



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Ms. Julie Andersen, Midpeninsula Regional Open Space District

PERMIT NO.: SPN-2019-00146

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:

This Regional General Permit 42 (RGP 42) will provide an efficient permitting process for the activities of the Midpeninsula Regional Open Space District's (Midpen) Open Space Maintenance and Restoration Program (Program) that involves work in and discharge of dredged or fill material into jurisdictional waters of the U.S. (WOUS) occurring within the Midpeninsula Regional Open Space Program Area (Enclosure 1). The RGP addresses three general categories of activities:

- 1) Routine maintenance activities;
- 2) Small-scale facility improvements and new low-intensity/small footprint facilities; and
- 3) Restoration and enhancement projects

A summary of activities is provided here and details about the activities, methods, and best management practices are provided in the Open Space Maintenance and Restoration Manual, dated August 2021 (Open Space Manual). Only the activities involving regulated activities within WOUS are the subject of this RGP.

1. Routine maintenance

- Maintenance of ponds/lakes includes berm maintenance/repair; outlet, inlet, and pipe repair; trash, debris and vegetation removal; sediment removal; invasive plant treatment; wildlife structure installation; exclusion fencing and gate repairs; and trash rack clearing.
- Maintenance of water supply structures includes spring box and/or water tank maintenance or replacement; water line replacement extensions, or realignments; instream diversion intake clearing; and vegetation removal.
- Maintenance of roads includes grading and shaping (including rocking); culvert repair and replacement; removal of asbestos from culverts and other structures; sediment and debris removal at inboard ditches and stream crossings; repair and replacement of creek fords and swales, including new culverts to replace fords; bank stabilization adjacent to road or trail; in-kind repair of gabion rock or riprap supporting roads or trails road/trail brushing/mowing; vegetation management; minor relocation of unpaved road segments to correct resource concerns (e.g., erosion, rutting); installation of new roadside and trailside ditch relief culverts at non-stream crossings; repair and replacement of driveways.
- Maintenance of bridges includes minor structural repairs and replacement of decking and handrails; repair and fortification of abutments; sediment and debris removal beneath bridge and around abutments; addition

of surface material to punchcoons; vegetation management/removal; bridge removal or replacement; removal of lead paint; and repainting of bridges.

- Maintenance of roadside/trailside ditches includes replacement of culverts and ditches, installation of new rolling dips and fords; replacement and repair of fords; sediment and debris removal; vegetation management; and ditch cleaning.
- Maintenance of trails includes grading and shaping; culvert repair and replacement; repair and replacement of fords and swales (including with new culverts); bank stabilization; repair of gabion rock, riprap, or retaining walls; boardwalk repair; trail brushing/mowing; vegetation management; minor relocation/rerouting of trails; sediment and debris removal at channel/trail crossings; maintenance of rolling dips; and fence, gate, and signage repair.
- Maintenance of creeks includes vegetation management; sediment and debris removal; downed tree management and large woody material removal; bank stabilization; and trash rack clearing.
- Maintenance of other Midpen parks and open space features includes invasive species removal; fire fuel management; maintenance/clearing of defensive space buffers around park features; and treatment of vegetation at helicopter landing zones.

2. Small-scale facility improvements and new low intensity/small footprint facilities

- Bridge improvements include relocation or new installation to reduce resource/water quality impacts.
- Interpretive facilities and signage improvements include installation of new low-intensity, small footprint interpretive facilities and signage at existing open space parks and preserves.
- Ranching infrastructure improvements (fences, corrals, stock water).
- Utilities improvements include maintenance of utilities (septic, telephone, telecommunications, and others).
- Trail improvements include rerouting existing unpaved trails; providing new trail connections and public access; and single-track trail resurfacing for Americans with Disabilities Act (ADA) compliance.
- Wildlife crossing improvements include constructing wildlife crossings, some of which may also provide public access.
- Existing structure improvements and repairs to provide habitat for wildlife species.
- Water infrastructure improvements include replacing or removing degraded water infrastructure facilities.

3. Restoration and enhancement activities

- Removal of in-stream infrastructure and collapsed structures, or upsizing of culverts to improve aquatic habitat.
- Native vegetation plantings and seeding.
- Traditional ecological knowledge practices (indigenous stewardship).
- Wildlife-friendly spring box/troughs to prevent entrapment.

- Pond and stream restoration.
- Treatment of invasive species.
- Exclusion fencing.
- Prescribed burns.
- Conservation grazing.
- Road decommissioning to restore hydrology and watershed processes.
- Water well decommissioning to remove entrapment hazard and protect water quality.
- Structural demolitions in riparian or other sensitive areas.

This RGP will not cover Program activities that are not regulated activities, such as trash, debris, sediment, and vegetation removal done by hand without requiring discharge of fill into WOUS; invasive plant treatment; road brushing/mowing; vegetation management; repairs/replacement of decking and handrails on bridges; addition of surface material to bridge decks; painting and removal of paint; ditch cleaning; fence, gate and signage repairs and installation; clearing of trash racks; downed tree management and large woody material removal; fire fuel management; defensible space buffers; treatment of vegetation; and other trail, road, facility structure repairs and improvements that do not involve discharge of dredged or fill into WOUS.

All Program activities will be conducted as detailed in Midpen's Open Space Manual (Manual), dated August 2021. Chapter 5 of the Manual describes Program guidance for maintenance of culverts, bridges, channels, ponds, and other facilities; Chapter 6 describes Program guidance for vegetation management; Chapter 7 describes Program guidance for road and trail maintenance; Chapter 8 describes Program guidance for new small-scale facilities improvements, and Chapter 9 describes Program guidance for restoration and enhancement projects. Chapter 10 of the Open Space Manual describes the best management practices (BMPs, included as Enclosure 2), avoidance and minimization measures and mitigation that the Program requires for its activities.

The Program activities have been categorized in a tiered impact matrix, which is included as Enclosure 3. The tier categories classify the potential level of effects to federally protected species, with Tier 1 category activities having no effect to listed species and Tier 3 category activities having potential to adversely affect listed species. Tier 2 category activities are split between those that are not likely to adversely affect due to the location and timing of proposed work such that the species would not likely be present (Tier 2A) and those that are not likely to adversely affect due to the implementation of specific species-protection BMPs (Tier 2B).

Enclosure 4 summarizes the number of projects per activity type that are estimated to be implemented per year, and the estimated fill discharge associated with each project. For each activity type except restoration, impacts to WOUS will not exceed 0.1 acre of permanent fill each year, and will not exceed 0.5 acre of permanent fill over the 5-year period of this RGP. Though the impact quantities identified in Enclosure 4 are estimates, the overall project limits described above will apply to the entire Program, even if the estimated projects to be implemented changes or is revised. Most activity types will involve far smaller impacts, and in many cases no permanent impacts. Restoration activities, such as stream crossing removal and restoration of natural channel, may temporarily impact up to 0.2 acre of WOUS annually, and up to 1 acre over the 5-year period of this RGP, but the overall result of the activity will be beneficial and not result in permanent loss of WOUS.

Midpen will submit a pre-construction annual notification report (ANR) of proposed projects for the year no later than 45 days prior to the start of the work season (except for Year 1, which should be submitted as soon as feasible). The notification will be transmitted both to the Corps and to the U.S. Fish and Wildlife Service (USFWS). The notification will, at a minimum, include the following:

- Description of activities/projects proposed and locations
- Location and extent of disturbance, temporary and permanent
- Anticipated effects to listed species (area of habitat disturbance)
- Any proposed deviations from the conservation measures referenced in the Open Space Manual
- Mitigation proposal for any project that exceeds the 0.1-acre limit of permanent loss of WOUS
- Identify any special approaches or conditions to complete projects
- Identify any projects that may impact any historical or cultural resource*
- Provide spreadsheets with required information (e.g., project location, WOTUS) in the current format for uploading to the Corps' national regulatory database

* The Corps will require all relevant cultural resources information for projects with potential impacts to cultural resources. Tribal coordination and National Historic Properties Act section 106 consultation with the State Historic Preservation Officer (SHPO) may be required before these authorizations can be completed.

No later than 90 days after the end of the construction season, Midpen will prepare a post-construction annual summary report (ASR) that will include document the implemented work activities per the annual notification report, including before/after photos, and final impact numbers for each project completed that season. If applicable, the report will also include any incidental take of listed species that may have occurred, and any modifications of the avoidance and minimization measures that were used. This report should be transmitted both to the Corps and to the USFWS.

PROJECT LOCATION: Midpeninsula Open Space District preserves located throughout San Mateo, Santa Clara and Santa Cruz Counties, California

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on January 31, 2029. 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. For your convenience, a copy of the water quality certification or waiver is attached. 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.
6. You must allow representatives from this office to inspect the authorized activities at any time deemed necessary to ensure that they are, or have 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. To remain exempt from the prohibitions of Section 9 of the Endangered Species Act, the non-discretionary Terms and Conditions for incidental take of federally-listed Species shall be fully implemented as stipulated in the Biological Opinion titled "Formal Consultation on the Midpeninsula Regional Open Space District Open Space Maintenance and Restoration Program (U.S. Army Corps of Engineers File No. 2019-00146) in San Mateo, Santa Clara, and Santa Cruz Counties, California," (pages 26-27), dated March 15, 2023 (Enclosure 5). Project authorization under the RGP is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the RGP authorization for your project. The USFWS is, however, the authoritative federal agency for determining compliance with the incidental take statement and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.
2. Midpen Open Space District shall notify the Corps no later than 45 days prior to the start of that year's proposed projects to allow review and approval prior to projects implementation. The notification shall, at a minimum, provide the following information:
 - Description of activities/projects proposed and locations;
 - Location and extent of disturbance, temporary and permanent;
 - Anticipated effects to listed species (area of habitat disturbance);
 - Any proposed deviations from the conservation measures referenced in the OS Manual;
 - Mitigation proposal for any project that exceeds the 0.1-acre limit of permanent loss of WOUS;
 - Identify any special approaches or conditions to complete projects;
 - Identify any projects that may impact any historical or cultural resource;

- Provide spreadsheets with required information (e.g., project location, WOUS) in a format for uploading to the Corps' national regulatory database
3. The Corps will have 45 days from the date of receipt of the annual project list to comment on the proposed projects or add special conditions if necessary. Construction on projects may not begin until the Corps has provided authorization.
 4. Midpen Open Space District shall submit an annual post construction report to the Corps and the USFWS in accordance no later than 90 days after the end of the construction season, you shall submit an annual report summarizing the activities performed per the annual notification, and final impact quantities. At a minimum, the annual post construction report will include the following information for that year, and in total for all years:
 - A description of projects completed and their location (only for that year and denoting projects that were not implemented from the pre-season notification list of proposed projects);
 - Final impact quantities within WOUS;
 - BMPs that were implemented that year;
 - An annual cumulative summary updating project related impacts tracking each activity type over the five-year duration of the permit.
 5. The Program Best Management Practices (Enclosure 2) shall be implemented, as appropriate, for all projects authorized under this RGP.
 6. Impacts to Corps jurisdictional waters for each project shall not exceed the maximum limit allowed per activity type, as detailed in the Table of Estimated USACE Disturbance Per Activity Type (Enclosure 4).
 7. All material and debris generated as a result of project construction shall be removed from the site and disposed of in an approved location outside of Corps jurisdiction.
 8. Following project construction, disturbed areas including access points, staging and equipment storage areas, etc. shall be returned to pre-project conditions. This shall include, but is not necessarily limited to, grading to establish pre-project contours, removal of debris and planting native vegetation.
 9. Should any buried archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archaeological indicators include: obsidian and chert flakes, and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars, and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic, and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps, and old trails. The Corps shall be notified of the discovery and a professional archaeologist shall be retained by the permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Corps for approval, and project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of 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)

4/15/2024

(DATE)

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



James Mazza
Chief, Regulatory Division
San Francisco District
U.S. Army Corps of Engineers

15 APR 2024

(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)