

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Steven Bobzein, East Bay Regional Park District (EBRPD)

PERMIT NO.: 28902S

ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

PROJECT DESCRIPTION: EBRPD is authorized to perform various maintenance activities designed to improve watersheds and maintain existing structures under this re-authorized Regional General Permit (RGP 13). These activities include: maintenance of road crossings, culvert replacement and maintenance, bank stabilization, maintenance dredging, maintenance of other existing structures (wells, levees, swim dams, etc.) and other minor discharges of fill material for new structures as necessary. The number of projects performed under this RGP will vary by year. Routine maintenance projects involving streams, creeks, lakes, wetlands, bay shorelines or ponds will be annually identified in the field by park operations staff and/or EBRPD management who are intimately familiar with their park's infrastructure. EBRPD will submit a detailed list of proposed projects to the Corps at least 30 days prior to the start of construction season for review and approval. Construction season will correspond to the portion of the year when the potential for aquatic and aquatic species impacts will be minimal, normally from May 15 through October 15. At the conclusion of the construction season, EBRPD will submit a second report documenting which projects were actually constructed and the impacts associated with each, including the area and volume of permanent fill in waters of the U.S.

PROJECT LOCATION: Work authorized under RGP 13 will be located within various waterways and wetlands on EBRPD lands within Alameda and Contra Costa Counties, California.

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on **October 31, 2009**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the

space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

7. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

SPECIAL CONDITIONS:

In accordance with the Memorandum of Understanding between the California Department of Fish and Game (CDFG), the Waste Discharge Requirements of the San Francisco Bay Regional Water Quality Control Board (SFRWQCB), the CZMA permit of the Bay Conservation and Development Commission (BCDC) and Section 7 consultation with the United States Fish and Wildlife Service (USFWS) and the United States National Marine Fisheries Service (NMFS), the permittee shall comply with the following special conditions:

1. Best management practices shall be instituted in the planning of all maintenance activities. Whenever feasible, these best management practices should be compatible with the California Department of Fish and Game Stream Restoration Manual.
2. Work will be confined to the dry season (August 1 through October 31) or dry site conditions, in order to avoid impacts to California red-legged frogs (*Rana aurora draytonii*).
3. The following practices shall be used when removing debris from culverts and streams:
 - a. Debris removal during winter, while stream flows are high or as needed during other high flow events, will be performed by hand crews or by the use of a backhoe operated from the top of the bank.
 - b. The disturbance in streams shall be minimized by avoiding the use of equipment in the stream channel as such as possible.
 - c. Woody debris, which does not cause a problem of bank instability, flooding, or culvert blockage, will be left in the stream to provide habitat for California red-legged frogs.
4. The following practices shall be used when replacing or installing culverts:
 - a. Projects which involve the installation of new culverts will be reviewed by the USFWS on a case-by-case basis. USFWS must concur that the project is not likely to result in the take of California red-legged frogs, before the project shall be approved under the RGP.
 - b. The culverts installed shall be large enough to accommodate anticipated 25-year frequency storm events, in order to minimize the need for follow up maintenance and disturbance of the stream channel.

c. The construction of head walls, discharge end splash pads, and culvert armoring, to stabilize culverts, will include porous materials or other techniques to allow plant growth and to avoid the permanent elimination of stream habitat.

d. Replacement of culverts shall be installed at the existing grade.

e. New culvert work should include a field inspection by an experienced archaeologist to identify significant cultural resources and determine whether there will be project impacts. The EBRPD shall provide locations of new culvert projects in the May 1st annual report or in other written form. The United States Army Corps of Engineers (Corps) archeologist shall coordinate with the EBRPD and perform the necessary field inspections. Adversely affected cultural resources may require Historic Preservation consultation, as outlined in the Nationwide Permits regulations.

5. When stabilizing stream banks, rock rip-rap, that would permanently prevent re-establishment of riparian vegetation in California red-legged frog habitat, will be avoided unless no other alternative is feasible. If rock rip-rap must be used, the EBRPD shall initiate a separate consultation with the USFWS before any work occurs.

6. The following practices shall be used when performing erosion control activities:

a. Jute netting, whole grown, or other erosion control fabrics, that provide protection until plant growth can provide permanent protection, will be used when feasible.

b. Supplemental hydro-seeding (native mix) and/or willow, maple, and other native planting, will be utilized, if needed to assure rapid growth opportunities.

7. The following practices shall be used when performing work on stream crossings (fords):

a. The minimal grading or debris removal shall be performed, to make the crossing passable.

b. Stream crossings shall be evaluated District-wide to determine the need for annual maintenance. For those situations that will result in the take of California red-legged frogs, no annual maintenance shall be performed until completion of consultation with the USFWS.

c. Natural crossings (that require less intensive maintenance), without the use of culverts, will be preferred and used where feasible.

d. Gravels and sediments will be left within the dry portion of the stream channel rather than moved to upland areas.

8. To ensure compliance with the terms of the Section 7 consultation with the USFWS, we recommend these practices be followed for minor dredging:

a. Only dry stock ponds currently unoccupied by California red-legged frogs should be dredged by use of an excavator or tractor.

b. Boat launch sites at recreational lakes should be dredged by use of an excavator, with a maximum of 25 cubic yards removed.

c. All sediments removed shall be disposed of in upland locations.

9. The following procedures shall be used for maintenance activities verified under this regional general permit:

a. A detailed annual report of the proposed maintenance activities to be performed that year, shall be prepared. Five copies of the report shall be prepared and submitted to the Corps, by May 1st of each year. The Corps will distribute copies of these reports to CDFG, USFWS, and NMFS and request the receipt of comments within fifteen calendar days. For all proposed projects, this report shall:

- i. clearly describe the project,
- ii. show pictures of representative sites for the different types of maintenance activities requested,
- iii. show the project locations,
- iv. identify wetland fill and associated mitigation,
- v. identify any special approaches or conditions to complete the project,
- vi. identify measures taken to reduce the need for continued maintenance of the site, and
- vii. identify any projects that may impact federal or state endangered species or their designated habitats.

b. At the end of the comment period (or when all comments are received), the Corps shall notify the EBRPD, in writing, which projects are verified under this RGP. Based upon these comments, the Corps may choose to exclude individual projects from processing under the RGP, if the proposed project will have greater than minimal impacts or may adversely affect endangered species. Authorization for these projects would need to be processed as a separate request. In addition, based upon the comments received, the Corps may request additional mitigation be provided for the verification of projects under the RGP, which involve impacts to wetlands.

c. One copy of the May 1st annual report, will be forwarded to the Corps archaeologist. As outlined in special condition 4e, the Corps archeologist will review the projects involving the installation of new culverts. Comments from the Corps archeologist shall be requested during the fifteen day comment period. If the Corps determines that any of these projects may adversely affect cultural resources, Historic Preservation consultation may be required before authorization may be given at these sites.

d. A second annual report on completed projects is due by December 1st of each year. Four copies of this report shall be submitted to the Corps, and the Corps will distribute copies to CDFG, USFWS, and NMFS. This report shall include a description of the work performed, specifically noting any changes that were made in the project design that differs from what was outlined in the May 1st report. The report shall also document the permanent fill within jurisdictional wetlands and other waters of the U.S. for each project, as well as not the volume of discharge. In addition, photographs should be included of sites which are representative of each type of maintenance activity that was performed under this RGP. This report shall be reviewed by the resource agencies for compliance with the terms of the RGP. Field site visits may be performed, on representative sites, by the employees of these resource agencies, as a part of their compliance evaluation.

e. At any time, a meeting may be requested by the EBRPD, Corps, CDFG, USFWS, NMFS, BCDC or SFRWQCB to discuss the terms of the permit and compliance with those terms. Based upon the results of these meetings, the Corps may choose to revoke or modify the RGP.

10. EBRPD shall implement the terms and conditions of SFRWQCB's Waste Discharge Requirements Permit and BCDC's Permit. Violations of either of these authorizations may result in the revocation of this Regional General Permit.

11. This RGP does not authorize take of any federally listed species or their designated habitat. Should any project have the potential to impact a federally listed species, EBRPD may not proceed until all required steps under Section 7 of the Endangered Species Act have been taken and written approval has been received from the Corps.

12. This permit shall expire on October 31, 2009. If EBRPD desires this Regional General Permit be reauthorized,

EBRPD shall submit a request in writing noting any changes in maintenance.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- (x) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

2. Limits of this authorization:

- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation

procedures contained in 33 C.F.R. Section 325.7 or enforcement procedures such as those contained in 33 C.F.R. Sections 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. Section 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE) (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Philip T. Feir (DATE)
Lieutenant Colonel, U.S. Army
Commanding

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE) (DATE)