



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

REPLY TO

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Mr. Charlie Fielder, District 1, California Department of Transportation

PERMIT NO.: 1991-194740N

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:

A. PROJECT DESCRIPTION: Construct a new segment of U.S. Highway 101 (U.S. 101) that will bypass the City of Willits in Mendocino County, California. The proposed project entails construction of a four-lane freeway segment of U.S. 101. Each lane shall be 12 feet wide with a 22-foot median separating the northbound and southbound lanes. The proposed freeway shall bypass the City of Willits with several bridges spanning creeks and local roads, a viaduct spanning the floodway, and interchanges on either end of the bypass. The interchange ramps shall be single-lane. The project shall be constructed as depicted in drawings prepared by Caltrans, dated February 1, 2012, titled "Caltrans 03-Design East, District 01, County Mendocino, Route 101, Kilometer Post Total Project R69.4/R78.9: Figures L-1A through L-36A."

The project shall directly affect a total of 82.05 acres of wetlands and other waters of the United States, (streams such as: Haehl, Baechtel, Broaddus, Mill, Upp, and Outlet Creeks and their related tributaries), of which 51.07 acres shall be permanently filled and 30.98 acres shall be temporarily filled during project construction, (as depicted in drawings prepared by Caltrans dated February 1, 2012 and titled: Figures B-1 through B-60 of Appendix B, Willits Bypass Sensitive Biological Resources Impact Maps, of the "Willits Bypass Project Mitigation and Monitoring Proposal").

The project shall be constructed in two phases: Phase I of the project shall be the two southbound lanes. However, Phase I shall function as an interim facility upon which northbound and southbound traffic shall travel until construction of Phase II. Upon completion of both phases, traffic shall be separated via a median and two viaducts.

The Phase I interim facility shall be comprised of two lanes and have wider roadway shoulders to safely accommodate the travelling public. Also, the Phase I (interim facility) viaduct shall be one foot wider than the future Phase II viaduct. This design feature shall be to allow safe passage of northbound and southbound traffic on a singular viaduct until construction of the Phase II viaduct to separate northbound traffic from southbound.

Phase I shall include constructing all four north and southbound lanes from the southern end of the project at Post Mile 43.1 on U.S. 101 to Post Mile 45.6. Phase I shall also include the construction of a southern interchange at Post Mile 43.7 near Haehl Creek, and a northern interchange that includes a roundabout-type intersection with local roads at Post Mile 48.2 near Upp Creek.

Phase I construction shall permanently fill 42.76 acres of waters of the United States and temporarily fill 22.91 acres of waters of the United States.

Phase II shall consist of construction of the two north-bound lanes. Phase II construction would permanently fill 8.31 acres of waters of the United States and temporarily fill 8.07 acres of waters of the United States.

Note: “temporary fill material” is a fill discharge that would be in place for the duration of active construction (likely up to 5 years).

PROJECT LOCATION: City of Willits, Mendocino County, California

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on December 31, 2022. 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:

1. The Permittee shall mitigate for permanent impacts to 42.76 acres and temporary impacts to 22.91 acres of waters of the U. S. associated with Phase I of the Project, through restoration (rehabilitation) of 344.63 acres and establishment of 49.58 acres of wetlands and the rehabilitation of 19.03 acres of other waters of the U.S. as described in the final mitigation plan: “Willits Bypass Project Mitigation and Monitoring Proposal” (which includes Appendices A, C, D, E, F, G, H, I, J, K, L, M, and N), dated January 2012, (and also includes Appendix B, dated February 1, 2012), prepared by Caltrans (MMP). The Permittee shall fully implement this final mitigation plan concurrently with impacts to waters of the U.S. Delays in the mitigation implementation schedule (Figure 7-1 of the final mitigation plan) may result in the requirement of additional mitigation to compensate for the temporal loss. According to the final mitigation plan, responsible parties would be as follows: a) Implementation: Caltrans; b) Performance: Caltrans; c) Long-term management: Mendocino County Resource Conservation District. The

Permittee retains ultimate legal responsibility for meeting the requirements of the final mitigation plan. Detailed mitigation objectives, performance standards, and monitoring requirements are described in the above final mitigation plan.

2. The MMP documents are not complete without this permit and its accompanying special conditions. A notation to this effect shall be annotated on the cover and title page of the MMP prior to distribution. This permit, including the special conditions, shall be attached to all distributed copies of the MMP.
3. A performance bond, other Corps-approved financial assurance mechanism, or alternate mechanism, such as a formal, documented commitment from Caltrans or a public authority, must be in place within ninety (90) days following permit issuance or prior to commencing the permit activity, whichever is sooner. It must ensure a high level of confidence that the compensatory mitigation will be performed and maintained, in accordance with 33 C.F.R. § 332.3(n) and the Institute for Water Resources White Paper, *Implementing Financial Assurance for Mitigation Project Success*, June 2011.
4. The fee title holder and the conservation easement holder shall not be the same entity.
5. The Permittee shall record a Conservation Easement (CE) in a form approved by the Corps; which shall run with each off-site mitigation parcel, obligating the Permittee, its successors and assigns to protect and maintain the mitigation areas (parcels identified in Tables 6-2, 6-4, and 6-5 of the MMP, and as shown in Figures L-1 through L-34 of Appendix E ("Design plans for Offsite Mitigation") dated February 1, 2012) as natural, unmanaged, wetland and other waters in perpetuity. Each CE will identify that the mitigation parcels shall not have any agricultural or management activities that may reduce or diminish successional vegetation development, without prior approval from USACE. Each CE must include a 3rd party easement holder qualified to hold easements pursuant to California Civil Code § 815.3 and Government Code § 65965. Each CE must also identify the Corps as a 3rd party beneficiary. The Permittee must provide monies in the form of an endowment (as specified in Chapter 13 of the final mitigation plan) for the purposes of fulfilling the 3rd party easement holder's responsibilities under the CE. Each CE shall abide by and fulfill all requirements of the "Willits Bypass Project Mitigation and Monitoring Proposal," dated January 2012, and prepared by Caltrans (Willits Bypass Project MMP). Review of Conservation Easement will include review of title reports all off-site mitigation parcels with maps depicting any recorded easements. Conservation Easements shall have as an exhibit the Willits Bypass Project MMP, and reference this document's adaptive management plan and long-term management plan. Each CE shall preclude establishment of fuel modification zones, paved public trails, drainage facilities, walls, maintenance access roads and/or future easements, except as provided in the Project Description (described in this permit). Further, to the extent practicable, any such facilities outside the CE shall be sited to minimize indirect impacts on the avoided, created, restored and enhanced wetland and non-wetland waters of the U.S. Prior to its execution and within six months of issuance of this permit, the Permittee shall submit drafts of each CE to the Corps for review. The Permittee shall not execute or record any CE until it has received written approval from the Corps. No later than 30 calendar days after receiving Corps approval of the final draft CE's, the CE's shall be executed and recorded and a recorded copy furnished to the Corps.
6. Any proposed changes to the final mitigation plan, the Willits Bypass Project MMP, including changes to the performance standards and any proposed adaptive management actions, shall be submitted in writing to the Corps at least 60 days prior to implementation. Caltrans shall not implement the proposed changes prior to receiving written approval from the Corps.
7. This permit may require modification if the final, revised project plans and/or impact maps differ from those used to develop the temporary and permanent impact assessments for the MMP dated March 15, 2011. Prior to construction of the project, the permittee shall provide the Corps with the final revised project plans, corresponding maps showing final project footprint and location of each temporary and permanent impact to wetlands and other waters, and a detailed spreadsheet itemizing the areal extent of each temporary and permanent impact. The final, revised project plans and corresponding impact maps shall be reviewed and approved by the Corps in writing. Any temporary or permanent impacts that occur on areas not evaluated for the presence of wetlands and/or waters of the U.S. in the initial development of the impact assessments for the MMP shall require verified jurisdictional

determination and an assessment of those impacts. For example, impacts occurring on the parcels Garman (APN038-020-21), Burton (APN 038-020-09), Shrabel (APN 038-020-46), (Pellegrini (APN 038-040-07), Lamb (APN 038-040-05), and King (APN 038-040-08).

8. Within 45 calendar days of installation of each mitigation area, the Permittee shall submit to the Corps a memo indicating the following:
 - A) Date(s) all mitigation was installed and monitoring was initiated;
 - B) Schedule for future mitigation monitoring, implementation and reporting pursuant to final, Corps-approved mitigation plan;
 - C) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions proposed to achieve compliance);
 - D) One copy of "as built" drawings for all mitigation sites (all sheets must be signed, dated, to-scale, and no larger than 11 x 17 inches)
9. Performance Standards must be met each year for each mitigation action on each mitigation unit. The Permittee shall submit annual mitigation monitoring reports to the Corps by December 31 each year. Annual sampling documentation, as part of monitoring reports, shall include maps showing locations of sampling points/transects and photos representative of sampling locations. Reports should provide quantitative data and other information necessary for the Corps to verify the site conditions and whether the compensatory mitigation project is meeting its performance standards. Such information includes, for each site, field data forms (raw data) and summary tables of the following: relative cover by wetland plant species, percent change in relative cover by wetland plant species over baseline conditions, relative cover of target native wetland plant species, percent change in relative cover of target native wetland plant species over baseline conditions, species richness (including a list of species), and absolute percent cover by invasive plants. If a performance standard is not met, Caltrans shall propose possible remedial actions for USACE review and approval.
10. For determining the mitigation treatment units and types of treatments, Caltrans shall submit the proposed Baseline Study required in the Willits Bypass Project Mitigation and Monitoring Proposal" (dated January 2012, and prepared by Caltrans), at least two months prior to its implementation for USACE review and approval in the winter of 2012. A site visit may be required for approval of the proposed Baseline Study.
11. For vegetation sampling of mitigation treatment units, the Permittee shall propose a sampling strategy for Corps to review and approve in writing at least three months prior to its anticipated implementation. On homogenous rehabilitation treatment areas, random sampling of vegetation is acceptable. On heterogeneous rehabilitation treatment areas, stratified random sampling or an equivalent is required. Vegetation sampling shall not commence until the Corps has approved the strategy in writing. The number and location of the transects will be sufficient to adequately represent the mitigation unit's plant species composition (measured by a species diminishing curve) and plant species distribution (i.e. percent cover).
12. Caltrans shall submit proposed hydroperiod reference sites and method of measurement of hydroperiod (ie. ground water measurement or surface ponding observation) of adjacent wetland areas for each off-site establishment (Group 1 and 2) at least three months prior to its implementation for Corps review and approval. For Group 2 wetland establishment areas, a ground water measurement well will be situated at the highest elevation of the established wetland area for each treatment area. A minimum of one well will be installed for every 2 acres of Group 2 establishment.
13. The footprint (total acreage) of the rehabilitation treatment areas are described in Table 6.4 of the MMP. If it is determined by the Corps that adjustments are required to treatment areas, the total wetland rehabilitation credit amount as stated in Table 6.4 (61.29 acres of credit) shall not decrease.
14. All measurements for percent cover of wetland species, targeted wetland species and native plant species (herbaceous and woody) shall be in relative percent cover. Measurement of invasive plant species shall be in absolute percent cover.

15. All references in the MMP for target species, target wetland species, and target hydrophytic species refer to the list of plant species found in Table 7.5 of the MMP.
16. The Permittee shall clearly mark all areas of Corps jurisdiction, and any associated riparian vegetation, that are not to be removed or otherwise adversely impacted during project implementation with cyclone-type fencing. Markers and/or barricades shall be clearly located to restrict access and ensure all movement of equipment and personnel will occur within the authorized construction/impact areas.
17. The Permittee shall disclose all proposed temporary impact areas, including temporary access routes and staging areas, located within wetlands and other waters of the U.S to the Corps a minimum of sixty (60) days prior to any project construction. All Phase I temporary impact areas shall have the temporary fill removed within 60 days following Phase I construction completion (by approximately the year 2016). All temporary impacts to waters of the U.S. must be restored to pre-construction conditions and still meet the definition of jurisdictional wetlands/waters of the U.S.
18. This Corps permit does not authorize you to take any threatened or endangered species, in particular the threatened northern spotted owl (*Strix occidentalis caurina*), Northern California steelhead (*Oncorhynchus mykiss*), Southern Oregon/Northern California coho salmon (*Oncorhynchus kisutch*), or California Coastal Chinook salmon (*Oncorhynchus tshawytscha*), or adversely modify its designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The USFWS and NMFS BOs (EA 01-262000 dated June 22, 2010, and #2011/06217 dated January 19, 2012, respectively) contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BOs. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BOs, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BOs, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The USFWS and NMFS are the appropriate authorities to determine compliance with the terms and conditions of their BOs and with the ESA.
19. The Permittee shall allow Corps representatives to inspect the authorized activities at any time deemed necessary to ensure compliance with permit terms and conditions.
20. The Permittee (Caltrans) is not authorized to commence fill or construction activities associated with Phase II of the Project until after the Corps has provided a written notice to proceed with Phase II. Design-level drawings for Phase II shall be submitted to the Corps a minimum of two years prior to the anticipated commencement of construction. In addition, a draft mitigation plan in accordance with the requirements of 33 CFR § 332.4(c) must be submitted to the Corps to address Phase II Project impacts. The draft submittal must allow two (2) years of development and review such that the final mitigation plan is developed prior to the proposed start of Phase II construction. The draft mitigation plan shall address the 8.31 acres of permanent and 8.07 acres of temporary impacts to waters of the U.S. associated with Phase II through restoration/establishment/enhancement of waters of the U.S. and shall ensure that there will not be a net loss of aquatic resource functions and services resulting from Phase II. The Phase II final mitigation plan will be submitted for public review and comment via a Public Notice, and the Permittee shall adequately respond to all comments prior to Corps approval of the plan. No work in waters of the U.S. associated with Phase II is authorized until the Permittee receives, in writing, Corps approval of the final mitigation plan and Corps acknowledgement of the receipt of the Phase II design-level drawings. The Permittee shall fully implement this Phase II final mitigation plan concurrently with, or prior to, Phase II impacts to waters of the U.S.
21. The Permittee shall disclose all proposed temporary impact areas, including temporary access routes and staging areas, located within wetlands and other waters of the U.S to the Corps a minimum of sixty (60) days prior to any project construction. All Phase II temporary impact areas shall have the temporary fill removed within 60 days

following Phase II construction completion. All temporary impacts to waters of the U.S. must be restored to pre-construction conditions and still meet the definition of jurisdictional wetlands/waters of the U.S.

22. Your responsibility to complete the required compensatory mitigation as set forth in Special Conditions 1 through 17, 20 and 21, will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers. Failure to fulfill your responsibility to fully compensate for impacts to 82.05 acres of waters of the U.S. will result in a requirement of additional compensatory mitigation, as determined by the Corps.

FURTHER INFORMATION:


1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
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. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 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. § 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)

Feb 17, 2012

(DATE)

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



Torrey A. DiCiro, P.E., PMP
Lieutenant Colonel, U.S. Army
District Commander

FEB 21, 2012

(DATE)

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)