~~ completed by April 15, 2008, unless further extensions of time are ~~were~~ granted. The in-kind repair and maintenance of existing boat docks, breakwaters, riprap, and shoreline structures and facilities may occur as needed for so long as the originally authorized project exists.

The authorization for live-aboard boats in Amendment No. Eleven may continue as long as the recreational marina remains in place.

D. **Summary of Bay Fill and Public Access.** The project, as amended and corrected, will result in fill, in the form of pilings, breakwaters and berths, covering approximately 2.8 acres of Bay surface area. The fill will be for a recreation marina, a water-related recreation use, and shoreline protection. New public access will be provided along the approximately 2,000 linear feet of Bay shoreline including a minimum 15-foot-wide open space area with a 10-foot-wide pathway in between the shoreline and the structures that will cover approximately 3.75 acres. In addition, approximately 6,350 square feet of new public access, consisting of 12 paved parking spaces and 2,350 square feet of landscaped public access will be provided at the Brisbane Lagoon, north of Sierra Point.

II. Special Conditions

The amended and corrected 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. **Plan Review.** No work whatsoever shall be performed at any location pursuant to this permit, as amended and corrected, until final precise site, engineering, grading, architectural, and landscaping plans for that portion of the work have been submitted to, reviewed, and approved by or on behalf of the Commission.

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Architectural plans submitted for review shall include all outside architectural building details and fixtures, including, but not limited to, the location, dimensions, and color of all outside signs and other fixtures. In each instance, plan review shall be completed within sixty (60) days after receipt of the plans to be reviewed. Approval or disapproval shall be based upon conformity with the permit, as amended and corrected, and upon a determination of or on behalf of the Commission that the proposed construction will be in accordance with (a) the terms and conditions of this amended and corrected permit and the all application materials, (b) the information presented to and the recommendations of or on behalf of the Engineering Criteria Review Board for engineering plans, and (c) the information presented to and the recommendations of or on behalf of the Design Review Board for grading, site, architectural and landscaping plans.

2. **Plans for Buildings.** All buildings shall be individually designed for the project. Building plans will be approved or disapproved pursuant to Special Conditions II-A-1 and II-A-5 on the basis of the proposed building's compatibility with the site, nearby structures, landscaping, public access areas and parks and upon a finding that the building design takes maximum advantage of the bayside location at the Brisbane waterfront.
3. **Plans for Public Access Areas.** Prior to constructing any facilities authorized herein, the permittee shall prepare and submit for approval, a plan showing the public access areas and improvements required by Special Condition II-D. Such plan shall be accompanied by a written, itemized estimate of the cost of the improvements projected to the time when the improvements will be provided.
4. **Marina Construction.** The standards of construction for the marina piles, floats and appurtenant facilities shall be equal to or better than criteria for such construction established by the State Department of Boating and Waterways and the Office of Architecture and Construction (OAC).
5. **Changes to Approved Plans.** After final plans have been approved pursuant to Special Condition II-A-1, no changes shall be made to such approved plans without first obtaining written approval of the proposed change by or on behalf of the Commission. Approval or disapproval shall be made within forty-five (45) days after the proposed change in plan has been submitted for approval and shall be based on a finding that the change is authorized by this permit, as amended and corrected, and would not detrimentally affect public access, landscaping, open space, open water or other public benefits required by this amended and corrected permit.

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6. **Conformity with Approved Plans.** All leases, contract specifications and all structures and improvements at the project site shall conform to the final plans approved pursuant to this special condition. No structure shall be placed nor any improvement undertaken that is not clearly shown on the approved final plans. After construction, no changes to the exterior of any structure shall be made, no additional structures shall be built, nor shall open space, marsh, open water, landscaped or public access areas be altered without first obtaining written approval by or on behalf of the Commission pursuant to Special Condition II-A-5.
7. **Concrete Stairway.** The stairway authorized under Amendment No. Nine shall conform with the plans entitled "City of Brisbane, 400 Marina Boulevard, Revised Stairway," dated October 1, 2004 and received in the Commission's offices on June 24, 2005. No final plan approval is required for this project (Amendment No. Nine).
8. **Boater Restroom, Shower, and Laundry Facility.** The restroom, shower, and laundry facility authorized under Amendment No. Ten shall conform with the plans entitled "The Marina Restrooms, 400 Sierra Point Parkway (By Gate 3)", dated November 22, 2005 and received in the Commission's offices on December 23, 2005. No final plan approval is required for the new restroom at Gate 3 (Amendment No. Ten).

B. Notice to Private Developers. Prior to leasing, renting or otherwise providing any area or constructing any commercial, residential or recreational building in the shoreline area that is subject to BCDC jurisdiction, the permittee shall provide a copy of this amended and corrected permit to any person or non-governmental entity leasing or otherwise obtaining a right to use any area subject to BCDC jurisdiction or participating in the construction of any commercial, residential or recreational building. A copy of the approved permit with any amendments shall be provided to such person or entity prior to the execution of the lease or other instrument or the commencement of construction, whichever is earlier, and shall be accompanied by a written statement specifically calling attention to the provisions of the permit, as amended and corrected, regarding public access, parks, plan review, and design controls.

C. Water Quality

1. **Construction Operations.** All construction operations shall be performed to minimize roiling of the water and to prevent timbers, floats, or other construction materials from drifting and presenting either a pollution or navigation hazard.

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2. **Waste Discharge.** The discharge of any solid or liquid wastes, including oily bilge water, waste oil, or sewage into the Bay within the marina basin, shall be in accordance with federal and state regulations. This restriction shall not apply to the discharge of liquid wastes associated with the use of an automatic bilge pump (Amendment No. Nine).
3. **Sewage Facilities.** The permittee shall install and maintain a convenience facility for the pumping out of boat holding tanks and the disposal of sewage from portable toilets into shoreside sewers.
4. ~~**Houseboats and Live-Aboard Boats.** No houseboat and no live-aboard boat shall be moored at the marina without specific prior written amendment to this permit, as amended and corrected. An amendment to allow houseboats or live-aboard boats shall be granted only upon a finding that the policies of the Bay Plan with regard to houseboats would be met and that the community water supply and the sewage treatment facilities would meet the standards under the Federal Water Pollution Control Act as applied by the Regional Water Quality Control Board, San Francisco Bay Region.~~

54. Use of Marine Toilets

- a. The permittee shall make it a requirement of the use or occupancy of any boat slip that any boat berthed, if equipped with a marine toilet (head), shall contain an adequate holding tank, incinerator recirculation device, or other equivalent device approved by or on behalf of the Environmental Protection Agency and the United States Coast Guard that would receive and retain sewage from the boat's head to preclude discharge of sewage or chemicals into the waters of the marina; or have the marine toilet rendered inoperable while any such boat is moored in the marina. The permittee shall require that marine toilets of boats without holding tanks or equivalent devices are, in fact, rendered inoperable at all times when the boats are moored in the marina.
- b. The permittee shall make it a requirement of the use or occupancy of any boat slip in the marina that any dumping of solid or liquid waste into that portion of San Francisco Bay within the mooring area is forbidden and any such dumping shall be cause for immediate cancellation of the right of such use or occupancy and shall be reported to all appropriate authorities.
- c. The permittee shall submit to the Commission a copy of the berthing agreement which includes the requirements of Special Conditions II-C-5a and II-C-5b.

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- d. The permittee shall provide, in the marina, adequate on-shore restrooms for boat owners, users and guests, and persons using the public access areas required in Special Condition II-D.
- e. The permittee shall permanently and adequately enforce, through appropriate policing, the rules and requirements adopted pursuant to this special condition. The permittee shall submit to the Commission's staff the name, address and telephone number of the person who is responsible at the marina for requiring that the rules and regulations adopted pursuant to this special condition are enforced.
- f. The Commission specifically reserves the right, in the event of repeated or serious problems with dumping of sewage from boats into the Bay within the marina, to require, in addition to the above, either that shoreside sewer connections be provided for each offending boat berth and that said boat be connected to said sewer whenever moored in the marina or, in the alternative, that the permittee, upon written demand of or on behalf of the Commission, shall permanently remove or cause to have removed said offending boat or boats from the marina.

D. Public Access

1. Areas

- a. **Required Public Access Area.** Until this amended and corrected permit is further amended, revoked, or otherwise modified by or on behalf of the Commission, the permittee shall hold and maintain for the public for walking, sitting, viewing and other related purposes a shoreline area within the project including the area shown on plans entitled "Master Plan, Sierra Point Marina," by Blair Consultants, J. F. Carroll and Associates, MacKinley, Winnacker, MacNeil and Associates, Inc., Royston, Hanamoto, Alley and Abey and Woodward-Clyde Consultants, dated July, 1980, and shown in reduced from as Exhibit A. Such area shall consist of a total of approximately 4.5 acres within the entire project and 3.75 acres within the 100-foot shoreline band and along the approximately 2,000 linear feet of shoreline. The only exception to access along the shoreline shall be for those portions of the water uses such as the boat launching ramp, boat repair yard, harbormaster office, etc., specifically approved in this amended and corrected permit. The public access areas, including all plazas and all pathways, shall cover not less than 3.75 acres of area within the 100-foot shoreline band. Furthermore, until this amended permit is further amended, revoked, or otherwise modified by or on behalf of the

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Commission, the permittee shall hold and maintain for the public for walking, sitting, viewing and other related purposes a shoreline area north of the Sierra Point, at the Brisbane Lagoon, consisting of approximately 6,350 square feet, as shown on plans entitled "Landscape Plan, Fisherman's Park," dated June 9, 1982, prepared by Royston, Hanamoto, Alley and Abey, Landscape Architects, and shown in reduced from as Exhibit B. In addition, the permittee shall hold and maintain two, 5,850-foot-long, 8-foot-wide bicycle lanes, on a road known as Sierra Point Parkway, as shown on plans entitled "City of Brisbane, Local Improvement District 79-1, Sierra Point Parkway and Lagoon Way, Second Increment," dated May 17, 1982, prepared by James F. Carroll and Associates, Consulting Civil Engineers and Surveyors.

- b. **Required Public Access at Sierra Point (Amendment No. Ten).** Amendment No. Ten authorizes the construction of an approximately 510-square-foot marina restroom, shower, and laundry facility structure along the marina at the Sierra Point shoreline. However, the original permit authorized the construction of four additional buildings within the shoreline band at the Sierra Point portion of the project site that have not yet been constructed. Some of those four buildings appear to occupy the same space along the shoreline where the restroom would be constructed. Should the marina restroom and the four, previously authorized structures be constructed, it may not be possible for the permittee to provide the required 3.75-acre area of public access at Sierra Point. According to the permittee, this BCDC permit and authorization of the four structures (Items I-2-a-(1), (2), (3), and (4) herein), are based on an outdated City of Brisbane Master Plan. The most recent Master Plan includes only small portions of the structures within the Commission's jurisdiction. Thus, the permittee believes that the required public access area will not be impacted by construction of the restroom. To assure that the restroom will not reduce the area available for public access, the permittee shall request an amendment to this permit prior to constructing any of the four structures, to correct the location and size of the structures within the Commission's jurisdiction and to ensure that useable, high quality public access can continue to be provided at the project site.

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2. **Improvements for Public Access at Sierra Point.** Prior to the occupancy or use of any boat berths or commercial facilities authorized herein, the permittee shall provide, in accord with a plan previously approved pursuant to the amended and corrected permit, the following public access improvements to the public access areas:
 - a. An approximately 2,000-foot-long by 10-foot-wide, meandering all-weather pathway along the shoreline between the south breakwater and the eastern shoreline;
 - b. At least three connections not less than 10 feet in width from the shoreline path to nearby parking areas and at least three connections from the shoreline path to an interior pathway system that may be constructed at interior areas of Sierra Point;
 - c. Landscaping covering not less than 3.75 acres. Plant materials shall be native or native-like;
 - d. One public restroom that is open to the public during daylight hours and free of charge near the boat launch facility;
 - e. Not fewer than ten benches, two picnic tables, and five trash containers placed at convenient locations along the pathway;
 - f. Lighting along the pathway and an irrigation system for the landscaped areas;
 - g. A public fishing pier; and
 - h. Public Access signs of a design approved by staff.
3. **Improvements for Public Access at Brisbane Lagoon and along Sierra Point Parkway.** The permittee shall provide, in accord with Exhibit B attached, and with plans entitled "City of Brisbane, Local Improvements District 79-1, Sierra Point Parkway and Lagoon Way, Second Increment," dated May 17, 1982, prepared by James F. Carroll and Associates, Consulting Civil Engineers and Surveyors, the following public access improvements to the public access areas (Amendment No. Four):
 - a. **Brisbane Lagoon.** The following public access improvements shall be installed and completed by February 1, 1983.
 - (1) An approximately 3,825-square-foot paved parking area consisting of 12 parking spaces immediately south of and adjacent to the culverts at the Lagoon;

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(2) Landscaping covering approximately 2,525 square feet. Plant materials shall be native or native-like; and

(3) Not fewer than three benches and two trash receptacles within the landscaped area.

b. Sierra Point Parkway

(1) Striping and signing of an 8-foot-wide bicycle lane on both sides of Sierra Point Parkway; and

(2) Placement of lane markers along the striping of the bicycle lanes.

4. **Funding.** Prior to the construction of any berths or other improvements at the marina, the permittee shall deposit in a special interest-bearing account sufficient funds amounting to not less than the amount indicated in an estimate of the cost of all public access improvements. Such funds shall be designated for exclusive use to pay for the public access improvements. Evidence that the fund has been created shall be provided to the Commission.

5. **Maintenance.** The areas and improvements required by Special Conditions II-D and II-E shall be permanently maintained by, and at the expense of, the permittee.

Such maintenance shall include, but is not limited to, repairs to all path surfaces, replacement of any plant material that dies or becomes unkempt, periodic clean-up of litter and other materials deposited within the access areas, removal of any encroachments into the access areas, replacing sand washed away from any beach area, and assuring that benches, trash containers, and lighting remain adequate to serve the needs of the public. Within thirty (30) days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site.

6. **Leases to Private Developers.** The permittee shall include in any lease with private developers for commercial, residential or recreational structures, an express reservation of and provisions for pedestrian and bicycle pathways adjacent to any building site and for landscaping.

7. **Drawing.** Prior to the time the marina berths are occupied, but in no case later than March 1, 1980, the permittee shall prepare and file with BCDC a drawing with specific dimensions for the public access areas. The drawing shall also show the improvements required by Special Conditions II-D and II-E.

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8. Reasonable Rules and Restrictions. The permittee(s) 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 would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittee(s) has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

E. Live-Aboard Boat Berth Use (Amendment No. Eleven)

- 1. Live-Aboard Boats.** Live-aboard boats authorized to be moored in the marina pursuant to Authorization Section I.A shall be capable of being used for active self-propelled navigation and shall also be occupied as a residence as that term is defined in California Government Code Section 244. The number of live-aboard boats shall at no time exceed 10% of the total number of berths or up to 58 berths, whichever is fewer. No houseboats, as that term is defined in Commission Regulation Section 10127, shall be moored in the marina;
- 2. Adequate Facilities.** The permittee shall provide occupants of the live-aboard boats convenient bathrooms, parking, showers, garbage disposal facilities, and vessel sewage pump-out facilities. These facilities shall be maintained in a safe and sanitary condition;
- 3. Tidal Circulation.** Adequate tidal circulation shall be maintained in the marina;
- 4. Waste Discharge.** The discharge of any solid or liquid wastes, including oily bilge water, waste oil, or sewage into the Bay within the marina basin, shall be in accordance with federal and state regulations. This restriction shall not apply to the discharge of liquid wastes associated with the use of an automatic bilge pump;
- 5. Berthing Plan.** Within 90 days of issuance of the permit, or prior to the use of any berth for live-aboard purposes, whichever is later, the permittee shall submit for review and approval by or on behalf of the Commission, as required in Special Condition II.A, a plan showing the specific berth of each live-aboard vessel within the marina. The permittee shall request review and approval by or on behalf of the Commission for any changes to berthing locations of live-aboard vessels, pursuant to Special Condition II.A;
- 6. Distribution of Boats.** The live-aboard boats shall be distributed throughout the marina, in a manner that will provide the greatest security benefit to the marina and shall not be concentrated solely in one dock in the marina;

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7. Berthing Agreement and Rules. Within 90 days of issuance of the permit, or prior to the use of any berth for live-aboard purposes, whichever is later, the permittee shall submit for review and approval by or on behalf of the Commission the proposed berthing agreement and rules for live-aboard boats. The berthing agreement shall define a live-aboard boat consistent with the definition provided in Commission Regulation Section 10128;
8. Permittee's Responsibility to Enforce. The permittee shall permanently, continuously and fully enforce, through lease provisions, monitoring, notices, education and other appropriate measures, all requirements imposed by this permit regarding the use of marina berths by live-aboard boats; and
9. Termination of Authorized Live-Aboard Use. Failure to comply with any of the special conditions at any time after the issuance of this amended permit may result in the Executive Director pursuing any or all of the enforcement remedies in Chapter 13 of the Commission's Regulations, including, but not limited to, revocation of this permit.

EF. Access to and on Sierra Point. No work whatsoever shall be performed at any location pursuant to this amended and corrected permit until the permittee presents evidence acceptable to the Commission of an adopted Capital Improvements Program, the formation of and funding for an assessment district, or other appropriate funded mechanism that assures that vehicular public access roads to and through Sierra Point designed to the standards and specifications of the County of San Mateo will be constructed by a specific time and will be sufficient to serve the marina needs.

FG. Title to Dryland Portion. No work whatsoever shall be performed at any location pursuant to this amended and corrected permit until the permittee presents evidence acceptable to the Commission of valid and unfettered title to the 20-acre upland portion of Sierra Point to be devoted to the public marina. Such evidence of title may consist of an agreement executed by Sunset Scavengers and Macor, Inc., real parties in interest, to provide all interest owned or claimed to the 20-acre area where improvements for the marina and public access will be constructed.

GH. Design Guidelines. Prior to the lease or use of any parcel within the remaining approximately 80 acres of Sierra Point (i.e., the area not to be used for the marina), the permittee shall prepare a set of design guidelines to be submitted to the Commission for approval. The guidelines shall include, but shall not be limited to, heights, bulk setbacks, signing, lighting, landscaping, colors and materials for all buildings, a circulation system for vehicles, amount and type of open space and landscaped areas. Review of the guidelines shall be completed within forty-five (45) days after receipt. Approval of the guidelines shall be made by written communication by or on behalf of the Commission.

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Hi. Horizontal Control Points. No work whatsoever shall be performed at any location pursuant to this amended and corrected permit until the permittee installs a minimum of two permanent horizontal control points of a type and at locations approved by or on behalf of the Commission. These control points shall be placed under the supervision of a registered civil engineer or land surveyor, and shall be accurately located and mapped in relation to each other, to the closest known existing control point or other acceptable fixed point in the project area, and to the limits of any proposed fill in the Bay. These control points shall be located so as to facilitate field checking, with simple equipment, of the limits of the fill authorized pursuant to this amended and corrected permit. Such fill limits shall be dimensioned from the control points, or, if the scale of the drawing is adequate, it shall carry a note stating that field dimensions may be scaled from the drawing and the accuracy of such scaling, e.g., "Field dimensions to an accuracy of + 1' may be scaled from this drawing." The control point locations shall be clearly shown on all plans submitted pursuant to Special Condition II-A.

~~I. Abandonment.~~ If, at any time, the Commission determines that the improvements in the Bay authorized herein, have been abandoned for a period of two (2) 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, its assigns or successors in interest or by the owner of the improvements, within sixty (60) days or such other reasonable time as the Commission may direct.

J. In-Kind Repairs and Maintenance. Any in-kind repairs and maintenance operations authorized herein shall only utilize construction material that is approved for use in San Francisco Bay. Construction shall only occur during current approved months during the year to avoid potential impacts to fish and wildlife. BCDC staff should be contacted to confirm current restrictions. In-kind repair and maintenance work shall be confined to existing structural footprints and shall not result in the enlargement of any of the existing structures or overall increase in Bay fill (Amendment No. Nine).

K. 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 (Amendment No. Nine).

~~L. 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, its assignees, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement (Amendment No. Nine).

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III. Findings and Declarations

This amended authorization is based upon the Commission's findings and declarations that the work authorized is consistent with the McAteer-Petris Act, the San Francisco Bay Plan, and the California Environmental Quality Act of 1970, for the following reasons:

A. **Use.** The uses involved in the proposed project, as amended and corrected through August 13, 1982, and subject to the above conditions, are consistent with the Bay Plan, in that Bay Plan Map No. 9 shows a waterfront park-priority designation for both the marina improvements and Lagoon public access improvements.

B. **Fill**

1. **Marina.** The amount of fill for the ~~600~~580-berth marina and the breakwaters, approximately 2.8 acres, is the minimum amount necessary for a water-oriented use for which fill may be permitted in accordance with Government Code Sections 66605(a) and 66605(c), and the Bay Plan Policies on Fill (page 13).
2. **Shoreline Protection.** The riprap placed along 2,000 lineal feet of shoreline at Sierra Point and the 20 cubic yards of riprap placed at the abutments of the culvert structure at the Lagoon are the minimum amount necessary to establish a permanent shoreline in accordance with Government Code Sections 66605(a), 66605(c), and 66605(f), and the Bay Plan Policies on Fill (page 13) because (a) the present shoreline is unsafe; (b) the public and commercial facilities planned along the shoreline must be protected from erosion; and (c) the fill is the minimum amount necessary to establish a permanent shoreline.

C. **Marina Location and Dredging and Excavation.** The excavation of 275,000 cubic yards of material is the minimum amount necessary to provide water area of sufficient depth to moor small boats and operate in the proposed marina, and the disposal of spoils from the marina basin is in accordance with Bay Plan policies in that the spoils will be deposited at the Federal disposal site off Alcatraz Island. The location of a marina in the marina basin is in accordance with Bay Plan Recreation Policies (page 21) because: (1) future maintenance dredging is expected to be minimal; (2) the launching lanes will be placed where wind and water conditions are most favorable for smaller boats; (3) the fill for marina development will be the minimum necessary; and (4) the fill for marina uses is far less than the 3/4:1 land/water ratio specified in the Bay Plan.

D. **Sierra Point and Brisbane Lagoon Public Access.** The proposed project, as amended and corrected through August 13, 1982, and subject to Special Conditions II-D, II-E, and II-G stated herein, will provide maximum feasible public access to the Bay shoreline consistent with the amended project because within the 100-foot shoreline band, approximately 3.75 acres of landscaped pedestrian and bicycle paths will be provided along approximately 2,000 linear feet

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of the east shore of Sierra Point. A total of 4.5 acres of landscaped areas open to the public will be available at Sierra Point and a 6,350-square-foot public access area with 5,850 linear feet of bicycle lanes and roadway will be available at the Lagoon area. In addition, the shoreline areas at Sierra Point and the Lagoon are being improved, developed, and preserved in order to make San Francisco Bay more accessible for the use and enjoyment of people in accordance with Government Code Section 66632.4. The public access area consisting of 4.5 acres at Sierra Point, as conditioned, and the 6,350-square-foot public access area adjacent to the Lagoon with the 5,850-linear-foot road and bicycle path, as conditioned, is consistent with the McAteer-Petris Act and the Bay Plan because they provide public access where there is currently none existing, better landscaping, and a reduction in the total amount of land covered by buildings and parking in the entire project, as amended and corrected. Without completion of the public access described in Special Condition II-D, the Commission could not find that the maximum feasible public access in conjunction with the project was being provided.

E. **Shoreline Band Parking.** This amended and corrected permit approves within the 100-foot shoreline band 13 automobile parking places out of a total of 536 automobile parking places at Sierra Point and 12 parking spaces within the 100-foot shoreline band at the Lagoon.

F. **Environmental Impact.** The City of Brisbane, the permittee and lead agency for the project, certified the Final Environmental Impact Report on Sierra Point Marina with addendum and appendices in September, 1976. The Environmental Impact Report, in part, found that the public benefit from the project substantially outweighed the public detriment due to unavoidable adverse impacts to the environment. Moreover, pursuant to Regulation Section 10910, Amendment Nos. 1, 2, 3, and 4, as corrected, are categorically exempt from the requirement to prepare an environmental impact report.

The City will amend its municipal code to authorize live-aboard boats in the Brisbane Marina. The City has determined that the authorization for live-aboard boats, along the code modification do not constitute a "project" under CEQA so that no CEQA review is necessary, in a memorandum dated December 6, 2017.

G. **Public Trust.** By this amended and corrected permit, the Commission determines that the proposed project, involving a small boat marina with on-shore incidental facilities is consistent with the public trust needs.

H. **Title.** The City of Brisbane, the permittee for the project, has obtained a lease from the State Lands Commission for the tidelands portion of the site at Sierra Point, and upon fulfillment of Special Condition II-F will have sufficient title to the upland portion of the site to maintain the water-related, marina uses authorized herein.

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I. Amendments

Amendment No. Nine. Amendment No. Nine authorizes the construction of an approximately 20-foot-long, concrete stairway to link an upper and lower marina parking lot. This work consists of “the placement of small amounts of inert inorganic fill...[that] does not have a significant adverse effect on present or possible future maximum feasible public access to the Bay consistent with the project...or on the environment” as defined by Regulation Section 10601(b)(1). In addition, Amendment No. Nine authorizes the in-kind repair and maintenance of all facilities and includes Special Conditions II-J, and II-K, ~~and II-L~~, that allow only the use of construction materials approved for use in the Bay specifically prohibit the use of creosote treated wood, authorize work only during approved months, specify that in-kind repairs that result in enlargement of the existing facilities are not authorized and require that all construction materials and debris be removed from the site and disposed of properly. Finally, Amendment No. Nine modifies language contained in Special Condition II-C-2 of this amended permit, which is intended to ensure that marinas comply with federal and state water quality laws prohibiting the discharge of oily waste, including wastewater, into the Bay. This special condition as originally written, however, resulted in some marina operators prohibiting boat owners from using automatic bilge pumps, which, in turn put owners at risk of losing their boats and insurance. Therefore, Special Condition II-C-2 was revised so as not to apply to the discharge of liquid wastes associated with use of automatic bilge pumps. The modification to this special condition will not result in adverse effects on the Bay, and thus is a similar activity with no greater adverse impact on the Bay, as defined by Commission Regulation Section 10601(e)(3), to those listed as minor repairs or improvements in Commission Regulation Section 10601. Further, these modifications to the permit for Amendment No. Nine to this permit will not result in a material alteration of the original authorization, and thus can be authorized by the Executive Director, pursuant to Commission Regulation Section 10822.

Amendment No. Ten. Amendment No. Ten authorizes the construction of an approximately 510-square-foot footprint restroom, shower, and laundry facility in an effort to provide more on-shore facilities, as required by Special Condition II-C-5-d. The facility will be located away from the public access trail and not block Bay views, but will be located within a landscaped public access area. However, the existing boater restrooms are located on each end of the site and an additional restroom facility, more centrally located, is required. In addition, the facility will not adversely impact use of the surrounding public access area. Finally, Special Condition II-D-1-b requires the permittee to provide the 3.75-acre public access area that the permit requires at Sierra Point, despite the increased number of structures that are authorized in this portion of the project site. If the four previously authorized structures (Items I-2-a-(1), (2), (3), and (4) herein) were constructed at the locations authorized in the permit as well as the restroom facility authorized under Amendment No. Ten, it would likely result in the permittee being unable to provide the full amount of required public access and/or could result in less

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useable or poor quality public access. Therefore, a condition has been included that requires the permittee to request an amendment to this permit prior to constructing any of the four structures, to correct the location and size of the four structures that the original permit authorized within the Commission's jurisdiction (based on a more recent City of Brisbane Master Plan) and to ensure that useable, high quality public access can continue to be provided at the project site. This work consists of "the placement of small amounts of inert inorganic fill...[that] does not have a significant adverse effect on present or possible future maximum feasible public access to the Bay consistent with the project...or on the environment" as defined by Regulation Section 10601(b)(1). This modification to the permit for Amendment No. Ten to this permit will not result in a material alteration of the original authorization, and thus can be authorized by the Executive Director, pursuant to Commission Regulation Section 10822.

Amendment No. Eleven. The modifications to the permit authorized in Amendment No. Eleven authorizes live-aboard boats at the Brisbane Marina and the addition of a "reasonable rules and restrictions" Special Condition to the Public Access conditions of this amended permit.

The use of recreational boat berths by live-aboard boats is generally inconsistent with the requirements of the McAteer-Petris Act, the provisions of the San Francisco Bay Plan, and the public trust, in part, because live-aboard boats constitute a residential use and are not a water-oriented use, and residential uses in the Bay generally have an alternative upland location. However, the San Francisco Bay Plan Policies on Recreation provide that live-aboard boat use at a recreational marina may be authorized by the Commission in extremely limited circumstances. As described in the Bay Plan policies on Recreation, live-aboard boats are "...designed and used for active navigation but are distinguished from other navigable boats in that they are also used as a primary place of residence. Although residential use is neither a water-oriented nor a public trust use, live-aboard boats can be converted easily to a navigable, recreational use and, when properly located within a recreational boat marina, can provide a degree of security to the marina."

The San Francisco Bay Plan Policies on Recreation further provide, in part, that: "Live-aboard boats should be allowed only in marinas and only if:

- (1) The number would not exceed ten percent of the total authorized boat berths unless the applicant can demonstrate clearly that a greater number of live-aboard boats is necessary to provide security or other use incidental to the marina use;
- (2) The boats would promote and further the recreational boating use of the marina (for example, providing a degree of security), and are located within the marina consistent with such purpose."

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The policies state that appropriate amenities, including showers, restrooms, and sewage pump-outs should be provided to accommodate the live-aboard residents.

This exception to the general prohibition on live-aboard boat berths exists because, although live-aboard boats are not a water-oriented use and are not consistent with the public trust, live-aboard boats can be allowed where the use is incidental to a proper public trust use in the area and in furtherance of a statewide purpose. The Commission has determined that the security benefits of live-aboard boats occupying up to ten percent of the total berths at a marina are incidental to the marina use (which is a proper public trust use) and in furtherance of a statewide purpose of providing security at the recreational marina.

The inclusion of live-aboard boats at the marina will enhance security and safety for recreational boaters and the public. The marina is located in an isolated area. The permittee states that although a private security firm and the Brisbane Police Department patrol the marina and adjacent areas, criminal activity has occurred, including illicit drug use, vehicle burglaries, and other crimes. In addition, the existing marina rules limit boaters to reside in their boats no more than 72-hours in a week, leading to a limited nighttime presence at the marina. Live-aboard boat residents will provide visibility and report unauthorized visitors to the marina.

The permittee will locate live-aboard boats evenly throughout the marina to maximize their security benefits. Special Condition II.E.6 requires a distribution of the live-aboard boats consistent with this plan. The marina includes over 500 parking spaces, with 135 parking spaces reserved for boat tenants. As a result, there is sufficient number of parking spaces to accommodate the live-aboard boat residents, recreational boaters, and other members of the public. The marina includes an on-site pump-out and will incorporate management practices for sewage and marine water.

The live-aboard boats authorized by Amendment No. Eleven are necessary to provide a degree of security at the marina, and are located consistent with that purpose. In addition, the marina includes the amenities consistent with the Recreation Policies of the Bay Plan including showers, restrooms, trash disposal, and a sewage pump-out. Special Condition II.E is included to ensure that the live-aboard boats do not exceed 10% of the marina berths (totaling 58 berths) and to ensure the permittee operates the marina in a manner consistent with the Recreation Policies of the Bay Plan related to live-aboard boats.

Special Condition II.E.1 prohibits the mooring of houseboats in the marina. Commission Regulation Section 10127 defines as "houseboat" as "a boat that is used for a residential or other non-water-oriented purpose and that is not capable of being used for active navigation." A "live-aboard boat," as defined by Commission Regulation Section 10128, is defined as "a boat that is not a transient boat, that is capable of being used for active self-propelled navigation, and that is occupied as a residence as that term is defined in the

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California Government Code Section 244.” Special Condition II.E.1 provides for live-aboard boats, and requires that all live-aboard boats be capable of self-navigation. Special Condition II.E.2-4 are included to ensure the live-aboard boat berths operate in a manner that protects Bay resources. Special Condition II.E.5 requires a berthing plan for the live-aboard, showing the distribution of live-aboards. The berthing plan will be approved by or on behalf of the Commission. Any updates to the berthing for live-aboards that become necessary, for example due to the relocation of a boat within the marina, or the addition or removal of a live-aboard boat from the marina, will require the submittal of an updated plan. Special Condition II.E.7 requires the permittee to submit the proposed berth agreement and rules to the Commission for approval, in order to ensure the definition of live-aboards used by the permittee is consistent with the definition in the Commission’s regulations and to ensure live-aboard use is consistent with the policies in the Bay Plan. The Special Conditions related to berthing plan and the berthing agreement and rules are constructed to allow the permittee to use the marina for live-aboard boats prior to submitting the plan and agreement. Special Condition II.E.8 and II.E.9 are included to ensure the permittee enforces the requirements related to live-aboard boats.

Special Condition II.D.8 provides for restrictions based on particular issues that arise in the public access areas required by the permit. In particular, the permittee has cited sleeping in cars at the parking area of Fisherman’s Park at Brisbane Lagoon, which results in accumulated waste at the site and illicit drug activities. This condition will not result in a reduction of public access or public benefits at the site.

As conditioned, the project authorized by Amendment No. Eleven is consistent with the requirements of the McAteer-Petris Act and the San Francisco Bay Plan.

The authorization for live-aboard boats at the marina and the addition of Special Condition II.D.8 provided by Amendment No. Eleven is a non-material amendment that will not materially alter the project and will not result in any reduction of public benefits, as defined in Regulation Section 10800, for which the Executive Director may issue a non-material amendment to an administrative permit, pursuant to Government Code Section 66632(f) and Regulation Section 10812.

J. **Conclusion.** For all of the above reasons, the public benefits from the proposed project would clearly exceed any public detriment. The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission’s Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

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IV. Standard Conditions

~~A.— 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.— 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.— The rights, duties, and obligations contained in this amended permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this amended permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director (call for a copy of the form or download it from our website). 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.— 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.— Unless otherwise provided in this amended permit, any work authorized herein shall be completed within the time limits specified in this amended permit, or, if no time limits are specified in the amended permit, within three years. If the work is not completed by the date specified in the amended permit, or, if no date is specified, within three years from the date of the amended permit, the amended permit shall become null and void. If an amended permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this amended permit shall be removed by the permittee or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.~~

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

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G.—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.

H.—Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.

I.—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.

J.—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.

K.—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.

L.—This 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 permit does not guarantee that the Commission's jurisdiction will not change in the future.

M.—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.

N.—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

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~~the amended permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.~~

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

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

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

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

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

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

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

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

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

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

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

L. **Permission to Conduct Site Visit.** The permittee(s) shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

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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.

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

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

LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and
Development Commission

By: 
ERIK BUEHMANN
Chief of Federal Consistency and Permits

EB/ra

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cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch
San Francisco Bay Regional Water Quality Control Board,
Attn.: Certification Section
Environmental Protection Agency

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____

City of Brisbane

Permittee

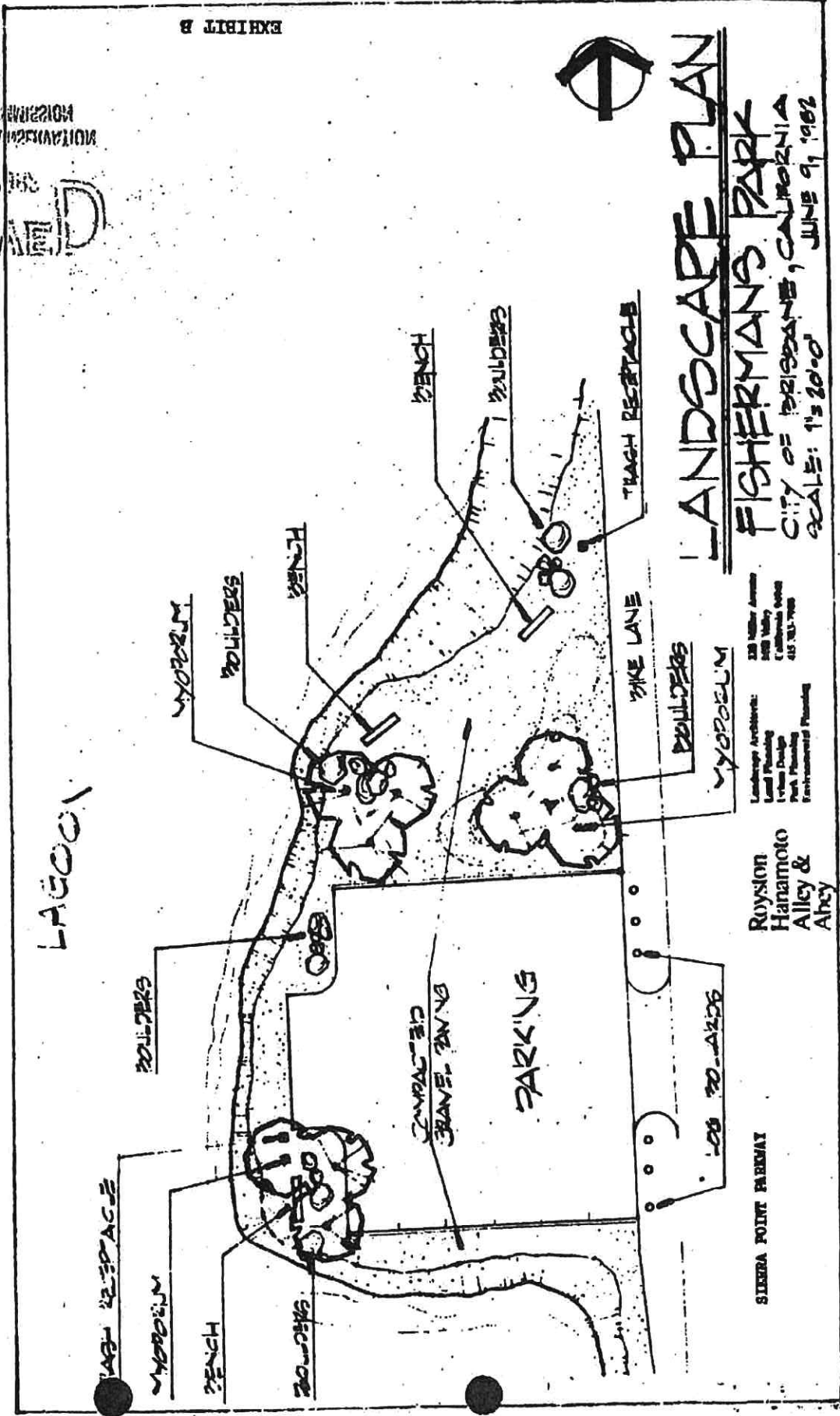
On _____

By: _____

Print Name and Title

RECEIVED
 JUN 13 1962
 DIVISION OF THE ENVIRONMENT
 CALIFORNIA DEVELOPMENT COMMISSION

EXHIBIT B



LANDSCAPE PLAN
 FISHERMANS PARK
 CITY OF BRISBANE, CALIFORNIA
 SCALE: 1" = 20'-0"

Royston Hanamoto Alley & Ahcy
 Landscape Architects: 228 Miller Avenue, San Mateo, California 94401
 Land Planning, Urban Design, Park Planning, Environmental Planning
 415 351-7900

SIEIRA POINT PARKWAY

LOG ROAD

LAGOON

PARKING

BIKE LANE

BIKE LANE

TRASH RESTRACKS

TRASH RESTRACKS

WALKERS

WYOPAEUM

BENCH

WALKERS

WALKERS

BENCH

BENCH

WALKERS

WALKERS

WYOPAEUM

