



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: Rebecca Tuden, East Bay Regional Park District

PERMIT NO.: 2003-289020

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: The East Bay Regional Park District Routine Maintenance and Restoration Program Regional General Permit, RGP15, includes the following routine maintenance activities: replacement of culverts; replacement and upgrade of culverts with new head and tail walls; installation of new culverts with new head/tail walls; installation of culvert energy dissipaters; installation of articulated armored stream ford crossings; maintenance of existing articulated fords; installation of natural rock fords; vegetation and debris removal from streams and drainages; maintenance of existing or installation of new bank/shoreline/levee stabilization; removal of sediment- debris from existing culverts; maintenance of clear span bridges; installation of clear-span bridges; repair and maintenance of existing spring boxes; installation of new spring boxes; routine dredging of silt basins, ponds and lakes; maintenance of existing shoreline facilities, docks, fishing piers, boat launches, marsh board walks and overlooks; removal of hazardous man-made structures and vessels from various waterbodies; re-construction of earthen pond dams and spillways; stream, pond, and tidal wetland restoration. These activities are more fully described with methods in "Description of Program Actions" (enclosure 1) and comply with standard designs that have been developed by the District to minimize impacts (enclosure 2). The District will also apply all the appropriate best management practices and avoidance/minimization measures that are described in enclosure 3, Conservation Measures.

Each year, the District will submit a pre-construction annual notification report (ANR) of proposed projects prior to May 1 of each year (except for Year 1, which should be submitted as soon as feasible) for review and approval by the Corps. 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).
- Conservation measures proposed to be implemented during the work season.
- 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 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.

The Corps will request initiation of Section 7 consultation for any maintenance or restoration project that may impact federally listed species regulated by the National Marine Fisheries Service (NMFS).

No later than 90 days after the end of each construction season, the District will prepare a post-construction annual summary report (ASR) that will document the implemented work activities per the annual notification report, including before/after photos, and final impact numbers for each project completed that season and cumulative for the duration of the RGP. 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 will be forwarded to the USFWS for their review and approval.

PROJECT LOCATION: Alameda and Contra Costa Counties, California. The permit area includes all East Bay Regional Park District (EBRPD) managed lands within the following watersheds: Alameda, Alhambra, Claremont, Garrity, Rheem, Kirker, Marsh, Mount Diablo, Pinole, San Pablo, San Leandro, San Lorenzo, Walnut and Wildcat Creeks, San Francisco Bay, San Pablo Bay, and Suisun Bay. Enclosure 4 – Map of Regional General Permit Area.

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on December 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 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. 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 Alameda whipsnake (*Masticophis lateralis*), California red-legged frog (*Rana draytonii*), Foothill yellow-legged frog (*Rana boylei*), California tiger salamander Central California DPS (*Ambystoma californiense*), San Joaquin kit fox (*Vulpes macrotus mutica*), Ridgway's rail (California clapper rail) (*Rallus obsoletus obsoletus*), salt marsh harvest mouse (*Reithrodontomys raviventris*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), giant garter snake (*Thamnophis gigas*), California least tern (*Sternula antillarum browni*), western snowy plover (*Charadrius alexandrinus nivosus*), delta smelt (*Hypomesus transpacificus*), longfin smelt (*Spirinchus thaleichthys*), and pallid manzanita (*Arctostaphylos pallida*) shall be fully implemented as stipulated in the Biological Opinion titled, "Formal Consultation on the East Bay Regional Park District's Routine Maintenance Activities, Contra Costa and Alameda Counties, California (Corps file number 2003-298020S; USFWS file number 2023-0050708-S7-001)," and dated June 4, 2024 (enclosure 5). Project authorization under the permit 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 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. The Corps will initiate Section 7 consultation with the National Marine Fisheries Service (NMFS) for any project that may affect Sacramento River winter and spring-run Chinook Salmon (*Oncorhynchus tshawytscha*), Central California Coast DPS and California Central Valley steelhead (*O. mykiss*) DPS, North American green sturgeon southern DPS (*Acipenser medirostris*), and their critical habitat pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.).
3. The Corps will initiate consultation with the NMFS for any proposed project that may impact Essential Fish Habitat (EFH) for various life stages of fish species managed with the Pacific Groundfish Fishery Management Plan, the Coastal Pelagics Fishery Management Plan, and the Pacific Coast Salmon Fishery Management Plan, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1996, as amended (16 U.S.C. § 1801 et seq.). No activity may substantially disrupt the necessary life cycle movement of aquatic species indigenous to the water body, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low-flow conditions. If feasible, they should be designed as open-bottom culverts.
4. No activity may substantially disrupt the necessary life cycle movement of aquatic species indigenous to the water body, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low-flow conditions.
5. Heavy equipment working in wetlands must be placed on mats, or other measures, such as low-ground pressure equipment, must be implemented to minimize soil disturbance.
6. Fill material must be clean and free of contaminants and noxious plants.
7. Fresh cement or concrete is not allowed in waters unless it is placed in sealed forms. Unsuitable fill material includes vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires, and concrete with exposed rebar.
8. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and re-vegetated in accordance with the plans authorized under this RGP.

9. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration project).
10. Should any archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Native American archaeological indicators include: obsidian and chert flakes, and chipped stone tools; a bedrock mortar (i.e., a boulder 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:
 - (X) 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.

Becky Tuden
(PERMITTEE)

July 9, 2024
(DATE)

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

Katerina Galacatos
South Branch Chief, Regulatory Division

July 9, 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)