

**Draft Regional Permit Program for
Impacts to Aquatic Resources in the East
Contra Costa County HCP/NCCP
Inventory Area**

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NOTE: THE FOLLOWING IS A DRAFT OF A REGIONAL WETLANDS PERMIT PROGRAM FOR EAST CONTRA COSTA COUNTY. THIS DRAFT WAS PREPARED BY CONTRA COSTA COUNTY AND ITS CONSULTANTS WITH THE GUIDANCE OF THE US ARMY CORPS OF ENGINEERS (CORPS). IT WILL BE SUBMITTED TO THE CORPS FOR THEIR CONSIDERATION IN DESIGNING A REGIONAL PERMIT PROGRAM (RPP). THE CORPS HAVE NOT ISSUED ANY ENDORSEMENT OF THE RPP AS OUTLINED IN THIS DOCUMENT.

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U.S. Army Corps of Engineers
 San Francisco and Sacramento Districts
SAN FRANCISCO AND SACRAMENTO DISTRICTS
REGIONAL PERMIT PROGRAM

Effective: X, 200X
Expiration: X, 200X
Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344

A. Introduction

The Sacramento and San Francisco Districts of the U.S. Army Corps of Engineers (District) hereby issues a set of Regional Permits for activities with minimal individual and cumulative impacts on the aquatic environment in the proposed permit area in East Contra Costa County, California (see Appendix A: Regional Permits). Collectively, the Regional Permits and this document are known as the Regional Permit Program (RPP).

Please visit our website for a copy of the joint application form (**Form X**), draft deed restriction, sample tolling agreement and various other documents, and Frequently Asked Questions (FAQ's) regarding the RPP. The FAQ contains a comprehensive listing of frequently asked questions and answers that specifically pertain to the RPP. You can access our website at: **X**.

The purpose of the RPP is twofold:

1. To provide a regional approach to aquatic resource conservation through impact avoidance, impact minimization, habitat enhancement, and habitat restoration in response to rapid development in the permit area.
2. To provide a simplified and expeditious means to review activities that meet the specified terms and conditions described herein.

The RPP provides a regulatory mechanism for landscape-level aquatic resource conservation planning.

Development in East Contra Costa County (ECCC) has generally taken place in the lower portions of the area's watersheds. Substantial lands have been acquired in East County for public parks, open space, and watershed protection, mostly in the middle and upper portions of all watersheds. Regional conservation planning will generally restrict unavoidable aquatic resource impacts to the bottom of the watershed, in order to maintain the greatest possible watershed area intact. Restoration and conservation efforts will be focused on the middle and upper watersheds, where significant natural resources with the potential to provide high levels of ecosystem function remain. An inventory and functional assessment of waters of the US in ECCC has been prepared that, together with the ECCC Habitat Conservation Plan (HCP)/Natural Communities Conservation Plan (NCCP), will serve as a guide to regional wetlands planning in the area.

Regional permits are a type of general permit, as defined in 33 CFR 322.2(f), 33 CFR 323.2(h) and 325.2(e)(2). A regional permit may be issued by a District Engineer for a category of activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts.

B. Applicability

The RPP authorizes activities that involve structures or work in or affecting navigable waters of the United States (U.S.) under Section 10 of the Rivers and Harbors Act of 1899 and discharges of dredged or fill material into waters of the U.S. under Section 404 of the Clean Water Act.

C. Definitions

Definitions found at 33 CFR Parts 320-323 and 325-329 and 40 CFR Part 230 are applicable to the RPP and are incorporated by reference herein.

Applicant is the individual, organization or company requesting authorization under the RPP.

Authorization is written verification by the District that an activity qualifies for, and may proceed under, the RPP provided the terms and conditions of the program are followed. Authorization under the RPP is for three (3) years and will not generally be extended.

Avoidance and Minimization Measures (AMMs) are policies, practices, or procedures implemented to avoid and/or minimize impacts to waters of the U.S. AMMs include minimum buffer zones between development and waters of the U.S.

Best Management Practices (BMPs) are policies, practices, procedures or structures implemented to mitigate the direct and indirect degradation of surface water quality from an activity. BMPs include non-structural elements, such as the preservation of existing natural areas and drainageways, and structural elements, such as vegetated swales, filter strips and infiltration trenches, which are designed to remove pollutants, reduce runoff rates and velocity, and protect aquatic resources.

Compensatory WoUS mitigation is the creation, restoration, enhancement or, in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

Complete application is all required notification materials submitted by the applicant to the District. If all materials are not submitted, the application is considered incomplete and cannot be processed under the RPP. Conservation area is any national park or forest, natural heritage landmark, State nature preserve or conservation area, county park, or land managed by a local government or organization for conservation purposes. All conservation areas are depicted in the ECCC HCP/NCCP.

Currently serviceable means that a structure or fill is useable as is, or with some maintenance, but not so degraded as to require reconstruction.

Difficult-to-replace aquatic resources (DTRARs) are aquatic areas considered to be regionally critical due to their uniqueness, scarcity, and/or value, and other wetlands considered to perform

functions important to the public interest, as defined in 33 CFR Part 320.4(b)(2). These resources include

- Vernal pools,
- Alkali wetlands,
- Seeps,
- Streams and wetlands rated as high functioning in the Waters of the U.S. (WoUS) Inventory, Classification and Function Study of the permit area (Appendix D),
- Streamside marshes (Palustrine persistent emergent wetlands), and
- WoUS supporting Federal or California endangered or threatened species.

These areas are generally considered unsuitable for dredge or fill activities. Descriptions of DTRARs are provided in Appendix C.

Impact is the direct and indirect loss of waters of the U.S., including wetlands, which results from implementation of a proposed activity. This includes waters of the U.S. that are adversely affected by flooding, excavation, or drainage as a result of the activity.

Modification is the imposition of additional or revised terms or conditions on the authorization to ensure that an activity has minimal impacts on aquatic resources.

Notification is the submission of materials by the applicant to the District for a complete application.

Permit area is the geographic area where the RPP will apply. The permit area boundaries are shown in Figure 1. Note that some of the RPs only authorize activities within a portion of the permit area. Geographic restrictions on specific RPs are discussed in Appendices A and B.

Permittee is the individual, organization or company authorized to complete an activity under the RPP.

Pre-construction notice (PCN) is the notice provided to Federal and State agencies which requests comments concerning a proposed “Category II” activity.

Preservation is the protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Project area is the land, including waters of the U.S. and uplands, utilized for a single and complete project. The acreage is determined by the amount of land cleared, graded, and/or filled to construct the single and complete project, including any buildings, utilities, stormwater management facilities, roads, yards, and other attendant features. The project area also includes any other land and attendant features that are used in conjunction with the single and complete project, such as open space, roads and utilities. Roads constructed by State or local governments for general public use are not included in the project area.

Revocation is the permanent cancellation of the authorization.

Single and complete project is the total project proposed or accomplished by one owner, developer or partnership, or agency, within a project area.

Single-family residence is a parcel of land owned by an individual and used by that individual as his/her primary personal habitation.

Special conditions are conditions added by the District for projects on a case-by case basis to ensure an activity has minimal impacts on aquatic resources and complies with the RPP.

Suspension is the temporary cancellation of the authorization while a decision is made to modify, revoke or reinstate the authorization.

Terms and conditions are the parameters, including thresholds, limitations and requirements, for completing an activity under the RPP. These parameters are described in each Regional Permit (see Appendix A) and in Section I (General Conditions) of this document. Case-specific conditions (called “special conditions”) may also be added by the District on individual authorizations to ensure that an activity has minimal individual and cumulative impacts.

Utility line is any pipeline used to transport a gaseous, liquid, liquefiable or slurry substance for any purpose, and any cable, line or wire used to transmit electrical energy, telephone, radio signals, television signals or data communication. This definition does not include pipes or ditches which serve to drain a water of the United States, such as drainage tile; however, it does apply to pipes conveying drainage from another area.

D. Permit Expiration

The Regional Permits are valid for five (5) years from the date of issuance (or reissuance). The District will issue a public notice (with an opportunity for comment) describing the reasons for reissuing the Regional Permits, reissuing the Regional Permits with modifications, or not reissuing the Regional Permits for another five years, at least sixty (60) calendar days prior to the expiration date of the Regional Permits. If the District has not reissued the Regional Permits by the expiration date, the Regional Permits will no longer be valid. A Regional Permit may also be modified, suspended or revoked by the District at any time deemed necessary. In such an instance, the District will issue a public notice (with an opportunity for comment) describing the proposed change at least sixty (60) calendar days prior to the date the change will go into effect.

E. Activity Categories

Activities to be covered under the RPP will fall under one of two categories (see Appendix B):

Category I: Activities with very limited impacts requiring minimal review by the District. Authorization may include special conditions to ensure compliance with the RPP.

Category II: Activities with minimal impacts requiring more rigorous review by the District and coordination with resource agencies. Authorization may include special conditions to ensure compliance with the RPP.

Activities that do not fall into one of the above categories by definition have more than minimal impacts and are therefore subject to the individual permit review process.

F. Discretionary Authority

The District has the discretion to suspend, modify, or revoke authorizations under this RPP. This discretionary authority may be used by the District to further condition or restrict the applicability

of the Regional Permits for cases where it has concerns for aquatic resources under the Clean Water Act Section 404(b)(1) Guidelines or for any factor of the public interest. Because of the nature of most Category I activities, the District anticipates that it will not exert discretionary authority, except in extraordinary cases. For Category II activities, the District will thoroughly evaluate each proposed activity before issuing authorization. Should the District determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to aquatic resources or otherwise be contrary to the public interest, the District will modify the authorization to reduce or eliminate those adverse effects, or notify the applicant that the proposed activity is not authorized by the RPP and provide instructions on how to seek authorization under an individual permit. The District may restore authorization under the RPP at anytime it determines that the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information.

The District may also use its discretionary authority to modify, suspend, or revoke a Regional Permit for any specific geographic area, class of activities, or class of waters within the District's boundaries or individual authorizations where an activity is not in compliance with the RPP.

G. Authorization

Applicants seeking authorization under the RPP shall notify the District in accordance with the RPP General Condition number 21, prior to commencing a proposed activity. If the District determines that an activity does not comply with the RPP, it will notify the applicant in writing within forty-five (45) calendar days and provide instructions on the procedures to seek authorization under an individual permit. If the District does not provide a written response to the applicant within 45 calendar days following receipt of a complete application, the applicant may presume the proposed activity qualifies for the requested Regional Permit(s), provided the activity complies with the terms and conditions of the RPP. If the District determines that a proposed activity complies with the terms and conditions of the RPP, it will notify the applicant within 45 calendar days of receipt of a complete application. If the District determines that an unauthorized activity complies with the terms and conditions of the RPP, it will notify the applicant once it is satisfied that the violation is resolved.

The District may add special conditions to an authorization to ensure the activity complies with the terms and conditions of the RPP, and/or the adverse impacts on the aquatic environment or other aspects of the public interest are individually and cumulatively minimal.

Multiple Regional Permits may be combined to authorize a proposed single and complete project, except as indicated under specific Regional Permits. If multiple Regional Permits are used, the total impact may not exceed the maximum allowed by the Regional Permit with the greatest impact threshold. To use multiple Regional Permits, the applicant shall submit notification under Category II and indicate which Regional Permits are to be used for the project.

Any activity authorized by the District under the RPP shall be completed within three (3) years of the date it is authorized. The authorization date is the date the District confirms in writing that the activity meets the terms and conditions of the RPP, or 45 calendar days after the District receives a complete application and 5 the District fails to contact the applicant in writing concerning whether the activity meets the terms and conditions of the RPP. Time extensions will not generally be granted by the District if the permittee fails to complete the activity within three years.

H. General Conditions

Permittees shall comply with the terms and conditions of the Regional Permits and the following general conditions for all activities authorized under the RPP:

1. State 401 Water Quality Certification

Water quality certification under Section 401 of the federal Clean Water Act (CWA) is required from the California Environmental Protection Agency (CalEPA) to ensure all activities subject to a permit meets all state water quality standards. Federal CWA regulations are administered by the California State Water Resources Control Board (State Board) and nine Regional Water Quality Control Boards (RWQCBs) as delineated by California's Porter-Cologne Water Quality Control Act. The State Board issues 401 certification for projects encompassing jurisdictions of two RWQCBs. The State Board may exercise discretionary authority and require an individual permit.

It is anticipated that the State Board will review projects for Section 401 compliance through this RPP. In order to make this review possible, 401 certification conditions will be attached to the RPP. The following conditions of the certification will be proposed as conditions of the RPP:

a. The permittee shall not cause:

- 1) violation of applicable water quality standards of the State Board and appropriate RWQCBs Section 1350(h) of the California Water Code;
- 2) water pollution defined and prohibited by the federal Clean Water Act; or
- 3) interference with water use practices near public recreation areas or water supply intakes.
- 4) other impairment of beneficial use of waters of the U.S. or waters of the State.

b. The permittee shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.

c. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all State statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by the State Board or RWQCBs. Any backfilling must be done with clean material placed in a manner to prevent violation of applicable water quality standards.

d. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The permittee shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent soil erosion during construction shall be taken and may include the installation of staked straw bales, sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero to low flow conditions. The permittee shall be responsible for obtaining an NPDES Storm Water Permit for construction prior to initiating construction if the activity associated with the project will result in the disturbance of one (1) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the appropriate RWQCB(s), NPDES unit(s).

e. The permittee shall implement streamflow management and erosion control measures consistent with the Provision C.3 Amendments to the Contra Costa County Clean Water Program's NPDES Permit and Conservation Measures outlined in the ECC HCP/NCCP.

f. The permittee is advised that the following permits(s) must be obtained from the appropriate agency: the permittee must obtain permits to construct sanitary sewers, water mains, and related facilities prior to construction.

g. The permittee shall comply with requirements of the California Environmental Quality Act (CEQA).

j. Backfill used within trenches passing through surface waters of the State, except wetland areas, shall be clean course aggregate, gravel or other material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material may be used only if:

- 1) particle size analysis is conducted and demonstrates the material to be at least 80% sand or larger size material, using #230 U.S. sieve; or
- 2) excavation and backfilling are done under dry conditions.

k. Backfill used within trenches passing through wetland areas shall be clean material that will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material shall be used to the extent practicable, with the upper six (6) to twelve (12) inches backfilled with the topsoil obtained during trench excavation.

l. Any permittee proposing activities in a mined area or previously mined area shall provide determination on sediment and materials used which may have detrimental effects on water quality. Such impacts would be addressed as part of the State 401 Water Quality Certification Process described above.

m. Any discharge to waters of the U.S. by the permittee shall not include waste classified as "hazardous" or "designated" as defined in Title 22 CCRs section 66261 and California Water Code section 13173.

n. The permittee shall not increase the constituents impairing beneficial uses, as identified according to section 303(d) of the federal CWA, on Marsh Creek, the Marsh Creek Reservoir, San Joaquin River, urban streams, Suisun Bay, and the Delta.

2. Threatened and Endangered Species. No activity is authorized under the RPP if the activity is likely to jeopardize the continued existence of a threatened or endangered species listed or proposed for listing under the Federal Endangered Species Act (ESA) or destroy, or adversely modify, the critical habitat of such species. Within the permit area, compliance with the East Contra Costa County HCP/NCCP will provide for compliance with the ESA. The HCP/NCCP will take effect after approval by the US Fish and Wildlife Service and the California Department of Fish and Game (DFG). Federal agencies should follow their own procedures for complying with the requirements of the ESA. Non-federal applicants shall notify the District if any Federally listed (or proposed for listing) endangered or threatened species or critical habitat might be affected by the activity or is located in the project area. If all issues pertaining to endangered and threatened species have been resolved through the HCP/NCCP process to the satisfaction of the District and U.S. Fish and Wildlife Service (USFWS), the District may, at its discretion, authorize the activity under the RPP instead of an individual permit. Applicants are encouraged to obtain information on threatened or endangered species and their critical habitats from the USFWS at the earliest stages of project planning. For information, contact:

US Fish and Wildlife Service
2800 Cottage Way, Room W2605
Sacramento, California 95825
Phone: 916 414-6600

Fax: 916 414-6713

3. Historic Properties. No activity is authorized under the RPP if the activity will affect properties listed, or properties eligible for listing, in the National Register of Historic Places, in accordance with the provisions of 33 CFR Part 325, Appendix C and Section 106 of the National Historic Preservation Act. Federal agencies should follow their own procedures for compliance with the requirements of the National Historic Preservation Act and other Federal historic preservation laws. Non-federal applicants should notify the District if the activity may affect historic properties which are listed, determined eligible for listing, or which the applicant has reason to believe may be eligible for listing, on the National Register of Historic Places in the project area. If the District determines that the activity may potentially affect a historic property, or a property eligible for listing, the activity shall not be authorized under the RPP and an individual permit will be required. The District will take into account the effects on such properties in accordance with 33 CFR Part 325, Appendix C. If all issues pertaining to historic properties have been resolved through the consultation process to the satisfaction of the District, California State Office of Historic Preservation (OHP), the District may, at its discretion, authorize the activity under the RPP instead of an individual permit. Applicants are encouraged to obtain information on historic properties from the OHP and the National Register of Historic Places at the earliest stages of project planning. For information, contact:

California Department of Parks and Recreation
Office of Historic Preservation
PO Box 942896
Sacramento, CA 94296-0001
916-653-6624

4. Soil Erosion and Sediment Control.

The federal Clean Water Act specifically prohibits the discharge of any pollutants to the “navigable waters of the United States.” The CWA requires the Environmental Protection Agency (EPA) to establish regulations setting forth the National Pollutant Discharge Elimination System (NPDES) program requirements for stormwater discharges. Projects disturbing more than 1 acre of land during construction must be covered under the State’s General Construction Activities NPDES Storm Water Permit (General Construction Permit). This is accomplished by filing a Notice of Intent (NOI) and preparing and implementing a Stormwater Pollution Prevention Plan (SWPPP). The purpose of the NPDES program and SWPPP are to control soil erosion and sedimentation at the project site to ensure that sediment is not transported to waters of the U.S. during construction. Soil erosion and sediment control measures shall be implemented before initiating any clearing, grading, excavating or filling activities. All temporary and permanent soil erosion and sediment control measures shall be maintained during the construction period and until the site is stabilized. All exposed soil and other fills, and any work below the ordinary high water mark shall be permanently stabilized at the earliest practicable date. The SWPPP shall be designed in accordance with Conservation Measures identified in the ECC HCP/NCCP and best management practices, such as those outlined in the California Department of Transportation SWPPP/WPCP Preparation Manual (CalTrans 2003).

5. Floodplain.

Discharges of dredged or fill material into waters of the United States within the 100-year floodplain (as defined by the Federal Emergency Management Agency) resulting in permanent above-grade fills shall be avoided and minimized to the maximum extent practicable. When such an above-grade fill would occur, the applicant may need to obtain approval from the Department Water Resources (DWR) which regulates activities affecting the floodway and local government

with jurisdiction over activities in the floodplain. Compensatory storage may be required for fill within the floodplain. Applicants are encouraged to obtain information from the DWR and local government with jurisdiction at the earliest stages of project planning. For information on floodway construction, contact:

Floodplain Management
 Department of Water Resources
 1416 9th Street
 Sacramento, Ca. 95814
 Mailing Address:
 P.O. Box 219000
 3310 El Camino Ave.
 Sacramento, Ca. 95821

and the Contra Costa Flood Control and Water Conservation District.

For information on floodplain construction, please contact the local government and/or the Federal Emergency Management Agency. Pursuant to 33 CFR 320.4 (j), the District will consider the likelihood of the applicant obtaining approval for aboveground permanent fills in floodplains in determining whether to issue authorization under the RPP.

6. Navigation. No activity may cause more than minimal adverse effects on navigation.
7. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including that necessary to ensure public safety.
8. Aquatic Life Movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including species that normally migrate through the area, unless the activity's primary purpose is to impound water.
9. Equipment. Heavy equipment working in wetlands shall be placed on mats, or other measures, such as low-ground pressure equipment, shall be taken to minimize soil disturbance.
10. Tribal Rights. No activity or its operation may impair reserved tribal rights, such as reserved water rights, treaty fishing and hunting rights.
12. Water supply intakes. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.
11. Shellfish production. No discharge of dredged or fill material may occur in areas of concentrated shellfish production.
12. Suitable material. No discharge of dredged or fill material may consist of unsuitable material and material discharged shall be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act). Unsuitable material includes trash, debris, car bodies, and asphalt.
13. Spawning areas. Discharges in spawning areas during spawning seasons shall be avoided to the maximum extent practicable.
14. Obstruction of high flows. Discharges shall not permanently restrict or impede the passage of normal or expected high flows. All crossings shall be culverted, bridged or otherwise designed to prevent the restriction of expected high water flows, and shall be designed so as not to impede low water flows or the movement of aquatic organisms.

15. Impacts from impoundments. If the discharge creates an impoundment of water adverse impacts on aquatic resources caused by the accelerated passage of water and/or the restriction of its flow shall be avoided to the maximum extent practicable.

16. Waterfowl breeding areas. Discharges into breeding areas for migratory waterfowl shall be avoided to the maximum extent practicable.

17. Removal of temporary fills. Any temporary fill material shall be removed in its entirety and the affected area returned to its pre-existing condition.

18. Mitigation. Impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable at the project site. Avoidance and minimization shall be attempted before compensatory wetland mitigation is considered. Compensatory mitigation will be accomplished by establishing a minimum ratio of **X** acres of mitigation for every 1.0 acre of waters of the U.S. impacted by the project. (Mitigation ratios may vary depending on the quality and type of the wetland impacted.) Furthermore, the District has the discretion to require additional mitigation to ensure that the impacts are no more than minimal. Mitigation shall be consistent with the Memorandum of Agreement (MOA) between the Department of the Army and the Environmental Protection Agency Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines. Mitigation may consist of the following, listed in order of preference: restoration of historic wetlands that are currently non-wetlands because of drainage or other alterations; enhancement of existing aquatic resources through various actions such as modification of hydrology, introduction of appropriate native species, invasive species removal, and other management measures; creation of aquatic resources in historically upland areas; and, preservation of existing aquatic resources through real estate acquisition strategies. These mitigation measures are described in detail, with specific reference to the permit area, in the ECCC HCP/NCCP. The ECCC HCP/NCCP's conservation measures will be considered for mitigation under the RPP. Careful consideration shall be given to the likelihood of sustainability, practicability, availability, and reliability of compensatory mitigation. Off-site wetland mitigation may be considered where the long-term success of on-site mitigation is uncertain. The RPP will encourage a regional approach to mitigation within the permit area in order to maximize the cumulative benefits of mitigation for individual project impacts.

19. Notification. The applicant shall provide written notification (i.e., a complete application) for a proposed activity to be authorized under the RPP prior to commencing a proposed activity. The District's receipt of the complete application is the date when the District receives all required notification information from the applicant (see below). If the District does not provide a written response to the applicant within 45 calendar days following receipt of a complete application, the applicant may presume the proposed activity qualifies for the requested Regional Permit(s), provided the activity complies with the terms and conditions of the RPP. If the District informs the applicant within 45 calendar days that the notification is incomplete (i.e., not a complete application), the applicant shall submit the requested information to be considered for authorization. A new 45-day review period will commence when the District receives the requested information. Applications that involve unauthorized activities that are completed or partially completed by the applicant are not subject to the 45-day review period.

For a Category I activity, notification shall include:

- a. A cover letter which provides a clear project purpose and need statement, a brief description of the proposed activity, the Regional Permit(s) to be used for the activity, the area (in acres)

of waters of the U.S. to be impacted, and a statement that the terms and conditions of the RPP will be followed;

- b. A completed application form (**Form X, Standard USACOE application form**) signed by the applicant or agent. If the agent signs, notification shall include a signed, written statement from the applicant designating the agent as its representative;
- c. A delineation of waters of the U.S., including wetlands, and waters of the State, for the project area, and for areas adjacent to the project site (off-site wetlands shall be identified through the use of reference materials including review of local wetland inventories, soil surveys and the most recent available photography), shall be prepared in accordance with the current Corps of Engineers and DFG methodology and generally conducted during the growing season.¹ For sites supporting WoUS, the delineation shall include a Hydrogeomorphic Functional Assessment, as detailed in Appendix E. The delineation shall *also* include information on the occurrence of any difficult-to-replace aquatic resources and a listing of waterfowl and amphibian species observed while at the project area.
- d. Map showing the location of the project area;
- e. Preliminary engineering drawings (full size and 8 ½” x 11” reduced sized for Category II projects only) showing all aspects of the proposed activity and the location of waters of the U.S. to be impacted and not impacted. The plans shall include grading contours; and proposed and existing structures of work such as buildings footprints, roadways, road crossings, stormwater management facilities, utilities, construction access areas and details of water conveyance structures. The drawings shall also buffer areas, outlots or open space designations, best management practices, deed restricted areas, and restoration areas, if required under the specific RP in Appendix A;
- f. A preliminary stormwater pollution prevention plan;
- g. Evidence that an application was submitted for coverage under the East Contra Costa HCP/NCCP, providing for compliance with the ESA;
- h. Other items listed under the specific RP(s) in Appendix A.

For a Category II activity, the notification shall include all materials listed for notification for Category I above, plus:

- j. A detailed description of the proposed activity;
- k. A discussion of the measures taken to avoid and minimize impacts to aquatic resources on the project site;

¹ If a wetland delineation is conducted during the non-growing season, the District will determine on a case-by-case basis whether sufficient evidence is available to make an accurate determination. If the District finds that a delineation lacks sufficient evidence, the application will not be considered complete until such time the information is provided. This may involve re-delineating the project site during the growing season.

1. A compensatory mitigation plan for all impacts to waters of the U.S., if compensatory mitigation is required under the specific RP.

For Category II activities, the District will, upon receipt of a complete application, provide (by facsimile transmission, email or other expeditious means), a pre-construction notice (PCN) which describes the proposed activity to the USFWS, USEPA, CDFG, CalEPA, SWRCB, OHP, and U.S. Coast Guard (Section 10 activities only). These agencies will then have ten (10) calendar days from the date the PCN is transmitted to contact the District if they intend to provide substantive, site-specific comments. If so contacted by an agency, the District will wait an additional fifteen (15) calendar days for agency written comments before making a decision on the notification. The District will fully consider agency comments received within the specified time frame. If the District determines the activity complies with the terms and conditions of the RPP and impacts on aquatic resources are minimal, the District will notify the applicant in writing and include any special conditions deemed necessary. If the District determines that the impacts of the proposed activity are more than minimal, the District will notify the applicant that the project does not qualify for authorization under the RPP and instruct the applicant on the procedures to seek authorization under an individual permit.

22. Compliance Certification. Every permittee who has received authorization under the RPP from the District will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the District with the authorization letter and will include: a) A statement that the authorized work was done in accordance with the District's authorization, including any general or specific conditions; b) A statement that any required mitigation was completed in accordance with the permit conditions and; c) The signature of the permittee certifying the completion of the work and mitigation.

23. Multiple use of Regional Permits. In any case where a Regional Permit is combined with any other Regional Permit to cover a single and complete project (except where prohibited under specific Regional Permits), the applicant shall notify the District in accordance with Category II. If multiple Regional Permits are used, the total impact may not exceed the maximum allowed by the Regional Permit with the greatest impact threshold.

24. Other Restrictions. Authorization under the RPP does not obviate the need to obtain other Federal, State or local permits, approvals, or authorizations required by law nor does it grant any property rights or exclusive privileges, authorize any injury to the property or rights of others or authorize interference with any existing or proposed Federal project. Approved by:
Original Signed **X 200X**

Colonel, U.S. Army
District Engineer

Date

APPENDIX A: REGIONAL PERMITS

1. RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL DEVELOPMENTS

RP1 authorizes the construction of residential, commercial and institutional developments and associated infrastructure, such as roads, utilities, detention areas, and recreation areas, subject to the following:

- a. The project shall take place within the urban limit line (ULL), originally established by Contra Costa County voters in 1990, as subsequently amended.
- b. The impact to waters of the U.S. shall not exceed **X** acres. For projects that impact over 0.25 acres of waters of the U.S., the permittee is required to provide compensatory mitigation.
- c. Projects that impact no more than 0.25 acres of waters of the U.S. and do not impact any difficult-to-replace aquatic resources shall be processed under Category I.
- d. Projects that impact over 0.25 acre up to **X** acres of waters of the U.S. or impact difficult-to-replace aquatic resources shall be processed under Category II.
- e. The permittee shall establish and/or enhance an upland buffer of native plants (or other appropriate vegetation approved by the District) adjacent to all created, restored, enhanced or preserved waters of the U.S., including wetlands, rivers, streams, creeks, ponds and lakes etc.. The following buffer widths shall be required:
 - 1) For a linear body of water (e.g., river, stream, creek, etc.) that is classified as a lower perennial or intermittent reach, the buffer shall be a minimum of 150 feet from the Ordinary High Water Mark (OHWM) on both sides of the linear waterbody;
 - 2) For a linear body of water (e.g., river, stream, creek, etc.) that is classified as an upper perennial reach, the buffer shall be a minimum of 100 feet from the Ordinary High Water Mark (OHWM) on both sides of the linear waterbody;
 - 3) For a linear body of water (e.g., river, stream, creek, etc.) that is classified as an ephemeral reach, the buffer shall be a minimum of 50 feet from the Ordinary High Water Mark (OHWM) on both sides of the linear waterbody;
 - 4) For any waters of the U.S., including wetlands, over 0.25 acres and up to 1.0 acre in size, the buffer shall average **X** feet wide (**X** foot minimum);
 - 5) For any waters of the U.S. including wetlands, 1.0 acre or larger in size, the buffer shall average **X** feet wide (**X** foot minimum); and
 - 6) For any area determined to be a difficult-to-replace resource, the buffer shall average **X** feet wide (**X** foot minimum),

The above requirements do not apply to linear road crossings. Waters of the U.S. shall not be filled in order to meet the buffer requirements.

Stormwater retention/detention facilities, and pervious nature trails may be located in the buffer. However, the facility and/or trail shall be setback to a minimum distance of 50% of the required buffer, leaving the remaining buffer footage (adjacent to the regulated area) to consist of native vegetation only (or other appropriate vegetation approved by the District). The District may allow Best Management Practices, small boat launches and houses, and piers/docks to be located in buffers.

The District may, on a case-by-case basis, give compensatory wetland mitigation credit for buffers (except for area occupied by stormwater detention), following a request from the applicant to receive such a credit. The credit may be applied to 10% of the overall compensatory wetland mitigation required to offset project impacts.

- f. All remaining, created, restored or enhanced waters of the U.S. and adjacent buffers on the project site shall be permanently preserved and protected through deed restriction (or conservation easement). A draft deed restriction (or conservation easement) shall be provided with notification.
- g. No lot lines shall occur in created, restored, enhanced or preserved waters of the U.S. and adjacent buffer areas on the project site. In instances where there is a demonstrated conflict between this lot line restriction and a local ordinance, other measures, such as the installation of split-rail fencing, posting of signs marking the limits of the protected areas and establishing a party responsible for the long-term management of the protected areas, may be acceptable in lieu of placing such areas in separate outlots.
- h. The project shall employ Best Management Practices (BMPs) to protect water quality and minimize impacts of stormwater on aquatic resources. A written narrative shall be included with notification which describes how the BMP hierarchy above was used in determining the water quality protection practices selected for the project site. The following BMP hierarchy shall be used in designing the project: (a) preservation of natural resource features on the project site (e.g., floodplains, wetlands, streams, and other drainageways, prairies, woodlands, and native soils); (b) preservation of natural infiltration and storage characteristics of the site; (c) minimization and disconnection of impervious surfaces; (d) structural measures that provide water quality and quantity control; and (e) structural measures that provide only quantity control and conveyance. BMPs may be located in upland buffers adjacent to wetlands and other waters of the U.S.

Applicants who protect water quality and minimize run-off by designing and implementing a comprehensive and coordinated use of BMPs throughout the project site may receive partial compensatory wetland mitigation credit. The District may, at its discretion and on a case-by-case basis, reduce the required mitigation ratio to 1:1, following a request from the applicant for such a credit. In order to qualify for the credit, the applicant shall prepare a water quality management plan for the entire project site that identifies priority watershed resources to be protected, water quality goals, the natural and proposed drainage system and details of the projected runoff quality and quantity. The plan shall describe in detail how the BMP hierarchy was used in determining the water quality protection practices selected for the project site. Each BMP selected shall be part of a coordinated system (“treatment train”) which provides multiple layers of treatment. The plan shall incorporate the following preventative construction techniques:

Preventative Construction Techniques

Preservation of natural resource features such as floodplains, streams, wetlands, grasslands, woodlands and native soils.

Limiting the amount of impervious surface through practices such as reducing road widths and clustering developments designed around open space.

In addition, the plan shall use the following structural BMPs on both individual lots and the overall site to the maximum extent practicable:

Lot Controls

Site Controls

Grassed swales
 Underground sand filter
 Infiltration trenches
 Vegetated filter strips
 Vegetated natural buffers
 Level spreaders
 Dry wells or roof downspout system
 Rubber rooftops

Wetland detention
 Wet bottom detention
 Grassed swales
 Infiltration basins
 Vegetated swales
 Vegetated natural buffers
 Level spreaders
 Curb cuts
 Channel grade controls

Furthermore, the plan shall outline how the BMPs will be permanently maintained and the entity responsible for the maintenance. The water quality management plan shall be submitted with notification.

- i. No stormwater management facility shall be constructed in any waterway shown as a solid blue line stream on a USGS quadrangle map.
- j. The project shall be designed such that collected stormwater does not directly discharge into waters of the U.S. All water shall be infiltrated or detained and treated prior to discharging into waters of the U.S. In addition, stormwater shall be discharged using methods that promote infiltration and water quality treatment, such as level spreaders, infiltration trenches and vegetated swales.
- k. For a project site adjacent to a conservation area, the permittee shall establish buffer zones between sensitive land cover types in the preserves and developed and agricultural lands. The purpose of these buffer zones is to eliminate or minimize the potential adverse effects of adjacent urban and agricultural uses on sensitive preserved, enhanced, restored, and created natural communities and covered species habitat. The buffer zone will be of sufficient width to achieve this purpose. In some cases, lands may not be available to serve as spatial buffers; in these instances, specific management actions may be undertaken to eliminate or minimize existing adverse effects that adjacent land uses could have on the preserves.
- l. The project shall be a single and complete project. For example, if construction of a residential development involves phases, the sum of all impacted areas would be the basis for deciding whether or not the project will be covered by this Regional Permit.
- m. All road crossings shall be constructed in accordance with the following:
 - 1) The width of the discharge is limited to the minimum necessary for the activity.
 - 2) All crossings shall be culverted, bridged or otherwise designed to prevent the restriction of expected high water flows, and shall be designed so as not to impede low water flows or the movement of aquatic organisms.
 - 3) The permittee shall establish and maintain an upland buffer of native plants (or other Corps-approved vegetation) within the right-of-way adjacent to all wetlands not impacted.
- n. All utility lines shall be constructed in accordance with the following:
 - 1) The waters of the U.S. to be impacted shall be limited to the minimum necessary to construct the utility line.
 - 2) The construction area for linear utility line projects shall be limited to a width of 75 feet, except in farmed wetlands where there is an established Agricultural Impact Mitigation

- agreement with the California Department of Agriculture. Any mechanized clearing of vegetation in the utility corridor shall be scheduled no more than seven (7) calendar days preceding installation of the utility line in that segment of the corridor. In no case shall the vegetation of the entire corridor be cleared prior to actual installation of the utility line.
- 3) For utility line projects, directional drilling (*Section 10 waters only*) or dry crossing techniques, such as fluming, shall be used if the waterbody to be crossed contains perennial flow.
 - 4) If the project involves the use of directional drilling in navigable waters (*Section 10 waters only*, see note below) notification shall include a contingency plan. A contingency plan is a plan of action to stabilize the work area, to employ alternative construction methods, and to obtain other permits necessary to complete the modified construction plans.
 - 5) Material resulting from trench excavation may be temporarily (up to 30 days) sidecast into waters of the U.S., provided that the material is not placed in such a manner that is dispersed by currents or other forces.
 - 6) Utility lines shall not adversely alter existing hydrology, including the draining of wetlands. In wetland areas, utility line trenches shall be lined with clay, or other impervious materials or structures (such as cut-off walls) to ensure that the trench through which the utility line is installed does not drain waters of the U.S.. In addition, to prevent a french drain effect, gravel cannot be used as backfill material in the top 10 feet of the trench.
 - 7) In wetland areas, the top 12" of the trench shall be backfilled with topsoil excavated from the trench in the same stratification in which it was removed.
 - 8) Excess material shall be removed to upland areas immediately upon completion of utility line construction in any segment of the project containing waters of the U.S. In no case shall the excess material be left in place until the entire utility line is completed.
 - 9) The construction area, including unprotected slopes and streambanks, shall be stabilized (e.g., blanketed and seeded) immediately upon completion of the utility line construction in any segment of the project. In no case shall soil stabilization be delayed until the entire utility line is completed.
 - 10) The permittee is required to restore the construction area to pre-construction conditions, including grading to original contours and revegetating (with native vegetation or other appropriate vegetation approved by the District) immediately upon completion of the project, except for permanent, above-ground fills. A restoration plan, which includes a 1-foot contour topographic map, shall be submitted with notification.
 - 11) Temporary construction activities, including access roads and cofferdams, are not authorized under this Regional Permit.

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

- o. This permit shall not be used in conjunction with any other regional permit, except RP7 and RP10.

2. RECREATION PROJECTS

RP2 authorizes the construction of recreation projects, including golf courses, sports fields, playgrounds, parks and multi-use trails, and associated infrastructure, such as roads, utilities, and detention areas, subject to the following:

- a. Recreation projects, with the exception of parks and multi-use trail, will only be processed under this regional permit if they take place within the ULL;
- b. The impact to waters of the U.S. from the project shall not exceed 5? 1? acres. For projects that impact more than 0.25 acres of waters of the U.S., the permittee is required to provide compensatory mitigation.
- c. Projects that impact no more than 0.25 acres of waters of the U.S. and do not impact any difficult-to-replace aquatic resources shall be processed under Category I.
- d. Projects that impact over 0.25 acre up to 5? 1? acres of waters of the U.S. or impact difficult-to-replace aquatic resources shall be processed under Category II.
- e. The permittee shall establish and maintain an upland buffer of native plants (or other appropriate vegetation approved by the District) adjacent to all created, restored, enhanced or preserved waters of the U.S., including rivers, streams, creeks, ponds and lakes, etc.. The following buffer widths shall be required:
 - 1) For a linear body of water (e.g., river, stream, creek, etc.) that is classified as a lower perennial or intermittent reach, the buffer shall be a minimum of 150 feet from the Ordinary High Water Mark (OHWM) on both sides of the linear waterbody;
 - 2) For a linear body of water (e.g., river, stream, creek, etc.) that is classified as an upper perennial reach, the buffer shall be a minimum of 100 feet from the Ordinary High Water Mark (OHWM) on both sides of the linear waterbody;
 - 3) For a linear body of water (e.g., river, stream, creek, etc.) that is classified as an ephemeral reach, the buffer shall be a minimum of 50 feet from the Ordinary High Water Mark (OHWM) on both sides of the linear waterbody;
 - 4) For any waters of the U.S., including wetlands, over 0.25 acres and up to 1.0 acre in size, the buffer shall average X feet wide (X foot minimum);
 - 5) For any waters of the U.S. including wetlands, 1.0 acre or larger in size, the buffer shall average X feet wide (X foot minimum); and
 - 6) For any area determined to be a difficult-to-replace resource, the buffer shall average X feet wide (X foot minimum).

1)

The above requirements do not apply to linear road crossings. Waters of the U.S. shall not be filled in order to meet the buffer requirements, except in extraordinary circumstances. Stormwater retention/detention basins and unpaved nature trails may be located in the buffer. However, the basin and/or trail shall be setback to a minimum distance of 50% of the required buffer, leaving the remaining buffer footage (adjacent to the regulated area) to consist of native vegetation only. The District may allow Best Management Practices, small boat launches and houses, piers/docks to be located in buffers.

The District may, on a case-by-case basis, give compensatory wetland mitigation credit for buffers (except for area occupied by stormwater detention), following a request from the applicant to receive such a credit. The credit may be applied to 10% of the overall compensatory wetland mitigation required to offset project impacts.

- f. The project shall employ Best Management Practices (*BMPs*) to protect water quality and minimize impacts of stormwater on aquatic resources. A written narrative shall be included with notification which describes how the BMP hierarchy above was used in determining the water quality protection practices selected for the project site. The following BMP hierarchy shall be used in designing the project: (a) preservation of natural resource features on the project site (e.g., floodplains, wetlands, streams, and other drainageways, prairies, woodlands, and native soils); (b) preservation of natural infiltration and storage characteristics of the site; (c) minimization and disconnection of impervious surfaces; (d) structural measures that provide water quality and quantity control; and (e) structural measures that provide only quantity control and conveyance. *BMPs* may be located in upland buffers adjacent to wetlands and other waters of the U.S.

Applicants who protect water quality and minimize run-off by designing and implementing a comprehensive and coordinated use of *BMPs* throughout the project site may receive partial compensatory wetland mitigation credit. The District may, at its discretion and on a case-by-case basis, reduce the required mitigation ratio to 1:1, following a request from the applicant for such a credit. In order to qualify for the credit, the applicant shall prepare a water quality management plan for the entire project site that identifies priority watershed resources to be protected, water quality goals, the natural and proposed drainage system and details of the projected runoff quality and quantity. The plan shall describe in detail how the *BMP* hierarchy was used in determining the water quality protection practices selected for the project site. Each *BMP* selected shall be part of a coordinated system (“treatment train”) which provides multiple layers of treatment. The plan shall incorporate the following preventative construction techniques:

Preventative Construction Techniques

Preservation of natural resource features such as floodplains, streams, wetlands, grasslands, woodlands and native soils.

Limiting the amount of impervious surface through practices such as reducing road widths and clustering developments designed around open space.

In addition, the plan shall use the following structural *BMPs* on both individual lots and the overall site to the maximum extent practicable:

Lot Controls

Grassed swales
 Underground sand filter
 Infiltration trenches
 Vegetated filter strips
 Vegetated natural buffers
 Level spreaders
 Dry wells or roof downspout system
 Rubber rooftops

Site Controls

Wetland detention
 Wet bottom detention
 Grassed swales
 Infiltration basins
 Vegetated swales
 Vegetated natural buffers
 Level spreaders
 Curb cuts

Furthermore, the plan shall outline how the BMPs will be permanently maintained and the entity responsible for the maintenance. The water quality management plan shall be submitted with notification.

- g. No stormwater management facility shall be constructed in any waterway shown as a solid blue line stream on a USGS quadrangle map.
- h. The project shall be designed such that stormwater does not directly discharge into waters of the U.S. All water shall be infiltrated or detained and treated prior to discharging into waters of the U.S. In addition, stormwater shall be discharged using methods that promote infiltration and water quality treatment, such as level spreaders, infiltration trenches and vegetated swales.
- i. The project shall be a single and complete project. For example, if construction of a residential development involves phases, the sum of all impacted areas would be the basis for deciding whether or not the project will be covered by this Regional Permit.
- j. All road crossings shall be constructed in accordance with the following:
 - 1) The width of the discharge is limited to the minimum necessary for the activity.
 - 2) All crossings shall be culverted, bridged or otherwise designed to prevent the restriction of expected high water flows, and shall be designed so as not to impede low water flows or the movement of aquatic organisms.
 - 3) The permittee shall establish and maintain an upland buffer of native plants (or other Corps-approved vegetation) within the right-of-way adjacent to all wetlands not impacted.
- k. All utility lines shall be constructed in accordance with the following:
 - 1) The waters of the U.S. to be impacted shall be limited to the minimum necessary to construct the utility line.
 - 2) The construction area for linear utility line projects shall be limited to a width of 75 feet, except in farmed wetlands where there is an established Agricultural Impact Mitigation agreement with the California Department of Agriculture. Any mechanized clearing of vegetation in the utility corridor shall be scheduled no more than seven (7) calendar days preceding installation of the utility line in that segment of the corridor. In no case shall the vegetation of the entire corridor be cleared prior to actual installation of the utility line.
 - 3) For utility line projects, directional drilling (*Section 10 waters only*) or dry crossing techniques, such as fluming, shall be used if the waterbody to be crossed contains perennial flow.

- 4) If the project involves the use of directional drilling in navigable waters (Section 10 waters only, see note below) notification shall include a contingency plan. A contingency plan is a plan of action to stabilize the work area, to employ alternative construction methods, and to obtain other permits necessary to complete the modified construction plans.
- 5) Material resulting from trench excavation may be temporarily (up to 30 days) sidecast into waters of the U.S., provided that the material is not placed in such a manner that is dispersed by currents or other forces.
- 6) Utility lines shall not adversely alter existing hydrology, including the draining of wetlands. In wetland areas, utility line trenches shall be lined with clay, or other impervious materials or structures (such as cut-off walls) to ensure that the trench through which the utility line is installed does not drain waters of the U.S.. In addition, to prevent a french drain effect, gravel cannot be used as backfill material in the top 10 feet of the trench.
- 7) In wetland areas, the top 12" of the trench shall be backfilled with topsoil excavated from the trench in the same stratification in which it was removed.
- 8) Excess material shall be removed to upland areas immediately upon completion of utility line construction in any segment of the project containing waters of the U.S. In no case shall the excess material be left in place until the entire utility line is completed.
- 9) The construction area, including unprotected slopes and streambanks, shall be stabilized (e.g., blanketed and seeded) immediately upon completion of the utility line construction in any segment of the project. In no case shall soil stabilization be delayed until the entire utility line is completed.
- 10) The permittee is required to restore the construction area to pre-construction conditions, including grading to original contours and revegetating (with native vegetation or other appropriate vegetation approved by the District) immediately upon completion of the project, except for permanent, above-ground 15 fills. A restoration plan, which includes a 1-foot contour topographic map, shall be submitted with notification.
- 11) Temporary construction activities, including access roads and cofferdams, are not authorized under this Regional Permit.

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

1. This permit shall not be used in conjunction with any other regional permit, except RP7 and RP10.

3. TRANSPORTATION PROJECTS

RP3 authorizes the construction of transportation projects, including roads, bridges, runways and taxiways, railroads, and multi-use trails, subject to the following:

- a. The impact to waters of the U.S. shall not exceed 0.25 acres or a distance of 200 linear feet for any single crossing. For transportation projects that involve multiple crossings of waters of the U.S., the cumulative impact cannot exceed 5? 1? acres, and no single crossing may impact more than 0.25 acres or a distance of 200 linear feet.
- b. Projects that impact no more than 0.25 acres of waters of the U.S. and do not impact any difficult-to-replace aquatic resources will be processed under Category I.
- c. Projects that impact over 0.25 acres up to 5? 1? acres of waters of the U.S. or impact difficult-to-replace aquatic resources shall be processed under Category II.
- d. For projects that cause the loss of greater than 0.25 acre of waters of the U.S., the permittee is required to provide compensatory mitigation.
- e. The width of the discharge is limited to the minimum necessary for the activity.
- f. All crossings shall be culverted, bridged or otherwise designed to prevent the restriction of expected high water flows, and shall be designed so as not to impede low water flows or the movement of aquatic organisms.
- g. The permittee shall establish and maintain an upland buffer of native plants (or other appropriate vegetation approved by the District) within the right-of-way adjacent to all wetlands.
- h. The activity shall be designed such that surface water does not directly discharge into waters of the U.S. All water shall be infiltrated or detained and treated prior to discharging into waters of the U.S.
- i. This permit specifically excludes any discharges used to construct associated building pads or equipment storage areas.
- j. For a project site adjacent to a conservation area, the permittee shall establish buffer zones between sensitive land cover types in the preserves and developed and agricultural lands. The purpose of these buffer zones is to eliminate or minimize the potential adverse affects of adjacent urban and agricultural uses on sensitive preserved, enhanced, restored, and created natural communities and covered species habitat. The buffer zone will be of sufficient width to achieve this purpose. In some cases, lands may not be available to serve as spatial buffers; in these instances, specific management actions may be undertaken to eliminate or minimize existing adverse effects that adjacent land uses could have on the preserves.
- k. Temporary construction activities, including access roads and cofferdams, are not authorized under this Regional Permit.

4. WETLAND AND STREAM RESTORATION AND ENHANCEMENT

RP4 authorizes the restoration, creation and enhancement of wetlands and riparian areas, and the restoration and enhancement of rivers, creeks and streams, and open water areas, on any public or private land. Wetland and stream restoration and enhancement activities include the removal of accumulated sediments; installation, removal and maintenance of small water control structures, dikes and berms; installation of current deflectors; enhancement, restoration, or creation of riffle and pool structures; placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; backfilling of artificial channels and drainage ditches; removal of existing drainage structures; construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation; mechanized land-clearing to remove undesirable vegetation; and other related activities. This RP may be used to relocate aquatic habitat types on the project site, provided there are net gains in aquatic resource functions and values. Authorization under RP4 is subject to the following:

- a. All projects shall be processed under Category II.
- b. This permit cannot be used to authorize activities for the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat.
- c. This permit cannot be used to channelize a stream.
- d. This permit cannot be used to authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where riparian scrub previously existed.

5. TEMPORARY CONSTRUCTION ACTIVITIES

RP5 authorizes temporary structures and discharges necessary for construction activities, access fills and dewatering of construction sites. Authorization under RP5 is subject to the following:

- a. All projects will be processed under Category II.
- b. The temporary impact to waters of the U.S. shall not exceed 0.25 acres.
- c. Fills shall be of non-erodible materials and shall be constructed to withstand expected high flows.
- d. This permit does not authorize the use of earthfill cofferdams, or any practices that would result in a release of sediment into waters of the U.S. Cofferdams shall be constructed of non-erodible materials. Acceptable practices include prefabricated rigid cofferdams, sheet piling, inflatable bladders, sandbags and fabric lined basins.
- e. Heavy equipment working in wetlands shall be placed on mats or other measures, such as low-ground pressure equipment, shall be used to minimize soil disturbance.
- f. Materials used for temporary construction activities shall be removed immediately and entirely to upland areas following completion of the construction activity.
- g. The permittee is required to restore the construction area to pre-construction conditions, including grading to original contours and revegetating (with native vegetation) all disturbed areas, immediately upon completion of the project. A restoration plan, which includes a 1-foot contour topographic map, shall be submitted with the notification.

6. UTILITY LINE PROJECTS

RP6 authorizes the construction, maintenance and repair of utility line activities and associated facilities in waters of the United States. This includes trenching and backfilling activities for utility lines and fill activities for construction of substations and related appurtenances (stormwater management facilities, fencing, parking lots, etc.), poles, pads, anchors and foundations for overhead utility line towers, utility lines under (e.g., through directional drilling) or over navigable waters (Section 10 waters only), and outfalls and associated intakes which are authorized, conditionally authorized, specifically exempted, or are otherwise in compliance with the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act). Authorization under RP6 is subject to the following:

- I. For the construction of utility line substations and related appurtenances, poles, pads, anchors, foundations and utility line tower projects that result in permanent fill, the impact to waters of the United States shall not exceed 5? 1? acres. For project that permanently impact over 0.25 acres of waters of the U.S., the permittee is required to provide compensatory mitigation.
 - a. Projects that impact no more than 0.25 acres of waters of the U.S. and do not impact any difficult-to-replace aquatic resources will be processed under Category I.
 - b. Projects that impact over 0.25 acres and up to 5? 1? acres of waters of the U.S., or impact difficult-to-replace aquatic resources, will be process under Category II.
 - c. Sufficient vegetative buffers shall be constructed adjacent to all open water, streams, and wetland areas. However, the installation of overhead utility line towers, poles, footings and anchors are exempt from the buffer requirement.
 - d. No stormwater management facility shall be constructed in any waterway shown as a solid blue line stream on a USGS quadrangle map.
 - e. The project shall be designed such that stormwater does not directly discharge into waters of the U.S. All water shall be infiltrated or detained and treated prior to discharging into waters of the U.S. In addition, stormwater shall be discharged using methods that promote infiltration and water quality treatment, such as level spreaders, infiltration trenches and vegetated swales.

- II. For construction of utility line activities, all projects will be processed under Category II. Utility line activities include the construction, maintenance and repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility in all waters of the United States, provided there is no change in pre-construction contours. A utility line is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communications (see Note 1, below).
 - a) The waters of the U.S. to be impacted shall be limited to the minimum necessary to construct the utility line.
 - b) The construction area for linear utility line projects shall be limited to a width of 75 feet, except in farmed wetlands where there is an established Agricultural Impact Mitigation Agreement with the California Department of Food and Agriculture. Any mechanized clearing of vegetation in the utility corridor shall be scheduled no more

than seven (7) calendar days preceding installation of the utility line in that segment of the corridor. In no case shall the vegetation of the entire corridor be cleared prior to actual installation of the utility line.

- c) For utility line projects, directional drilling (*Section 10 waters only*) or dry crossing techniques, such as fluming, shall be used if the waterbody to be crossed contains perennial flow.
- d) If the project involves the use of directional drilling in navigable waters (*Section 10 waters only*) notification shall include a contingency plan. A contingency plan is a plan of action to stabilize the work area, to employ alternative construction methods, and to obtain other permits necessary to complete the modified construction plans.
- e) Material resulting from trench excavation may be temporarily (up to 30 days) sidecast into waters of the U.S., provided that the material is not placed in such a manner that is dispersed by currents or other forces.
- f) Utility lines shall not adversely alter existing hydrology, including the draining of wetlands. In wetland areas, utility line trenches shall be lined with clay, or other impervious materials or structures (such as cut-off walls) to ensure that the trench through which the utility line is installed does not drain waters of the U.S.. In addition, to prevent a french drain effect, gravel cannot be used as backfill material in the top 10 feet of the trench.
- g) In wetland areas, the top 12" of the trench shall be backfilled with topsoil excavated from the trench in the same stratification in which it was removed.
- h) Excess material shall be removed to upland areas immediately upon completion of utility line construction in any segment of the project containing waters of the U.S. In no case shall the excess material be left in place until the entire utility line is completed.
- i) The construction area, including unprotected slopes and streambanks, shall be stabilized (e.g., blanketed and seeded) immediately upon completion of the utility line construction in any segment of the project. In no case shall soil stabilization be delayed until the entire utility line is completed.
- j) The permittee is required to restore the construction area to pre-construction conditions, including grading to original contours and revegetating (with native vegetation or other appropriate vegetation approved by the District) immediately upon completion of the project, except for permanent, above-ground fills. A restoration plan, which includes a 1-foot contour topographic map, shall be submitted with notification.
- k) Temporary construction activities, including access roads and cofferdams, are not authorized under this Regional Permit.

III. Authorization under RP6 is subject to Individual water quality certification under Section 401 of the Clean Water Act in the following waters:

LIST OF TYPES OF WATERS PENDING.

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

7. MAINTENANCE

RP7 authorizes:

- (I) Repair, rehabilitation or replacement of any previously authorized, currently serviceable, structure or fill, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or footprint including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to implement the repair, rehabilitation, or replacement are permitted, provided the environmental impacts resulting from such repair, rehabilitation, or replacement are minimal. This permit authorizes the repair, rehabilitation, or replacement of those structures destroyed by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within three years of the date of their destruction or damage. Maintenance dredging and beach restoration are not authorized by this permit; and

- (II) Maintenance of existing flood control facilities, retention/detention basins, and channels that were constructed by the Corps and transferred to a local sponsor for operation and maintenance. Maintenance is limited to that approved in a maintenance baseline determination made by the District. This determination will be based on the approved plans, the facility actually constructed, maintenance history, present versus original flood control needs, and presence of sensitive/unique functions and values of aquatic resources that may be adversely affected. Applicants are encouraged to meet with the District to establish the maintenance baseline prior to notification. This RP does not authorize the removal of sediment and associated vegetation from natural water courses.

Authorization under RP7 is subject to the following:

- a. All projects meeting (1) above will be processed under Category I.
- b. All projects meeting (2) above will be processed under Category II.
- c. Temporary construction activities, including access roads and cofferdams, are not authorized under this Regional Permit.

8. BED AND BANK STABILIZATION

RP8 authorizes bank stabilization activities in all waters of the U.S., except the Delta, subject to the following:

- a. Projects that involve the use of vegetative and biotechnical practices will be processed under Category I and are not subject to length restrictions.
- b. Projects that involve the use of structural bank stabilization practices, such as riprap, gabions, steel sheetpiling or fabric-formed concrete, will be processed under Category II. These activities are limited to 500 feet in total length and 1 cubic yard of material per running foot below the ordinary high water mark, and may not be used in a difficult-to-replace aquatic resource. Bank stabilization shall conform to the existing shoreline and may not be used to reclaim land lost to erosion. Riprap materials shall not be placed at a steeper slope than 2:1 (2 horizontal to 1 vertical) for dumped riprap and 1.5:1 for hand-placed riprap. Should broken concrete be used as riprap, all reinforcing rods shall be cut flush with the surface of the concrete.
- c. Structural and vegetative/biotechnical practices may be combined, but in no case shall structural practices exceed 500 feet in total length.
- d. Temporary construction activities, including access roads and cofferdams, are not authorized under this Regional Permit.

9. MINOR DISCHARGES AND MINOR DREDGING

RP9 authorizes:

- (I) The discharge of up to 25 cubic yards of dredged or fill material, the discharge of materials such as concrete, sand, rock or stone into tightly sealed cells, where such cells will be used as a structural member for a pile-supported structure (such as a bridge, walkway or mooring cell), and the dredging of up to 25 cubic yards of material. The activity, including discharges and/or dredging, shall not exceed 25 cubic yards or impact more than 0.25 acres of waters of the U.S.; and
- (II) The discharge of dredged or fill material for construction or expansion of elements of a single-family residence (including house, garage and driveway) provided the activity is a single and complete project, this RP is used only once per residence, and sufficient vegetated buffers are maintained adjacent to all open water, streams and wetlands. The impact to waters of the U.S. shall not exceed 0.25 acres. There is no volumetric limitation for activities processed under (II).

Authorization of RP4 is subject to the following:

- a. All activities will be processed under Category I.
- b. This RP does not authorize stream diversions, construction of new channels connected to navigable waters, or discharges/dredging in difficult-to-replace aquatic resources.
- c. This RP does not authorize pile-supported structures used for houses, decks, buildings, parking lots or equipment
- d. Septic fields may not be constructed in waters of the United States.
- e. This RP does not authorize residential, commercial and institutional developments, or temporary construction activities.

Individual water quality certification under Section 401 of the Clean Water Act is required in the following waters: **LIST OF TYPES OF WATERS PENDING.**

APPENDIX B: REGIONAL PERMIT PROGRAM ACTIVITY CATEGORIES

	CATEGORY I	CATEGORY II
1.Residential, Commercial and Institutional Developments	Activity impacts no more than 0.25 acres of waters of the U.S., and does not impact a difficult-to-replace aquatic resource	Activity impacts over 0.25 and up to X acres of waters of the U.S. and/or impacts a difficult-to-replace aquatic resource
2.Recreation Projects	Activity impacts no more than 0.25 acres of waters of the U.S., and does not impact a difficult-to-replace aquatic resource	Activity impacts over 0.25 and up to X acres of waters of the U.S. and/or impacts a Difficult-to-replace aquatic resource
3.Transportation Projects	Activity impacts no more than 0.25 acres or less of waters of the U.S., and does not impact a difficult-to-replace aquatic resource	Activity impacts over 0.25 and up to X acres of waters of the U.S. and/or impacts a difficult-to-replace aquatic resource
4.Wetland/Stream Restoration & Enhancement	N/A	All activities
5.Temporary Construction Activities	N/A	All activities
6.Utility Line Projects	Activity for utility substations, and foundations for utility line towers, poles, anchors, fences etc., that impact no more than 0.25 acres of waters of the U.S. and does not impact a difficult-to-replace aquatic resource	Activity for utility line and associated facilities that impact between 0.25 acres and X acres of waters of the U.S. and/or impacts a high quality aquatic resource. All below-ground activities
7.Maintenance	Repair, rehabilitation or replacement of any previously authorized, currently serviceable, structure or fill	Maintenance of existing flood control facilities, retention/detention basins, and channels that were either previously authorized by the District or constructed by the Corps and transferred to a local sponsor for operation and maintenance
8.Bank Stabilization	Activity involves use of vegetative or biotechnical practices	Activity involves use of structural practices
9.Minor Discharges & Minor Dredging	All activities	N/A

APPENDIX C: DIFFICULT-TO-REPLACE AQUATIC RESOURCES

The following descriptions of difficult-to-replace aquatic resources apply to the permit area only:

Ephemeral pool: A seasonally inundated depression within an upland community, usually located in an area shallow to bedrock or with relatively impermeable soils; also known locally as a “vernal pool.” These areas may not be permanently vegetated.

Seep: A wetland, herbaceous or wooded, with saturated soil or inundation resulting from the diffuse flow of groundwater to the surface stratum.

Streams rated high functioning in the WoUS Inventory, Classification and Functional Assessment of the Study Area (Appendix D).

Streamside marsh: A wetland that is adjacent to, and contiguous with, a body of flowing water or supported by stream baseflow and dominated by herbaceous species.

Waters of the US supporting Federal or California endangered or threatened species: For current state-listed species, reference California Department of Fish and Game’s “Endangered and Threatened Animals List” and their “Endangered, Threatened and Rare Plants List” and/or contact the California Department of Fish and Game. For Federally-listed species, reference the U.S. Fish and Wildlife Service’s “Endangered and Threatened Wildlife and Plants” list (latest edition) and/or contact the U.S. Fish and Wildlife Service.

Waters of the US rated high functioning in the WoUS Inventory, Classification and Functional Assessment of the Study Area (Appendix D).

**APPENDIX D. AQUATIC RESOURCES INVENTORY, CLASSIFICATION AND
FUNCTION FOR A PORTION OF EAST CONTRA COSTA COUNTY**

NOTE: APPENDIX D WILL BE AVAILABLE FOR REVIEW SEPARATELY.

APPENDIX E: PROTOCOL FOR HYDROGEOMORPHIC FUNCTIONAL ASSESSMENT OF WATERS OF THE US IN THE PERMIT AREA

For project sites supporting Waters of the US (WoUS), including wetlands, the required jurisdictional delineation of WoUS shall include a Hydrogeomorphic (HGM) Functional Assessment, as detailed below. .

1. Identify the subbasin(s) in which the project area is located. Appendix D provides a map and description of the fifteen subbasins in the permit area, and a landscape-level inventory, functional assessment and valuation of WoUS by subbasin. Information in Appendix D will also be useful for site-level delineations.
2. If individual WoUS in the project area are mapped in Appendix D, refer to the WoUS number, type, and functional evaluation therein. Classification and valuation of WoUS in Appendix D were conducted on a landscape level, and must therefore be confirmed or modified by site-level evaluation.
3. If WoUS are not mapped in Appendix D, classify WoUS according to the systems of Cowardin et al. (1979) and Ferren et al. (1995), as discussed in Appendix D.
 - a. Identify upland land cover types adjacent to the WoUS in the project area according to the classification in the HCP/NCCP. Also identify adjacent land uses. Functioning of individual WoUS may be strongly affected by adjacent land cover types and land uses.
4. Identify the geomorphic region or regions in which WoUS occur. Functioning of individual WoUS and their role in the watershed varies according to their position in the landscape. For example, steep streams in rocky portions of the montane region play an important role as sediment sources for the lower portions of the watershed, while streams in level areas of the lower valley/plain region naturally function as sediment sinks. The permit area can be divided into four geomorphic regions, as described in Appendix D. These geomorphic regions are:
 - a. Montane region (above 900 feet elevation);
 - b. Foothills/Upper Valley region (200 feet-900 feet in elevation);
 - c. Lower Valley/Plain region (below 200 feet in elevation with less than 50% agricultural land cover); and
 - d. Sacramento-San Joaquin Delta region (below 200 feet in elevation with less than 50% agricultural land cover).
 - e. Characterize wetland form and function according to the following attributes: (1) geomorphic form/process, (2) hydrology, (3) habitat; (4) water quality (see detail below). This characterization is requested in order to determine existing wetland quality to provide a basis for understanding/evaluating project level impacts and necessary mitigation.
 - i. On-site geomorphic characterization of wetland feature should describe wetland (or stream) geomorphic form (as described in Appendix D, citing Ferren *et al.* 1995) (*e.g.* overbank floodplain, braided stream, alluvial fan channel, pool/riffle sequence); key geomorphic processes supporting this wetland feature (*e.g.* overbank deposition of sediment, higher magnitude flows depositing coarser sand/gravel material; and adjacent geomorphic conditions upstream/downstream (*i.e.* changes in the feature immediately upstream/downstream of the site);

- ii. Evaluate habitat functioning including use of WoUS by wildlife and plant species. Potential use of WoUS by species covered by the HCP/NCCP should also be discussed. Habitat classification should include description of vegetative cover, relative cover of native vs. non-native species, the influence of adjacent and upstream land uses on the wetland habitat, size/extent of the habitat, connectivity of riparian habitat to upstream/upland areas used for other life-stage functions (breeding, foraging, aestivation).

- iii. Evaluate water quality functioning including the effect of the WoUS on sediment load, nutrient load, contaminant load, and temperature of water in the subbasin, as well as other key water quality factors in the subbasin identified in Appendix D (e.g., mercury in Upper Marsh Creek, pH in Kirker Creek). Water quality function evaluation should include a description of nutrient, sediment, and contaminant sources, the influence of adjacent and upstream land use on nutrient, sediment, and contaminant loads, and the degree to which site vegetation provides filtration.

- iv. Evaluate hydrologic functioning including the effect of the WoUS on groundwater recharge, flood storage and conveyance. Hydrologic function evaluation should include a description of hydrologic modifications on-site and upstream, such as channelization, bank alteration, reservoirs, isolation of the local drainage from its floodplain, or perennialized stream flow due to inputs from irrigation. Hydrologic modifications to the site that may increase erosion or decrease filtration, such as soil compaction, impervious surfaces, and poorly installed culverts, should be described. The amount of impervious cover on-site and in the immediate vicinity should be described.