

FOR CONTRACT NO.: 01-437404

INFORMATION HANDOUT

WATER QUALITY

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION
401 Certification

PERMITS

UNITED STATES ARMY CORPS OF ENGINEERS
NON-REPORTING NATIONWIDE No 14 Permit

ROUTE: 01-HUM-299-30.7

North Coast Regional Water Quality Control Board

April 2, 2013

In the Matter of

Water Quality Certification

for the

**California Department of Transportation
State Route 299 – Low Gap Buttress Project
WDID No. 1B12183WNHU**

APPLICANT: California Department of Transportation
RECEIVING WATER: Willow Creek
HYDROLOGIC AREA: Trinity River Hydrologic Unit No.106.00
COUNTY: Humboldt
FILE NAME: CDOT - HWY 299, Low Gap Buttress Project
WDID No. 1B12183WNHU

BY THE EXECUTIVE OFFICER:

1. On October 1, 2012, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from the California Department of Transportation (Caltrans), requesting Federal Clean Water Act, section 401, Water Quality Certification (Certification) for activities related to the proposed State Route 299 – Low Gap Buttress Project (Project). The proposed Project would cause disturbances to waters of the United States (U.S.) associated with the Trinity River Hydrologic Unit, HU 106 (Willow Creek Hydrologic Sub-Area 106.12). The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858, on March 8, 2013, and posted information describing the Project on the Regional Water Board's website. No comments were received.
2. The Project is located in Humboldt County on State Route 299 at post mile 30.7. The Project purpose is to stabilize the existing roadway by modifying the existing upslope and downslope drainage systems. The scope of work includes:
 - Re-grading the existing upslope cut bench to facilitate drainage from the cut slope;
 - Repairing the existing horizontal drain array and collection system;
 - Placing new horizontal slope dewatering drains;
 - Installing rock lined ditches along the back of the upslope cut bench and down the cut slope;

- Abandoning the existing overside drain to Willow Creek and constructing a new roadway dike and drainage system to improve drainage conditions; and
 - Constructing a new sand trap and drainage outlet.
3. Caltrans has determined that the Project would result in approximately 0.025 acres of permanent and approximately 0.025 acres of temporary impacts to jurisdictional waters. Because the impacts are considered *de minimis*, because Caltrans has conservatively estimated the potential permanent impacts to jurisdictional waters, because project implementation would reduce sediment inputs to Willow Creek, and because a traction sand trap would be constructed to control roadway runoff pollutants, additional mitigation measures are not required.
 4. Caltrans proposes to restore impacted areas to pre-construction condition following completion of the construction activities to offset temporary impacts to waters.
 5. The Project would result in an increase of approximately 0.009 acres (400 square feet (ft²)) of impervious surface due to installation of a traction sediment trap. This Project does not incorporate post-construction stormwater treatment best management practices (BMPs) because the Project crosses an active slide area and infiltration of stormwater must be minimized to maintain stability of the roadway. The amount of added impervious surface area is not great enough to warrant compensatory off-site stormwater treatment mitigation.
 6. The proposed Project would be conducted within approximately 25 days between May 15th and October 15th. Any work performed within State waters outside of this work window shall first be subject to the acceptance of Regional Water Board staff.
 7. The Project would result in less than one acre disturbed soil area. Caltrans shall utilize BMPs to provide erosion and sediment controls and pollution prevention throughout the Project area during construction. All graded areas within the Project affected by the construction activities shall be appropriately stabilized and/or replanted with appropriate native vegetation.
 8. Caltrans has applied to the U.S. Army Corps of Engineers to perform the Project under Non-Reporting Nationwide Permit No. 14 (*linear transportation projects*) pursuant to Clean Water Act, section 404.
 9. On August 18, 2011, Caltrans, acting as lead agency, certified a Class 1 Categorical Exemption for the proposed project in order to comply with the California Environmental Quality Act (CEQA). Regional Water Board staff anticipates filing a Notice of Exemption. The Regional Water Board has considered the environmental documentation, including any proposed changes, and has incorporated any avoidance, minimization, and mitigation measures into the Project as a condition of approval to avoid significant affects to the environment.
 10. The Willow Creek watershed is within the Trinity River HU (Lower Trinity Hydrologic Unit Area (HUA)) and is listed on the Clean Water Act section 303(d) list in 2001 as impaired for sediment and temperature. Roads are a significant source of sediment in the watershed (directly, from surface erosion, and, indirectly, by triggering landslides). This Project would stabilize an active slide area and help reduce sediment inputs to Willow Creek.

11. The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. This Certification is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater, and does not otherwise authorize degradation of the waters affected by this Project.
12. To ensure compliance with Basin Plan Water Quality Objectives and to protect State waters, requirements to avoid, minimize, and mitigate sediment impacts are incorporated as enforceable conditions in this Certification. Stormwater runoff monitoring, sampling, and analysis will be conducted as required by the State Water Resources Control Board (SWRCB) National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from the State of California, Department of Transportation (Caltrans) Properties, Facilities and Activities Order No. 99 - 06 - DWQ. The surface water data collected will be utilized to assess the adequacy of BMPs during construction as well as site specific mitigation measures proposed to minimize impacts to the environment, including sediment and temperature impacts.
13. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this certification.

Receiving Waters: Streams
 Trinity River Hydrologic Unit, HU 106

Filled and/or
Excavated Areas: Permanent - Other (Waters of U.S.): .025 acres (175 linear feet)
 Temporary - Other (Waters of U.S.): .025 acres (175 linear feet)

Total Linear Impacts: Permanent - Other (Waters of U.S.): .025 acres (175 linear feet)
 Temporary - Other (Waters of U.S.): .025 acres (175 linear feet)

Dredge Volume : None

Fill Volume : None

Latitude/Longitude: 40.9063N / 123.75018 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Caltrans - State Route 299 - Low Gap Buttress Project (WDID No. 1B12183WNMO), as described in the Project application will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Caltrans complies with the following terms and conditions:

All conditions of this Order apply to Caltrans (and all its employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project (including the off-site mitigation lands) as related to this Water Quality Certification.

1. All conditions required by this Order shall be included in the Plans and Specifications prepared by Caltrans for the Contractor. If the Plans and Specifications have been finalized prior to receipt of this Certification, Caltrans shall revise the Project Plans and Specifications to incorporate applicable conditions of this Order. Any enforcement action taken by the Regional Water Board for violations of this Order shall consider failure to revise the Plans and Specifications per this condition. In addition, Caltrans shall require compliance with all conditions included in this Order in the bid contract for this Project.
2. This certification action is subject to modification or revocation upon administrative or judicial review; including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
3. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
4. The validity this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the applicant. \$1,269 was submitted by Caltrans on October 1, 2012.
5. Caltrans shall provide a copy of this order and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ (web link referenced below) to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. Caltrans shall be responsible for work conducted by its contractor or subcontractors.
6. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification. BMPs for erosion, sediment, and pollutant control shall be implemented and in place at commencement of, during, and after any ground clearing activities, construction activities, or any other Project activities that could result in erosion, sediment, or other pollutant discharges to waters of the State. The BMPs shall be implemented in accordance with the Caltrans Construction Site Best Management Practice Manual (CCSBMPM) and all contractors and subcontractors shall comply with the CCSBMPM. Caltrans shall stage erosion and sediment control materials at the work site. All BMPs shall be installed properly and in accordance with the manufacturer's specifications. If the project Resident Engineer elects to install alternative BMPs for use on the project, Caltrans shall submit a proposal to Regional Water Board staff for review and concurrence.
7. Caltrans shall prioritize the use of wildlife-friendly biodegradable (not photo-degradable) erosion control products wherever feasible. Caltrans shall not use or allow the use of erosion control products that contain synthetic netting for permanent

- erosion control (i.e. erosion control materials to be left in place for two years or after the completion date of the project). If Caltrans finds that erosion control netting or products have entrapped or harmed wildlife, personnel shall remove the netting or product and replace it with wildlife-friendly biodegradable products. Caltrans shall not use or allow the use of erosion control products that contain synthetic materials within waters of the United States or waters of the State at any time. Caltrans shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.
8. Herbicides and pesticides shall not be used within the Project. If Caltrans has a compelling case as to why herbicides and pesticides should be used, a proposal for their use shall first be submitted to the Executive Officer of the Regional Water Board for review and consideration. The proposal shall include a strategy for BMP implementation to prevent discharge of pesticides to State waters.
 9. Work in flowing or standing surface waters, unless otherwise proposed in the Project description and approved by the Regional Water Board, is prohibited. If construction dewatering of groundwater is found to be necessary, Caltrans shall use a method of water disposal other than disposal to surface waters (such as land disposal) or Caltrans shall apply for coverage under the Low Threat Discharge Permit or an individual National Pollutant Discharge Elimination System (NPDES) Permit and receive notification of coverage to discharge to surface waters, prior to the discharge.
 10. Caltrans is prohibited from discharging waste to waters of the State, unless explicitly authorized by this Order. For example, no debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or concrete washings, welding slag, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into waters of the State. In addition, none of the materials listed above shall be placed within 150 linear feet of waters of the State or where the materials may be washed by rainfall into waters of the State.
 11. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside of waters of the U.S. and the State. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall not result in a discharge or a threatened discharge to any waters of the State or the U.S. At no time shall Caltrans use any vehicle or equipment which leaks any substance that may impact water quality.
 12. Caltrans and their contractor are not authorized to discharge wastewater (e.g., water that has contacted uncured concrete or cement, or asphalt) to surface waters, ground waters, or land. Wastewater may only be disposed of to a sanitary waste water collection system/facility (with authorization from the facility's owner or operator) or a properly-licensed disposal or reuse facility. If Caltrans or their contractor proposes an alternate disposal method, Caltrans or their contractor shall first obtain authorization from the Regional Water Board. Plans to reuse or recycle wastewater require written approval from Regional Water Board staff.
 13. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.

14. Caltrans shall provide analysis and verification that placing non-hazardous waste or inert materials (which may include discarded product or recycled materials) will not result in degradation of water quality, human health, or the environment. All project-generated waste shall be handled, transported, and disposed in strict compliance with all applicable State and Federal laws and regulations. When operations are complete, any excess material or debris shall be removed from the work area and disposed of properly and in accordance with the Special Provisions for the project and/or the 2006 Standard Specification 7-1.13, *Disposal of Material Outside the Highway Right of Way*. Within 30 days of disposing of materials off-site Caltrans shall submit to the Regional Water Board the satisfactory evidence provided to the Caltrans Engineer by the Contractor referenced in Standard Specification 7-1.13. In accordance with State and Federal laws and regulations, Caltrans is liable and responsible for the proper disposal of waste generated by their Project.
15. All imported fill material shall be clean and free of pollutants. All fill material shall be imported from a source that has the appropriate environmental clearances and permits. The reuse of low-level contaminated solids as fill on-site shall be performed in accordance with all State and Federal policies and established guidelines and must be submitted to the Regional Water Board for review and concurrence.
16. Asphalt-concrete grindings shall not be directly exposed to storm or ground waters, except asphalt-concrete grinding may be re-used and incorporated into impervious asphalt mixes.
17. Caltrans shall perform on-site revegetation in accordance with the application and *EA 01-434700 Revegetation Plan*, dated February 21, 2013. Restoration actions shall include revegetation of temporarily impacted areas. Restoration planting shall occur in the first full planting season (November to April) subsequent to the year construction is complete and erosion control is established. Caltrans shall notify Regional Water Board staff within five working days upon completion of restoration activities.
18. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this Order to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Order, the Regional Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.
19. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.

20. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) Completion of all proposed revegetation, avoidance, minimization, and mitigation measures, in strict compliance with Caltrans' project description and CEQA documentation, as approved herein; b) Project construction in accordance with the project described in the application and the findings above; and c) Compliance with all applicable water quality requirements and water quality control plans including the requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan), and amendments thereto. Any change in the design or implementation of the Project that would have a significant or material effect on the findings, conclusions, or conditions of this Order must be submitted to the Executive Officer of the Regional Water Board for prior review, consideration, and written concurrence. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this Order, and Caltrans may be subject to Regional Water Board enforcement actions.
21. The authorization of this certification for any dredge and fill activities expires five years from the date of issuance. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.
22. Please contact our staff Environmental Specialist / Caltrans Liaison Brendan Thompson at (707) 576-2699 or brendan.thompson@waterboards.ca.gov if you have any questions.

Original Signed By

Matthias St. John
Executive Officer

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Web link: State Water Resources Control Board Order No. 2003-0017 - DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification can be found at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

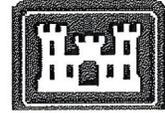
Original to: Ms. Kim Floyd, Project Manager Caltrans, PO Box 3700, Eureka, CA 95501

Copies to: Ms. Alison Kunz, Project Biologist - Caltrans, 703 B Street, Marysville, CA, 95901

Electronic Copies to: U.S. Army Corps of Engineers, Regulatory Functions - San Francisco District

NON-REPORTING NATIONWIDE PERMIT 14

U. S. Army Corps of Engineers South Pacific Division



Nationwide Permit Pre-Construction Notification (PCN) Form

This form integrates requirements of the U. S. Army Corps of Engineers Nationwide Permit Program within the South Pacific Division (SPD), including General and Regional Conditions. You MUST fill out all boxes related to the work being done. Fillable boxes in this form expand if additional space is needed.

Box 1 Project Name State Route 299 Low Gap Buttress Project			
Applicant Name Kim Floyd		Applicant Title Project Manager	
Applicant Company, Agency, etc. California Department of Transportation		Applicant's internal tracking number (if any) EA 01-43740; EFIS Number 0100000194	
Mailing Address 1656 Union Street, Eureka, CA 95501			
Work Phone with area code (707) 441-5739	Mobile Phone with area code	Home Phone with area code	Fax # with area code (707) 441-5733
E-mail Address Kim_Floyd@dot.ca.gov		Relationship of applicant to property: <input type="checkbox"/> Owner <input type="checkbox"/> Purchaser <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Other: Caltrans Project Manager	
Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a U.S. Army Corps of Engineers Nationwide Permit or Permits as described herein. I certify that I am familiar with the information contained in this application and, that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agency to which this application is made the right to enter the above-described location to inspect the proposed, in-progress, or completed work. I agree to start work <u>only</u> after all necessary permits have been received and to comply with all terms and conditions of the authorization.			
Signature of applicant <i>Kim Floyd</i>			Date (mm/dd/yyyy) 9/14/12

If anyone other than the person named as the Applicant will be in contact with the U. S. Army Corps of Engineers representing the Applicant regarding this project during the permit process, Box 2 MUST be filled out.

Box 2 Authorized Agent/Operator Name Allison Kunz		Agent/Operator Title Project Biologist	
Agent/Operator Company, Agency, etc. California Department of Transportation		E-mail Address Allison_Kunz@dot.ca.gov	
Mailing Address 703 B Street, Marysville, CA 95901			
Work Phone with area code (530) 741-4103	Mobile Phone with area code	Home Phone with area code	Fax # with area code (530) 741-4457
I hereby authorize the above named authorized agent to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application. I understand that I am bound by the actions of my agent and I understand that if a federal or state permit is issued, I, or my agent, must sign the permit.			
Signature of applicant <i>[Signature]</i>			Date (mm/dd/yyyy) 9/12/12
I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate.			
Signature of authorized agent <i>Allison Kunz</i>			Date (mm/dd/yyyy) 9/12/12

Box 6 Nature of Activity (Description of project, include all features):

The California Department of Transportation (Caltrans) is proposing a roadway stabilization project on State Route (SR) 299 in Humboldt County at Post Mile (PM) 30.7. To reduce potential for roadway movement it is proposed to stabilize the roadbed by: regrading the existing cut bench to enhance drainage off the cut slope, repairing the existing horizontal drain array and collection system, placing new horizontal drains to dewater the slope, installing a rock lined ditch along back of cut bench and down cut slope, placing a new cross drain to intercept roadside drainage before the slide area, placing a sand collection system, and repaving approximately 300' of SR 299. All work will be performed within the existing Caltrans right of way.

Slope Indicators placed in 2008 indicate this area is part of a large slide which extends from the top of slope, underneath SR 299, and down into Willow Creek. The cut slope above the roadbed is terraced into three benches. The third bench is located approximately 300' upslope from the highway. Drainage of these bench areas is comprised of a network of drains with horizontal drains and a drainage gallery that is estimated to be around 30 years old located on the first bench. The highway push-up is being caused by movement of the large deep slide. As the whole hill slope moves, the drainage network on the cut bench has become partially ineffective and many horizontal drains are not flowing. In addition, the roadside ditch on the west bound lane is continually filled by slide debris and is a maintenance problem. The drainage problems are believed to be contributing to the slide movement. The slide has for the most part rendered the original drainage network ineffective. Slide movement pinches off the drainage ditch on the left. Placing a culvert immediately to the west of the slide will reduce the likelihood of diverting runoff across the highway.

Project Purpose (Description of the reason or purpose of the project):

The purpose of the project is to address drainage and roadway damage issues associated with the large existing landslide affecting SR 299 at PM 30.7.

Reason(s) for discharge into Waters of the United States (Description of why dredged and/or fill material needs to be placed in Waters of the United States):

Replacement, repair, or maintenance of existing drainage facilities.

Proposed discharge of dredge and/or fill material. Indicate total surface area in **acres** and **linear feet** (where appropriate) of the proposed impacts to Waters of the United States, indicate water body type (tidal wetland, non-tidal wetland, riparian wetland, ephemeral stream/river, intermittent stream/river, perennial stream/river, pond/lake, vegetated shallows, bay/harbor, lagoon, ocean, etc.), and identify the impact(s) as permanent and/or temporary for each requested Nationwide Permit¹:

¹Enter the intended permit number(s). See Nationwide Permit regulations for permit numbers and qualification information: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>

Water Body Type	Requested NWP Number: 14 (non-reporting)				Requested NWP Number:				Requested NWP Number:			
	Permanent		Temporary		Permanent		Temporary		Permanent		Temporary	
	Area	Length	Area	Length	Area	Length	Area	Length	Area	Length	Area	Length
Other	0.025	175	0.025	175								
Total:	0.025	175	0.025	175								

Total volume (in cubic yards) and type(s) of material proposed to be dredged from or discharged into Waters of the United States:

Not applicable – the project will not place dredged material in waters of the U. S.

Material Type	Total Volume Dredged	Total Volume Discharged
Rock Slope Protection (RSP)		
Clean spawning gravel		
River rock		
Soil/Dirt/Silt/Sand/Mud		
Concrete		
Structure		
Stumps/Root wads		
Other:		
Total:		

Activity requires a written waiver to exceed specified limits of the Nationwide Permit? YES NO
 If yes, provide Nationwide Permit number and name, limit to be exceeded, and rationale for each requested waiver:

Activity will result in the loss of greater than ½-acre of Waters of the United States? YES NO
 If yes, provide an electronic copy (compact disc) or multiple hard copies (7) of the complete PCN for appropriate Federal and State Pre-discharge Notification (See General Condition #31, Pre-construction Notification, Agency Coordination, Section 2 and 4):

Describe direct and indirect effects caused by the activity and how the activity has been designed (or modified) to have minimal adverse effects on the aquatic environment (See General Condition #31, Pre-construction Notification, District Engineer's Decision, Section 1):

A potential indirect impact to waters of the U. S. associated with the project could include a temporary degradation of water quality. In order to avoid potential impacts to water quality, erosion control and soil stabilization measures will be implemented in accordance with Caltrans' Best Management Practices (BMPs). These BMPs could include, but are not limited to, the use of silt fences, fiber rolls, and the application of fiber matrix on unfinished slopes. Disturbed soils will also be treated with an erosion control seed mixture. To protect water quality, in-water work (work below the ordinary high water mark of the unnamed seasonal tributary) will be restricted to the dry/low flow season (May 15 to October 15).

Potential cumulative impacts of proposed activity (if any): To avoid and/or minimize impacts to waters of the U. S. the following measures would be incorporated into the project: use of clean fill, Best Management Practices (BMPs) for slope stabilization and erosion control. These BMPs could include, but are not limited to, the use of silt fences, fiber rolls, and the application of fiber matrix on unfinished slopes. Disturbed soils will also be treated with an erosion control seed mixture. The majority of the work would be done during the dry/low flow season (May 15 to October 15). Any work conducted outside of that time period would be limited to when the channel is dry (no flowing water).

Drawings and figures (see each U. S. Army Corps of Engineers District's Minimum Standards Guidance):

Vicinity map: Attached (or mail copy separately if applying electronically)

To-scale Plan view drawing(s): Attached (or mail copy separately if applying electronically)

To-scale elevation and/or Cross Section Drawings(s): Attached (or mail copy separately if applying electronically)

Numbered and dated pre-project color photographs: Attached (or mail copy separately if applying electronically)

Sketch drawing(s) or map(s): Attached (or mail copy separately if applying electronically)

Has a wetland/waters of the U.S. delineation been completed?

Yes, Attached² (or mail copy separately if applying electronically) No

If a delineation has been completed, has it been verified in writing by the Corps?

Yes, Date of approved jurisdictional determination (m/d/yyyy): _____ Corps file number: _____ No

²If available, provide ESRI shapefiles (NAD83) for delineated waters

For proposed discharges of dredged material resulting from navigation dredging into inland or near-shore waters of the U.S. (including beach nourishment), please attach³ a proposed Sampling and Analysis Plan (SAP) prepared according to Inland Testing Manual (ITM) guidelines (including Tier I information, if available), or if disposed offshore, a proposed SAP prepared according to the Ocean Disposal Manual.

³Or mail copy separately if applying electronically

Is any portion of the work already complete? YES NO

If yes, describe the work:

Box 7 Authority:

Is Section 10 of the Rivers and Harbors Act applicable?: YES NO

Is Section 404 of the Clean Water Act applicable?: YES NO

Is the project located in U. S. Army Corps of Engineers property or easement?: YES NO

If yes, has Section 408 process been initiated?: YES NO

Would the project affect a U. S. Army Corps of Engineers structure?: YES NO

If yes, has Section 408 process been initiated?: YES NO

Is the project located on other Federal Lands (USFS, BLM, etc.)?: YES NO

Is the project located on Tribal Lands?: YES NO

Box 8 Is the discharge of fill or dredged material for which Section 10/404 authorization is sought part of a larger plan of development?: YES NO

If discharge of fill or dredged material is part of development, name and proposed schedule for that larger development (start-up, duration, and completion dates):

Not applicable.

Location of larger development (if discharge of fill or dredged material is part of a plan of development, a map of suitable quality and detail of the entire project site should be included):

Not applicable.

Box 9 Measures taken to avoid and minimize impacts to waters of the United States:

To avoid and/or minimize impacts to waters of the U. S. the following measures would be incorporated into the project: use of clean fill, Best Management Practices (BMPs) for slope stabilization and erosion control. These BMPs could include, but are not limited to, the use of silt

fences, fiber rolls, and the application of fiber matrix on unfinished slopes. Disturbed soils will also be treated with an erosion control seed mixture. The majority of the work would be done during the dry/low flow season (May 15 to October 15). Any work conducted outside of that time period would be limited to when the channel is dry (no flowing water).

Box 10 Proposed Compensatory Mitigation related to fill/excavation and dredge activities. Indicate in **acres** and **linear feet** (where appropriate) the total quantity of Waters of the United States proposed to be created, restored, enhanced and/or preserved for purposes of providing compensatory mitigation. Indicate water body type (tidal wetland, non-tidal wetland, riparian wetland, ephemeral stream/river, intermittent stream/river, perennial stream/river, pond/lake, vegetated shallows, bay/harbor, lagoon, ocean, etc.) or non-jurisdictional (uplands¹). Indicate mitigation type (permittee-responsible on-site/off-site, mitigation bank, or in-lieu fee program). If the mitigation is purchase of credits from a mitigation bank, indicate the bank to be used, if known:

¹ For uplands, please indicate if designed as an upland buffer.

Site Number	Water Body Type	Created		Restored		Enhanced		Preserved		Mitigation Type
		Area	Length	Area	Length	Area	Length	Area	Length	
1	Other			0.05	300					On-site restoration of temporarily disturbed areas
Total:				0.05	300					

If no mitigation is proposed, provide detailed explanation of why no mitigation would be necessary:
Not applicable.

If permittee-responsible mitigation is proposed, provide justification for not utilizing a Corps-approved mitigation bank or in-lieu fee program: **Not applicable.**

Has a draft/conceptual mitigation plan been prepared in accordance with the April 10, 2008 Final Mitigation Rule² and District Guidelines?

²http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitig_info.aspx

³**Sacramento and San Francisco Districts**-http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/pdf/Mitigation_Monitoring_Guidelines.pdf

⁴**Los Angeles District**-http://www.spl.usace.army.mil/regulatory/mmg_2004.pdf

⁵**Albuquerque District**-http://www.spa.usace.army.mil/reg/mitigation/SPA%20Final%20Mitigation%20Guidelines_OLD.pdf

Yes, Attached (or mail copy separately if applying electronically) No

If no, a mitigation plan must be prepared and submitted, if applicable.

Mitigation site(s) Latitude & Longitude (D/M/S, DD, or UTM with Zone):	USGS Quadrangle map name(s):
Assessor Parcel Number(s):	Section(s), Township(s), Range(s):
Other location descriptions, if known:	
Directions to the mitigation location(s):	

Box 11 Threatened or Endangered Species and Essential Fish Habitat

Please list any federally-listed (or proposed) threatened or endangered species or critical habitat (or proposed critical habitat) within the project area (include scientific names (e.g., Genus species), if known):

- a. None. Please see the Natural Environment Study for information regarding species considered during studies for this project.
- b.
- c.
- d.
- e.
- f.

Have surveys, using U.S. Fish and Wildlife Service/NOAA Fisheries protocols, been conducted?

Yes, Report attached (or mail copy separately if applying electronically) No

Has a biological assessment or evaluation been completed for the proposed project?

Yes, Report attached (or mail copy separately if applying electronically) Not attached

Has Section 7 consultation been initiated by another federal agency?

Yes, Initiation letter attached (or mail copy separately if applying electronically) No

Has Section 10 consultation been initiated for the proposed project?

Yes, Initiation letter attached (or mail copy separately if applying electronically) No

Has the USFWS/NOAA Fisheries issued a Biological Opinion?

Yes, Attached (or mail copy separately if applying electronically) No

If yes, list date Opinion was issued (m/d/yyyy):

Is the project located within Essential Fish Habitat (EFH)? Yes No

¹ http://swr.nmfs.noaa.gov/hcd/HCD_webContent/EFH/index_EFH.htm

Box 12 Historic Properties and Cultural Resources

Are any cultural resources of any type known to exist on-site? YES NO

Please list any known historic properties listed, or eligible for listing, on the National Register of Historic Places:

- a. None.
- b.
- c.
- d.
- e.
- f.

Has a cultural resource records search been conducted?

Yes, Report attached (or mail copy separately if applying electronically) No

Has a cultural resource pedestrian survey been conducted for the site?

Yes, Report attached (or mail copy separately if applying electronically) No

Has another federal agency been designated the lead federal agency for Section 106 consultation?

Yes, Designation letter/email attached (or mail copy separately if applying electronically) No

Has Section 106 consultation been initiated by another federal agency?

Yes, Initiation letter attached (or mail copy separately if applying electronically) No

Has a Section 106 MOA or PA been signed by another federal agency and the SHPO?

Yes, Attached (or mail copy separately if applying electronically) No

If yes, list date MOA or PA was signed (m/d/yyyy):

Box 13 Section 401 Water Quality Certification:

Applying for certification? Yes, Attached (or mail copy separately if applying electronically) No
 Not Applicable (projects proposed for authorization under RHA Section 10 only)

Certification issued? (including Programmatically)?

Yes, Attached (or mail copy separately if applying electronically) No

Certification waived? Yes, Attached (or mail copy separately if applying electronically) No

Certification denied? Yes, Attached (or mail copy separately if applying electronically) No

Exempted Activity? Yes No

Agency concurrence? Yes, Attached No

If exempt, state why:

Box 14 Coastal Zone Management Act

Is the project located within the Coastal Zone? Yes No (If no, proceed to Box 15)

If yes, applying for a coastal commission-approved Coastal Development Permit?

Yes, Attached (or mail copy separately if applying electronically) No

If no, applying for separate CZMA-consistency certification?

Yes, Attached (or mail copy separately if applying electronically) No

Permit/Consistency issued? Yes, Attached (or mail copy separately if applying electronically) No

Exempt? Yes No

Agency concurrence? Yes, Attached No

If exempt, state why:

Box 15 List of other certification or approval/denials received from other federal, state, or local agencies for work described in this application:

Agency	Type Approval ⁴	Identification Number	Date Applied	Dated Approved	Date Denied
NCRWQCB	401 Water Quality Cert	Pending	September 2012		

⁴Would include but is not restricted to zoning, building, and flood plain permits

Nationwide Permit General Conditions (GC) checklist:

(<http://www.gpo.gov/fdsys/pkg/FR-2012-02-21/pdf/2012-3687.pdf>)

Check	General Condition	Rationale for compliance with General Condition
<input checked="" type="checkbox"/>	1. Navigation	The proposed project will not have an adverse impact on navigation.
<input checked="" type="checkbox"/>	2. Aquatic Life Movements	The proposed project will not disrupt the life cycle movements of aquatic life.
<input checked="" type="checkbox"/>	3. Spawning Areas	This project will not affect spawning areas.
<input checked="" type="checkbox"/>	4. Migratory Bird Breeding Areas	The project will not affect migratory breeding areas.
<input checked="" type="checkbox"/>	5. Shellfish Beds	The project will not occur in areas of concentrated shellfish populations.
<input checked="" type="checkbox"/>	6. Suitable Material	All materials used for the construction of the proposed project will comply with Caltrans materials standards.
<input checked="" type="checkbox"/>	7. Water Supply Intakes	The proposed project will not occur in the proximity of a public water supply intake.
<input checked="" type="checkbox"/>	8. Adverse Effects from Impoundments	The proposed project will not result in the impoundment of water.
<input checked="" type="checkbox"/>	9. Management of Water Flows	The proposed project will maintain pre-construction flow conditions. The project will not permanently restrict or impede the passage of normal or expected high flows, and will withstand expected high flows.
<input checked="" type="checkbox"/>	10. Fills Within 100-Year Floodplains	The proposed project is not within 100-Year Floodplain.
<input checked="" type="checkbox"/>	11. Equipment	The contractor will take measures to minimize soil disturbance by heavy equipment during construction.
<input checked="" type="checkbox"/>	12. Soil Erosion and Sediment Controls	Appropriate soil erosion and sediment controls will be used and maintained during construction. Exposed soils and areas of work below the ordinary high water mark will be stabilized at the earliest possible date.
<input checked="" type="checkbox"/>	13. Removal of Temporary Fills	Temporary fills are not expected to be needed during the construction of this project, but if they become necessary they will be removed in their entirety upon project completion. The affected areas will be returned to their preexisting elevation and reseeded with native species as appropriate.
<input checked="" type="checkbox"/>	14. Proper Maintenance	The project will be constructed in accordance with Caltrans codes and standards, and will be properly maintained by Caltrans Maintenance.
<input checked="" type="checkbox"/>	15. Single and Complete Project	The proposed project is a single and complete project.
<input checked="" type="checkbox"/>	16. Wild and Scenic Rivers	The proposed project will not take place in or near a river designated as a Wild and Scenic River.
<input checked="" type="checkbox"/>	17. Tribal Rights	The construction of this project will not impair reserved tribal rights.
<input checked="" type="checkbox"/>	18. Endangered Species	See Box 11 above
<input checked="" type="checkbox"/>	19. Migratory Bird and Bald and Golden Eagle Permits	The proposed project will comply with this condition
<input checked="" type="checkbox"/>	20. Historic Properties	See Box 12 above
<input checked="" type="checkbox"/>	21. Discovery of Previously Unknown Remains and Artifacts	The proposed project will comply with this condition.
<input checked="" type="checkbox"/>	22. Designated Critical Resource Waters	The proposed project will not take place in or near Designated Critical Resource Waters.
<input checked="" type="checkbox"/>	23. Mitigation	See Box 10 above
<input checked="" type="checkbox"/>	24. Safety of Impoundment Structures	The proposed project will comply with this condition.
<input checked="" type="checkbox"/>	25. Water Quality	See Box 13 above

<input checked="" type="checkbox"/>	26. Coastal Zone Management	See Box 14 above
<input checked="" type="checkbox"/>	27. Regional and Case-by-Case Conditions	The proposed project will comply with any case-by-case conditions.
<input checked="" type="checkbox"/>	28. Use of Multiple Nationwide Permits	The Applicant is aware that if total proposed acreage of impact exceeds acreage limit of NWP with highest specified acreage, no NWP can be issued.
<input checked="" type="checkbox"/>	29. Transfer of Nationwide Permit Verifications	The Applicant is aware of this permit transfer requirement.
<input checked="" type="checkbox"/>	30. Compliance Certification	The Applicant is aware of this compliance certification requirement.
<input checked="" type="checkbox"/>	31. Pre-Construction Notification	The applicant is aware of the pre-construction notification requirements.

San Francisco District (SPN) in California:

A. General Regional Conditions that apply to all NWP's in the Sacramento, San Francisco, and Los Angeles Districts:

1. Is pre-construction notification (PCN) required? Yes No

If yes, then in accordance with General Condition 31, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at:

<http://www.spn.usace.army.mil/regulatory/index.html>. In addition, the PCN shall include:

- a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States; and
- b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the Map and Drawing Standards for the Los Angeles District Regulatory Division (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and
- c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.

If yes, is the PCN attached? Yes No Not Applicable

2. Is the activity located in an area designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)).
 Yes No

If yes, notification pursuant to General Condition 31 is required. The PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at:

<http://www.swr.noaa.gov/efh.htm>.

3. Are any other Federal agencies involved? Yes No

If yes, for activities in which the Corps designates another Federal agency as the lead for compliance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended (50 CFR Part 402.07), Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH) (50 CFR 600.920(b)) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (36 CFR 800.2(a)(2)), the lead Federal agency shall provide all relevant documentation to the appropriate Corps demonstrating any previous consultation efforts, as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.

4. Is the project located within a waterbody supporting any federally-listed threatened or endangered fish species?
 Yes No
If yes, unless determined to be impracticable by the Corps, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural streambed.

5. Will the permittee complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity?
 Yes No

If no, then the proposed activity may not be in compliance with Regional Condition 10, unless construction of compensatory mitigation prior to or concurrent with commencement of construction of the authorized activity is specifically determined impracticable by the Corps.

Will the mitigation involve use of a mitigation bank or in-lieu fee program? Yes No

If yes, then the permittee shall submit proof to the Corps of payment prior to commencement of construction of the authorized activity.

6. Will the activity result in the loss of greater than 300 linear feet of intermittent and/or ephemeral streams for NWPs 29, 39, 40, 42, 43, 44, 51, and 52 or result in the loss of greater than 500 linear feet along the bank for NWP 13? Yes No

If yes, is the applicant requesting a waiver of the linear foot limit? Yes No Not Applicable

If yes, then the request shall include the following:

- a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the water body and characters observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information; and
- b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 31 and Regional Condition 3; and
- c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
- d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.

B. SPN Regional Conditions to be applied across the entire San Francisco District:

1. Is the project located within the **San Francisco Bay diked baylands** (undeveloped areas currently behind levees that are within the historic margin of the Bay)? Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map, Figure 1 on the Public Notice for Federal Register Notice Announcing the Reissuance of the Nationwide Permits and the San Francisco District Regional Conditions: <http://www.spn.usace.army.mil/regulatory/nwp/2012/final%20NWPs.pdf>)? Yes No

If yes, notification pursuant to General Condition 31 is required. The PCN must include an explanation of how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable (see General Condition 23(a)).

2. Is the project located within the **Santa Rosa Plain** (<http://www.spn.usace.army.mil/regulatory/srp/srpmmap.pdf>)?
 Yes No

If yes, notification pursuant to General Condition 31 is required. The PCN must include an explanation of how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable (see General Condition 23(a)).

3. Will the proposed project impact **Eelgrass Beds**? Yes No

If yes, notification pursuant to General Condition 31 is required. The PCN must include a compensatory mitigation plan, habitat assessment, and extent of proposed-project impacts to Eelgrass Beds.

C. SPN Regional Conditions to be applied to specific Nationwide Permits (NWP):

NWP 3:

Will excavation equipment operate from an upland site? Yes No

If no, an explanation as to need to place equipment in waters of the U.S. must be included in the PCN.

Will work occur within a special aquatic site? Yes No

If yes, an explanation why the special aquatic site cannot be avoided, as well as impact minimization measures, must be included in the PCN.

NWP 11:

Are temporary structures proposed in wetlands or vegetated shallow water areas? Yes No

If yes, notification pursuant to General Condition 31 is required. The PCN shall include the type of habitat and aerial extent affected by the structure(s).

NWP 12:

Will excess material removed from any trenching that is not used for backfilling of the trench be disposed of at an upland site? Yes No

Does the proposed project include construction of substation facilities? Yes No

If yes, NWP 12 cannot be used to authorize this project.

NWP 13:

Will more than 300 linear feet of bank be stabilized? Yes No

If yes, notification pursuant to General Condition 31 is required. The PCN shall address the effect of the bank stabilization on the stability of the opposite side of the waterway's bank, and on the adjacent property upstream and downstream of the activity.

Will wetland vegetation or submerged, rooted, aquatic plants be removed from an area greater than 0.1 acre or 300 linear feet? Yes No

If yes, notification pursuant to General Condition 31 is required and shall include vegetation type and extent of removal.

Will excess material excavated from a toe trench be disposed of in an upland location? Yes No

If yes, the PCN shall include the location of the disposal site.

Will additional fill extend beyond the original shoreline in excess of one cubic yard per running foot?

Yes No

Will bank stabilization incorporate structures or modifications beneficial to fish and wildlife? Yes No
If no, the applicant shall demonstrate why the structures or modifications were not considered practicable.

NWP 14:

Will the proposed project fill greater than 300 linear feet of a jurisdictional waterway? Yes No
If yes, notification pursuant to General Condition 31 is required. The PCN shall address the effect of the activity on the stability of the opposite side of the waterway's bank, and on the adjacent property upstream and downstream of the activity.

Is the proposed project to construct taxiways or runways? Yes No
If yes, NWP 14 cannot be used to authorize this project.

Has this NWP been used to authorize previous project segments within the same linear transportation project?
 Yes No
If yes, justification must be provided demonstrating that the cumulative impacts of the proposed and previously authorized project segments do not result in more than minimal impacts to the aquatic system.

Has any new or additional bank stabilization required for the crossing incorporated structures or modifications beneficial to fish and wildlife? Yes No
If no, the applicant shall demonstrate why they were not considered practicable. Bottomless and embedded culverts are encouraged over traditional culvert stream crossings.

NWP 23:

Use of this NWP requires notification pursuant to General Condition 31. Please refer to Regional Conditions for additional information on PCN requirements.

NWP 27:

The PCN shall include documentation of a review of the project's impacts to demonstrate that at the conclusion of work the project would result in a net increase of aquatic function. The documentation must also include a review of the project's impacts on adjacent properties or structures and must also discuss cumulative impacts associated with the project.

NWP 29:

Will the activity result in the replacement of wetlands or waters of the U.S. with impervious surfaces?
 Yes No
If yes, the residential development shall incorporate low impact development concepts to the extent practicable, and a description of those concepts proposed shall be included with the PCN. Additional information on concepts and definitions are available at the following website: <http://www.epa.gov/owow/NPS/lid>

Is the proposed project located within the San Francisco Bay diked baylands (Figure 1 on the Public Notice for Federal Register Notice Announcing the Reissuance of the Nationwide Permits and the San Francisco District Regional Conditions: <http://www.spn.usace.army.mil/regulatory/nwp/2012/final%20NWPs.pdf>)?

Yes No
If yes, NWP 29 cannot be used to authorize this project.

NWP 33:

Are access roads designed to be the minimum width necessary? Yes No Not Applicable (N/A)

Are access roads designed to minimize changes to the hydraulic flow characteristics of waterways and degradation of water quality for project implementation? Yes No N/A

Will the road(s) be properly stabilized and maintained during and after construction? Yes No N/A

Will fill be placed to minimize encroachment of equipment within waters of the U.S.? Yes No N/A

Will vegetative disturbance be minimized? Yes No N/A

Will borrow material be taken from an upland source, where feasible? Yes No N/A

If no to any of the above, NWP 33 cannot be used to authorize the project.

Will the proposed project result in stream channelization? Yes No N/A

If yes, NWP 33 cannot be used to authorize the project.

NWP 35:

Use of this NWP requires notification pursuant to General Condition 31. Please refer to Regional Conditions for additional information on PCN requirements.

NWP 39

Will the activity result in the replacement of wetlands or waters of the U.S. with impervious surfaces?

Yes No

If yes, the commercial or institutional development shall incorporate low impact development concepts to the extent practicable, and a description of those concepts proposed shall be included with the PCN. Additional information on concepts and definitions are available at the following website: <http://www.epa.gov/owow/NPS/lid>

Is the proposed project located within the San Francisco Bay diked baylands (Figure 1 on the Public Notice for Federal Register Notice Announcing the Reissuance of the Nationwide Permits and the San Francisco District Regional Conditions: <http://www.spn.usace.army.mil/regulatory/nwp/2012/final%20NWPs.pdf>)?

Yes No

If yes, NWP 39 cannot be used to authorize the project.

NWP 40:

Will work impede flows during high volume events of a perennial or intermittent watercourse? Yes No

If yes, NWP 40 cannot be used to authorize the project.

NWP 41:

If the Corps determines that there will be a detrimental impact to aquatic habitat, compensatory mitigation may be required.

Will fill material be re-deposited, re-graded, and/or discharged, or will channel lining be installed?

Yes No

If yes, notification pursuant to General Condition 31 is required. The PCN shall include a statement demonstrating the need for the project and an explanation of the project's benefit to water quality.

NWP 42:

Are buildings proposed in waters of the U.S.? Yes No

If yes, the applicant must demonstrate that there is no on-site practicable alternative less environmentally damaging as defined by the Section 404(b)(1) guidelines.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 14

This document is a supplement to the national decision document for Nationwide Permit (NWP) 14 and addresses the regional modifications and conditions for this NWP. The San Francisco District's Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications of this NWP by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. The San Francisco District (District) determined these regional conditions are necessary to address important regional issues relating to the aquatic environment which are identified in this document. These regional conditions are being required to ensure that this NWP authorizes activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This document also identifies regionally important high-value waters and other geographic areas in which this NWP should be regionally conditioned or excluded from NWP eligibility, as described below, to further ensure that the NWP does not authorize activities that may exceed the minimal adverse effects threshold.

1.0 Background

In the February 16, 2011, issue of the Federal Register, 76 Fed. Reg. 9,174, the U.S. Army Corps of Engineers (Corps) published its proposal to reissue 48 existing NWPs and issue two new NWPs. To solicit comments on its proposed regional conditions for these NWPs, the District issued public notices on February 17 and November 28, 2011. The issuance of the NWPs was announced in the February 21, 2012, Federal Register, 77 Fed. Reg. 10,184. After the publication of the final NWPs, the District considered the need for regional conditions for this NWP. The District findings are discussed below.

2.0 Consideration of Public Comments

2.1 General Comments

- a) In a letter dated April 6, 2011, the Environmental Protection Agency (EPA) requested the addition of a regional condition that states, *“unless determined impracticable by the District Engineer, all waters of the U.S. proposed to be avoided on a project site shall be preserved in perpetuity with protections designed to maintain the natural functions and services of the avoided waters of the U.S. Options include recording new and separate parcel numbers for all avoided waters of the U.S. and appropriate upland buffers, and using conservation easements or restrictive covenants to ensure functions are maintained. If the District determines that sufficient information has been provided by the applicant to determine that it is impracticable to require permanent preservation of the avoided waters, additional mitigation may be required in order to compensate for indirect impacts to the waters of the U.S.”*

Response: The NWP program is specifically targeted for projects with minimal impacts; this proposed requirement would raise many issues regarding implementation and would represent an unreasonable regulatory burden. In order for the District to implement the proposed condition, a clearer procedure for quantifying avoidance would be required. It would be difficult to determine if an applicant would be required to protect, in perpetuity, the entire creek, just the portion within their parcel, or just the area within their immediate project footprint. Often applicants do not own or have the rights to creeks in which they are working in or are proposing repeat routine maintenance. The District believes that the mitigation requirements outlined within the “*Compensatory Mitigation for Losses of Aquatic Resources; Final Rule*,” 40 C.F.R. pt. 230, published on April 10, 2008 (2008 Mitigation Rule), adequately address the EPA’s concerns as protection of riparian buffers associated with jurisdictional waters is included within the 2008 Mitigation Rule.

- b) In a letter dated April 6, 2011, the EPA recommended the District develop a regional condition similar to Sacramento District’s Regional Condition 8 for post-construction reporting for all NWPs in which a pre-construction notification (PCN) is not required. Within 30 days following completion of all construction activities, EPA believes dischargers should submit a post-construction report to the District that demonstrates compliance with all NWP general and regional conditions, and contains a brief project description (including geographic coordinates), the amount and type of material discharged into any waters of the U.S., and project photos taken before and after construction.

Response: Projects for which a PCN is not required have reduced thresholds or involve very small volumes of fill (e.g. less than 1/10 of an acre). Use of staff time to review post-construction reports for projects involving extremely small impact areas and minimal volumes of fill would not be an efficient use of District resources. Also, enforcement associated with this review would be unlikely and difficult as no authorization letter with special conditions was issued and projects conducted under non-reporting NWPs would likely qualify for authorization under a NWP. Traditionally EPA enforcement has focused on unauthorized fills impacting acreages above the NWP threshold. This requirement would therefore increase District workload but would not necessarily result in increased protection of the aquatic environment or improved enforcement.

- c) In a letter dated April 6, 2011, the EPA requested the addition of a regional condition that states, “*the limits of project disturbance shall be clearly identified in the field with highly visible markers such as construction fencing or silt barriers prior to commencement of construction activities within waters of the U.S. Such identification shall be properly maintained until construction is completed and the soils have been stabilized. Equipment, materials, or any other substances or activity that impact waters of the U.S. outside of the permit limits (as shown on the permit drawings), is prohibited. This requirement is only waived if no avoidance of waters of the U.S. is practicable on-site and if there are no off-site waters within 100-feet from the project site.*”

Response: It is rare for a project to be proposed that does not already incorporate this type

of best management practice. A regional condition of this nature would therefore be unnecessary.

- d) In a letter dated April 6, 2011, the EPA recommended the District develop a regional condition similar to Sacramento District's requiring a PCN for all activities that would result in discharge of dredged or fill material into vernal pools. In letters dated April 11 and December 23, 2011, the Citizens Committee to Complete the Refuge (CCCR) expressed a similar recommendation. CCCR further requests the prohibition of the use of NWPs on the Santa Rosa Plain and in all jurisdictional vernal pools.

Response: Within the District, vernal pools are largely located on the Santa Rosa Plain or provide suitable habitat for listed species. For this reason, this regional condition would be redundant with General Regional Condition 2 which requires a PCN for any activity on the Santa Rosa Plain and General Conditions 18 and 31 which require a PCN for activities that may affect federally listed species. Prohibiting the use of the NWPs in the Santa Rosa Plain and for all projects proposed to occur within vernal pools would overly restrict the NWP program. Where jurisdictional vernal pools support federally listed species, additional review is required with the United States Fish and Wildlife Service (USFWS) in accordance with General Conditions 18 and 31.

- e) In a letter dated April 6, 2011, the EPA requested the addition of a regional condition that states, *"no construction activities shall occur within standing or flowing waters, unless it can be demonstrated by the applicant that the activity will have minor impacts to indigenous organisms and water quality. For ephemeral or intermittent streams, this may be accomplished through construction during the dry season. In perennial streams, this may be accomplished through dewatering of the work area. All proposed dewatering plans must be approved, in writing, by the District prior to commencement of construction activities. Approach fills shall not be located below the ordinary high water mark or, if tidal waters, the high tide line of waters of the U.S., or within any special aquatic sites."*

Response: This condition would be redundant with General Condition 12 which states, *"permittees are encouraged to perform work within waters of the U.S. during periods of low-flow or no-flow."* In addition, it is very rare for applicants to propose to work in standing or flowing waters in California due to state requirements (e.g. California Department of Fish and Game and Regional Water Quality Control Board). In the rare occasion that work is proposed to occur in flowing waters, individual project review would be completed to demonstrate that the work in flowing waters is required due to special site specific circumstances that preclude de-watering or work in the dry season. Nationwide Permit 33, which authorizes *Temporary Construction, Access, and Dewatering*, always requires a PCN; therefore there is already a requirement that dewatering plans be approved by the district engineer in writing.

- f) In a letter dated April 6, 2011, the EPA suggested the District consider a regional condition that explicitly allows Corps and EPA representatives to inspect authorized activities, including any mitigation areas, at any time deemed necessary to determine compliance

with the terms and conditions of the NWP verification. EPA recommended the District adopt the regional condition for inspections being proposed by Sacramento and Los Angeles Districts.

Response: This condition was not adopted because the District was concerned that inclusion of this regional condition would give District staff a “false sense of security” regarding protection against trespassing laws. It is advisable that when completing inspections, explicit permission from the property owner to enter the premise must be obtained. If this permission is not appropriately obtained, information gathered during the site visit may not be admissible in court. Inclusion of this regional condition would not adequately protect staff from potential trespass actions.

- g) In letters dated April 11 and December 23, 2011, CCCR indicated that they believe riprap should be prohibited in areas adjacent to endangered species populations, refuges, special aquatic sites, and wetland areas that support woody vegetation. They believe riprap fragments riparian habitat and may displace plant communities. CCCR further believes that placement of riprap near endangered species populations, refuges, special aquatic sites, and wetland areas represents more than minimal impacts, especially given the proposal to allow discretionary waiver of compensatory mitigation for projects impacting less than 1/10 of an acre.

Response: General Condition 6 states that no activity may use unsuitable material (e.g. trash, debris, car bodies, asphalt, etc) and that material used for construction or discharge must be free from toxic levels of pollutants. General Condition 9 further requires that all activity must be constructed to withstand expected high flows. Regional conditions associated with NWPs 13 and 14 require authorization of fill greater than 300 linear feet consider effects to the opposite side of the streambank and on adjacent property upstream and downstream of the activity. As discussed above, proposed activities in endangered species habitat require further review in accordance with General Condition 18. Case-by-case review and application of general condition requirements ensure impacts associated with riprap replacement are minimal and thus make the requested prohibition unnecessary.

- h) In letters dated April 11 and December 23, 2011, the CCCR stated information regarding specific NWP authorizations should be published in a quarterly report and made available on the District’s webpage for public comment. Additionally, CCCR requests pre-construction notifications be provided on the District website for public information.

Response: Information is available to the public on specific NWP authorizations in compliance with the Freedom of Information Act. NWP public comment is not feasible or required in the regulations. There is no procedure for handling comments provided by the public in regard to general permit decisions. Summary information on all permit decisions is provided on our website (<http://www.spn.usace.army.mil/regulatory/sum.html>). The District does its best to allocate resources as efficiently as possible to keep the website updated.

- i) In an email dated May 27, 2011, the Lytton Band of Pomo Indians requested that a regional condition applicable to all NWP's be added that clearly requires an initial cultural resources survey. The Tribe is also concerned that there is adequate upfront investigation of a project area to determine the likelihood or potential for discovery of unknown resources during project development. The Tribe underscores the importance of adhering to the Section 106 procedures by setting an Area of Potential Affect (APE) which follows the Advisory Council of Historic Properties more expansive definition of APE. The Tribe also states it is important to provide adequate conditions should inadvertent discoveries occur during project development. The Tribe believes appropriate tribal monitors should be required to safeguard unknown remains and artifacts. The Tribe continues to encourage early coordination to develop project specific safeguards of historic properties and appropriate mitigation, if necessary.

Response: The District concurs that early upfront coordination is important to development of project specific requirements to safeguard historic properties and will continue to work toward improved collaboration with the Tribe. Regarding addition of a general regional condition addressing inadvertent discovery, clauses please see the comment below in reference to General Regional Condition 7. The below sections 6.0 and 7.0 further outline the District's procedures for addressing treatment of potential historic properties that may occur within a project site. The District continues to follow procedures outlined in Appendix C of 33 C.F.R. pt. 325, "*Procedures for Protection of Historic Properties*".

- j) In a letter dated December 23, 2011, the CCCR stated that the Public Notices regarding the announcement of the District's Regional Conditions is inadequate and does not provide enough information regarding cumulative effects of the program to allow for substantive comment.

Response: The District would not be able to provide cumulative effects analysis in the form of a public notice. National and District decision documents (which includes the cumulative effects analysis) are provided on Corps' websites as soon as these documents are finalized. Further, these documents dating back multiple 5-year NWP cycles are available upon request through the Freedom of Information Act.

2.1.1 General Comments Applicable to Multiple NWP's

- a) In a letter dated April 6, 2011, the EPA and the State Water Resources Control Board (DWQ, letter dated April 18, 2011) stated that submission of a PCN pursuant to General Condition 31 and Regional Condition 1 should be required for NWP's 7, 13, 14, 28, 29, 39, 42, 43, 44, A, and B in any Clean Water Act 303(d) impaired waters. Additionally, due to the role of the states in the protection of water quality, agency notification should be extended to state agencies for these proposed activities in impaired water bodies. EPA and DWQ also suggest the applicant be required to prepare a statement of how the proposed activity does not contribute to existing water quality impairments, and whether the activity is consistent with existing Total Maximum Daily Loads (TMDLs). DWQ believes this requirement should apply to all NWP's.

Response: The same review is completed for projects located in all jurisdictional waters. Consistent with General Condition 25, no NWP authorization is valid without a state Clean Water Act section 401 certification to ensure the activity does not result in more than minimal degradation of water quality. Additionally General Condition 6 requires that no activity may use unsuitable material and that construction material must be free from toxic pollutants. The District does not believe the requirement to submit a PCN in impaired waters would improve protection of water quality as there is no established additional review to be applied to impaired creeks beyond what would be implemented in a non-impaired creek. Additionally, per General Condition 25 the appropriate state agency notification is already required.

- b) In many of their comments, in letters dated April 11 and December 23, 2011, the CCCR stated that NWPs (e.g. NWPs 3, 11, 12, 13, 18, 29, 31, 33, 35, 42, 43, and 48) should be prohibited if a project may affect endangered species, is located in endangered species critical habitat, and/or is located in a special aquatic site.

Response: Section 7 of Endangered Species Act (ESA) requires federal agencies to consult with the appropriate resource agency to ensure any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any federally-listed species or result in the adverse modification of designated critical habitat. General Condition 19 further requires full compliance with ESA and enumerates procedures to be followed prior to authorization of a project that “may affect” a federally-listed species. As stated in section 5.0 of this document, careful procedures requiring coordination with the appropriate resource agency and multiple levels of review occur for any activity authorized by a NWP that may have an effect on federally-listed species or on designated critical habitat. Elevation of these projects to a standard permit review would only increase workload and regulatory burden without providing additional safeguard of endangered species and their habitat. After careful evaluation, the District feels that NWPs can be successfully implemented in the District while still protecting important resources such as endangered species and their critical habitat.

Special aquatic sites are also afforded additional safeguards under the NWP program as some activities are restricted in special aquatic sites and thresholds are established specifically for special aquatic sites (e.g. NWP 13 for Bank Stabilization, 36 for Boat Ramps). The vast majority of special aquatic sites are occupied by federally listed species and therefore receive additional resource agency review. Section 230.7 of the 404(b)(1) Guidelines also does not prohibit the use of NWPs to authorize discharges of dredged or fill material into special aquatic sites. Further, standard practices protect special aquatic sites such as the 2008 Mitigation Rule, avoidance and minimization requirements, and the no net loss policy. We have therefore determined that the current procedures and policies adequately protect special aquatic sites.

- c) In letters dated April 11 and December 23, 2011, the CCCR suggested regional conditions should be established, for many of the NWPs (e.g. NWPs 29, 39, 40, 41, and 42), requiring compensatory mitigation be provided for all unavoidable impacts to jurisdictional waters

and wetlands.

Response: For impacts authorized under Section 404, compensatory mitigation is not considered until after all appropriate and practicable steps have been taken to first avoid and then minimize adverse impacts to the aquatic ecosystem pursuant to 40 C.F.R. pt. 230 (i.e., the CWA Section 404(b)(1) Guidelines). Compensatory mitigation is required to offset unavoidable adverse impacts to wetlands, streams, and other aquatic resources consistent with the 2008 Mitigation Rule. This document improves the planning, implementation, and management of compensatory mitigation projects. General Condition 23 addresses mitigation policies specifically in reference to the NWP program. Joint General Regional Condition 5 requires that project mitigation occur prior to or concurrently with project implementation. The District believes the 2008 Mitigation Rule, the avoidance and minimization and no net loss policies, general conditions and regional conditions adequately provide the necessary safeguards to ensure appropriate compensatory mitigation is required.

- d) In letters dated April 11 and December 23, 2011, the CCCR stated regional conditions should be established to require post-construction documentation that demonstrates pre-construction conditions have been restored, that re-vegetation efforts have been successfully implemented, and that temporary fills have been removed for many of the NWPs (e.g. NWPs 3, 12, 33, 39, 40, 41, and 42).

Response: Authorization letters for NWPs include special conditions that list requirements for the permittee. It is at the District's discretion to include special conditions that allow for submittal of appropriate project specific monitoring. Often monitoring is required in support of the terms and conditions of the NWP being used to authorize the project. The District believes that by allowing discretionary authority we will continue to facilitate efficient use of our resources and staff time to require project appropriate reporting. Certificates of compliance are also required for all authorized NWPs.

- e) In a letter dated April 8, 2011, the Marin Audubon Society stated that linear feet and acreage restriction of many of the NWPs that would allow for the loss of 300 linear feet (e.g. NWPs 29, 39, 40, and 42) and up to 1/10 acre (NWP 6) are too large. In our Mediterranean Climate, where wetlands and riparian areas are limited, the limit threshold should be further reduced. Audubon believes the threshold for NWPs 13 and 14 should be reduced to 100 linear feet or the NWP should be prohibited.

Response: The District has not observed authorization of projects that result in more than minimal impact to aquatic resources in the past five years. The "*Compensatory Mitigation for Losses of Aquatic Resources; Final Rule*," 40 C.F.R. pt. 230, published on April 10, 2008 applies consistently to all Department of the Army permits, including general permits and standard permits. By further reducing the NWP threshold the District would be requiring many projects be reviewed under the standard permit procedures. This increased level of review would not result in a difference in the mitigation or minimization

requirements. Thus, the District does not believe that reducing the limit would result in an improvement in the protection of these aquatic resources.

In 2007 the District introduced regional conditions for NWP 13 and 14 that require notification for fills in excess of 300 linear feet reducing the threshold by 200 linear feet compared to the national threshold. This has proven useful in our evaluation in the Mediterranean Climate. Further reductions however, would result in increased regulatory burden without improving protection of the aquatic resource.

- f) In letters dated April 11 and December 23, 2011, the CCCR suggested many NWPs (e.g. NWP 12, 14, 18, 29, 29, 40, 41, 42, 43, and 44) be prohibited within wetlands adjacent to perennial streams and wetlands within woody vegetation adjacent to any stream course.

Response: NWPs help relieve regulatory burdens on small entities that need to obtain Department of the Army permits for proposed minor impacts to aquatic resources. They provide an expedited form of authorization under defined conditions. The terms and conditions of the NWPs, such as PCN requirements and acreage or linear foot limits, are imposed to ensure that the NWPs authorize only those activities that result in minimal adverse impacts on the aquatic environment and other public interest factors. Many of the wetlands regulated by the District would qualify as, “wetlands adjacent to perennial streams and wetlands within woody vegetation adjacent to any stream course”. Thus, prohibiting the use of NWP in these wetlands would result in a significant increase in District work load and project proponent regulatory burden without achieving increased protection of these aquatic resources.

- g) In letters dated April 11 and December 23, 2011, the CCCR indicated many NWPs (e.g. NWP 13, 14, 29, 39, 40, 41, 42, 43, and 44) should not be used to expand previously permitted projects to avoid piece-mealing in accordance with the avoidance and minimization requirement.

Response: According to General Condition 28, the use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the U.S. authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. If a previously permitted project is proposed for expansion then the district engineer is required to consider the cumulative impacts of the proposed activity. If it is determined that the cumulative impacts represent more than minimal impacts, the district engineer has the authority to require an evaluation under a standard permit procedure. The District therefore believes that General Condition 28 and case-by-case review provides adequate protection and therefore addition of this proposed regional condition would be redundant and unnecessary. A regional condition was added regarding the use of NWP 14 within a previously authorized linear transportation project.

- h) In a letter dated April 6, 2011, the EPA suggested the addition of a regional condition to many of the NWPs (e.g. NWP 29, 39, 40, 42, and 43) that states, “*unless specifically determined, in writing, to be impracticable by the district engineer, upland vegetated*

buffers shall be established and maintained in perpetuity next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 22. Except in unusual circumstances, as determined by the District, vegetated buffers shall be at least 50 feet in width (i.e., 25' minimum landward of each OHWM or wetland boundary)."

Response: The Corps regulates the discharge of dredged or fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters. Placing programmatic requirements on "upland buffers" outside of our jurisdiction would represent a significant increase in our Regulatory authority. We understand the potential value of preserving upland buffers; however, this should be handled on a project specific level, when appropriate, due to project specific implications that make this requirement prudent.

2.1.2 General Comments Applicable to General Regional Conditions that apply to all NWP's in the Sacramento, San Francisco, and Los Angeles Districts:

General Regional Condition 1:

- a) In letters dated April 11 and December 23, 2011, the CCCR stated this condition should require the applicant also discuss the direct and indirect impacts of the proposed project as well as the cumulative impacts of the project.

Response: General Condition 31 requires that the applicant provide a description of direct and indirect adverse environmental effects. Thus, addition of the suggested language to the regional conditions would be redundant with the current NWP general conditions. Cumulative effects of the NWP program are analyzed consistent with the 404(b)(1) guidelines and the National Environmental Policy Act (NEPA) on a five-year cycle during the NWP renewal process.

General Regional Condition 2:

- a) The Marin Audubon Society (letter dated April 8, 2011) and the CCCR (letters dated April 11 and December 23, 2011) suggested NWP's should be revoked where there are eelgrass beds because they are so rare and difficult to restore. CCCR also suggests revoking the NWP's in essential fish habitat (EFH).

Response: This general regional condition was developed in collaboration with the Sacramento and Los Angeles Districts. The condition requires the submittal of a PCN, with the appropriate documentation, to allow for consultation with the National Marine Fisheries Service (NMFS) pursuant to Section 305(b)(2) of Magnuson-Stevens Fishery Conservation and Management Act of 1996, as amended (MSFCMA) which requires federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is

defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity and therefore includes all eelgrass beds. This consultation with subject matter experts (i.e. NMFS) should ensure that resources crucial to fish for spawning, breeding, feeding or growth to maturity, including eelgrass beds are safe guarded.

Requiring standard permits for all projects occurring in eelgrass beds, and generally within EFH, would not improve review of the project in light of effects to eelgrass or EFH.

General Regional Condition 3:

- a) In letters dated April 11 and December 23, 2011, the CCCR stated this condition should clarify that for project locations that support endangered species, essential fish habitat, or historic properties, authorization should not be assumed by the project proponent until compliance with these regulations has been determined and confirmed in writing by the Corps.

Response: The intent of this regional condition is to require the submittal of the appropriate documentation that demonstrates the federal lead is in compliance with all appropriate federal laws. The project proponent/applicant could not proceed with the project until written authorization from the District is received. Thus, the addition of this language to the regional condition would be redundant with the standard program practices.

General Regional Condition 4:

- a) In a letter dated April 8, 2011, the Marin Audubon Society and the CCCR, in letters dated April 11 and December 23, 2011, stated their support of this regional condition. In a letter dated April 6, 2011, the EPA also indicated support of the regional condition but recommended expanding the applicability of this regional condition. Commenters suggested the District require crossing designs that ensure passage and spawning for all indigenous and migratory aquatic organisms and other wildlife associated with aquatic ecosystems. The EPA also recommend the physical and hydrological channel characteristics be maintained consistent with Subparts C&D of the 404(b)(1) Guidelines that require the consideration of effects to the physical and biological ecosystem. The EPA recommended revising Regional Condition 1 to be consistent with General Condition 2 and Sacramento District's Regional Condition 6 that includes additional protections for channel flows (i.e. sizing the culvert for high flow conditions).

Response: This regional condition was established in collaboration with the Los Angeles and Sacramento Districts. Expanding the condition to cover all indigenous species was discussed; however, it was determined impractical as District staff does not necessarily have the training or expertise to ensure compliance with a regional condition written so broadly. Staff would be required to have knowledge of all indigenous aquatic species and have the engineering expertise to evaluate the proposed project. Limiting the regional condition to listed species allows staff, in coordination with resource agencies, to ensure full compliance with the regional condition. This would also represent a redundant

review, as state agencies such as California Fish and Game evaluate suitability of projects for indigenous species.

- b) In letters dated April 11 and December 23, 2011, the CCCR stated they would like the words, “*unless determined to be impracticable by the Corps*” to be deleted. CCCR would also like the words, “*unless it can be confirmed by the National Marine Fisheries Service (NMFS)...*” added to the regional condition.

Response: The phrase regarding impracticability was added to the language to maintain flexibility within the NWP program. This regional condition applies to all of the NWPs. It is important that the concepts outlined in the regional condition are uniformly applied. However, it is also important that discretionary authority be maintained. As currently written we believe the condition strikes that balance. The following language was removed from the regional condition, “*unless it can be demonstrated that the subject waters do not contribute to the recovery of Federally-listed species.*” This language was determined to be confusing.

General Regional Condition 5:

- a) In a letter dated April 6, 2011, the EPA indicated their support of this condition. In letters dated April 11 and December 23, 2011, the CCCR indicated their support of this condition.
- b) In letters dated April 11 and December 23, 2011, the CCCR stated in-lieu fee mitigation should be prohibited in the District.

Response: There are currently no approved in-lieu fee programs in the District. If in-lieu fee programs become available, the use of these programs in conjunction with the NWP program would be considered. This prohibition is unnecessary at this time.

General Regional Condition 6:

- a) The EPA (letter dated April 6, 2011), the San Francisco Regional Water Quality Control Board (RWQCB, letter dated April 18, 2011) and CCCR (letters dated April 11 and December 23, 2011) stated this condition requires certain types of information be provided when requests for waivers of the linear footage threshold for NWPs 13, 29, 39, 40, and 42 are made. EPA is pleased to see this modification, but suggests including NWPs 43, A, and B. Additionally, EPA believes agency notifications should also be included for any project which requires a waiver. Notifications would provide opportunity for review of projects with increased footprints and aid in tracking the extent and frequency with which thresholds are waived. SFRWQCB remains concerned by the waiver provisions for the 300-foot limit on NWPs 29, 39, 40, and 42, and the 500-foot limit on NWP 13. RWQCB stated General Regional Condition 6 provides useful safeguards to limiting negative impacts associated with these waivers. CCCR believes the District should adhere strictly to the restrictions of authorization of no more than 300 linear feet of stream impacts for

NWPs. Failing that, the District should substantively analyze the cumulative effects before considering waiving restrictions on the linear footage threshold.

Response: The regional general condition has been made applicable to NWPs 43, A, and B. General condition 31 paragraph (d)(2) was modified to clarify that all NWP activities resulting in the loss of greater than 1/2-acre of waters of the United States require agency coordination. Further, agency coordination would be required for certain NWPs when the proposed activity would result in the loss of greater than 1,000 linear feet of intermittent and ephemeral stream bed, in cases where the district engineer is considering waiving the 300 linear foot limit.

At the time of NWP renewal in 2002 and 2007, similar concerns regarding the waiver process were expressed by various environmental organizations. In 2007 the District reduced the threshold for NWPs 13 and 14 to 300 linear feet. A review of the use of waivers over the past three years (2009-2011) was conducted. For NWPs 13 and 14, only 5% of projects authorized by these two NWPs required use of the waiver. For NWPs 29, 39, 40, and 42, only one waiver was issued during the three year period. This demonstrates how rarely the NWP threshold is waived in the District. Additionally, the waiver process has been updated (see General Condition 31) to require the district engineer make a written determination that the NWP activity will result in minimal adverse effects and requiring agency notification. The factors to be considered by the district engineer are also enumerated within the general condition.

The District has not observed more than minimal impacts associated with projects authorized requiring a waiver of the linear footage threshold. The District has demonstrated that the waivers are rarely implemented. Furthermore, the project proponent must continue to avoid and minimize discharges into waters of the U.S. to the maximum extent practicable, and must include a written statement explaining how avoidance and minimization is achieved. Compensatory mitigation is also required to offset the losses of waters of the U.S. consistent with the 2008 Mitigation Rule. Thus, we believe it is appropriate to rely on case-by-case analysis to determine if a waiver of the linear foot acreage limit is appropriate.

General Regional Condition 7:

- a) The Dry Creek Rancheria Band of Pomo Indians (letter dated December 20, 2011) and the Federated Indians of Graton Rancheria (letter dated March 18, 2011) commented that the proposed regional condition should include the following language, “culturally-affiliated tribes” as participants in 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.” The Tribes state, it is vital that tribes are included in procedures designed to protect against adverse impacts to historical, cultural, or archaeological remains discovered during construction because tribes have unique interest in such resources and have legal rights specific to those vital interests. Among those interests are protections for traditional tribal cultural places including prehistoric, archaeological, cultural, spiritual,

and ceremonial sites essential to tribal cultural traditions, heritages, and identities.

Response: General Condition 7 was removed from the joint conditions when it became apparent that it is redundant with General Condition 21 that was added to the NWP program which addresses the discovery of previously unknown remains and artifacts. We believe that the general condition adequately addresses the Tribe's concerns.

2.1.3 General Comments Applicable to San Francisco District's General Regional Conditions:

San Francisco District's General Regional Condition 1:

- a) In letters dated April 11 and December 23, 2011, the CCCR made the argument that this regional condition is not within the discretion of the district engineer, as requiring a PCN in Diked Baylands implies that authorizations would be issued under NWPs 29, 39, 40, and 42. This represents a broadening of authority under the NWP program, not a narrowing of authority as required by 33 C.F.R. 330.4(e). Further the terms and conditions of these NWPs state, "*this NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.*" CCCR believes that by definition Diked Baylands and the non-tidal wetlands that occur within them are adjacent to the San Francisco Bay, a tidal water.

Response: Based on comments received the District added a regional condition prohibiting the use of NWPs 29 and 39 in the Diked Baylands. This was determined necessary due to the fact that 95% of wetlands within the Diked Baylands of San Francisco Bay have been lost as a result of development. The District, however, maintains that requiring the submittal of a PCN in no way implies authorization with a NWP. Further, the requirement to submit a PCN does not broaden the District's authority under the NWP program. The requirement to submit a PCN simply ensures adequate informed review by the district engineer. During review of the pre-construction notification, the District has the responsibility to demonstrate that the project is in compliance with all terms and conditions of the NWP including the NWPs 29, 39, 40 and 42 prohibitions on authorizing fill of into non-tidal wetlands adjacent to tidal waters.

2.2 Specific Comments Received by the District in Reference to NWP 14

Comments regarding NWP 14 were received and are addressed in Section 2.1.1 (General Comments Applicable to Multiple NWPs). The following additional comments were received.

- a) In a letter dated April 6, 2011, the EPA requested the addition of a regional condition that builds off General Condition 2. The EPA suggests the condition state, "*road crossings shall be designed to ensure that no more than minor impacts would occur to indigenous fish and wildlife passage or expected high flows.*" EPA believes this is necessary to ensure that culverts maintain the original and natural full bank capacity (cross-sectional area) of the channel. Constrictions at these points are contributing factors in costly bridge and culvert "blow-outs" and it is important that culverts are sized to accommodate high flow

conditions. Additionally, it should be clear that this condition applies both to aquatic organisms and other wildlife that use the channel to migrate.

Response: Regional General Condition 4 specifically addresses fish passage for federally listed species at road crossings. As stated in the earlier response, it is not practical to expand the condition to cover all indigenous species as District staff does not have the expertise to evaluate projects in light of all indigenous species. This change would also represent redundant evaluation with state agencies (i.e. California Department of Fish and Game). General Condition 9, *Management of Water Flows*, specifically states that the activity must not restrict or impede the passage of normal or high flows. Per NWP 14 regional conditions, when projects affecting more than 300 linear feet are proposed the applicant must evaluate the effect of the work on adjacent property upstream and downstream of the activity. This evaluation would include identification of flow constrictions. Thus adding the suggested language to the regional conditions would be redundant.

- b) In a letter dated April 6, 2011, the EPA stated that it is common practice in Region 9 for the Corps to utilize several--or even dozens--of NWP 14 authorizations for linear transportation projects that cross braided systems or many tributaries of a nearby downstream waterway. The definition of "single and complete project" for linear transportation allows for this type of "stacking" of NWPs, which EPA believes often results in more than minimal impacts. The EPA recommends that the use of the same NWP in multiple instances not be sanctioned, unless on a case-by-case basis the applicant is able to prove no more than minimal impacts will result at the discharge site(s) and downstream. Even with such justification, reasonable thresholds should be placed on use of multiple permits by requiring a watershed approach to impact assessment, as called for in multiple Corps EPA guidance documents and current regulations (e.g., assessing not just the fill footprint, but downstream impacts to flow, habitat and sediment transport from the upstream modification of multiple tributaries). EPA requests that the District develop a regional condition to ensure that impacts from linear transportation crossing are minimal. CCCR expressed similar concerns.

Response: The San Francisco District concurs and the following condition was added: *"To ensure no more than minimal impacts are authorized by this NWP, if this NWP has been used to authorize previous projects proposed by the same applicant within the same linear transportation project, justification must be provided demonstrating that the cumulative impacts of the proposed and previously authorized projects are minimal."*

- c) In a letter dated April 18, 2011, the RWQCB indicated their support of this regional condition.

Response: We appreciate the RWQCB's endorsement of this regional condition.

- d) In a letter dated December 20, 2011, the Dry Creek Rancheria Band of Pomo Indians commented that the Tribe believes that section C which requires the notification to, *"also*

address the effect of the bank stabilization on the stability of the opposite side of the stream bank and on adjacent property upstream and downstream of the activity” would greatly increase the regulatory burden of the overall program and reduce the utility of permits. The Tribe states that the notification requirements in accordance with General Condition 31 provide adequate information for effective review.

Response: This requirement is consistent with the regional conditions for NWP 13 (bank stabilization), and is necessary to ensure that larger bank stabilization projects do not have greater than minimal adverse effects on the aquatic environment, and are not contrary to the public interest, in particular factors (l)-*shore erosion and accretion* and (t) *considerations of property ownership*. This regional condition only applies to projects under NWP’s 13 and 14 that involve bank stabilization, and as such would not reduce the utility of NWP’s in general or increase the regulatory burden of the overall NWP program. The same requirement was in the regional conditions for the 2007 NWP’s 13 and 14, and has not appreciably reduced the utility of or increased the regulatory burden of these NWP’s.

- e) In letters dated April 11 and December 23, 2011, the CCCR suggested the following further restrictions should be added to this NWP; (a) prohibit the construction of new linear transportation or spur projects; (b) reduce the impact threshold to 0.1 acre; and (c) restrict the linear footage impact to 100 feet.

Response: This NWP does not authorize the entire transportation project but applies primarily to crossing(s) of waterways which have minimal effects, individually and cumulatively, to the aquatic environment. New transportation projects must meet the same minimal impact criteria to be authorized under this NWP. To ensure minimal impacts, in 2007 the District introduced regional conditions for NWPs 13 and 14 that require notification for fills in excess of 300 linear feet, reducing the threshold by 200 linear feet compared to the national threshold. However, by excluding from this NWP any new transportation projects, or those with greater than 100 linear feet or 0.1 acre of impact, the commenter’s proposed restrictions would require many projects be reviewed under the standard permit procedures. This increased level of review would not result in a difference in the mitigation or minimization requirements, since all projects, whether authorized by NWP or standard permit, are subject to the April 10, 2008 “*Compensatory Mitigation for Losses of Aquatic Resources; Final Rule*,” 40 C.F.R. pt. 230. The District believes that these proposed restrictions would unnecessarily subject many “small” transportation projects to the standard permit process, thus increasing workload and regulatory burden without necessarily increasing protection of aquatic resources, and would decrease the utility of this NWP by excluding a large number of transportation projects that otherwise have minimal impacts to the aquatic environment.

3.0 Waters Subject to Additional Pre-Construction Notification Requirements

3.1 Waters excluded from use of this NWP

The District did not propose to prohibit the use of this NWP in any jurisdictional features.

3.2 Waters subject to additional pre-construction notification requirements

3.2.1 Waters or Wetlands of the U.S. Located within the San Francisco Bay Diked Baylands

The District's General Regional Condition 1 requires a PCN be provided for any fill discharge verified by a NWP within the Diked Baylands, including undeveloped areas currently behind levees that are within the historic margin of the Bay. Submittal of a PCN in accordance with General Condition 30 and General Regional Condition 1 will ensure appropriate information is provided for case-by-case evaluation. The evaluation will include review of proposed compensatory mitigation and avoidance and minimization measures. The requirement to submit a PCN will also enable record keeping of impacts and consequent cumulative impacts analysis.

3.2.2 Santa Rosa Plain

See additional discussion in the General Comments Section (2.1) regarding activities proposed for the Santa Rosa Plain. This regional condition was included as a requirement for NWPs 12, 14, 18, 29, 39, 40, 41, 42, & 43 in previous years. In 2007, this regional condition was made applicable to all NWPs. Broad application of this regional condition was useful during the 2007-2012 NWP cycle and has therefore been maintained for the next five years. Requirement of a PCN on the Santa Rosa Plain ensures compliance with the requirements of the Endangered Species Act and provides for better tracking of effects in this geographic area.

The Santa Rosa Plain figure was also updated. This figure has been revised by the USFWS to include the range of the Sonoma County population of the California tiger salamander as well as federally-listed plant species (see map attached to the Public Notice dated November 28, 2011).

3.2.3 Eelgrass Beds

The District's General Regional Condition 3 requires a PCN, habitat assessment, extent of impacts assessment, and compensatory mitigation plan for projects proposed to occur in eelgrass beds. Eelgrass beds are considered to be a valuable shallow-water habitat, providing shelter, feeding, and breeding habitat for many species of invertebrates, fishes, and some waterfowl. Eelgrass beds supply organic material to nearshore environments, and their root systems stabilize area sediments. These plants grow in relatively few locations within the Bay and require special conditions to flourish. Cultivation of eelgrass is difficult and efforts to grow eelgrass in San Francisco Bay thus far have not succeeded. Activities potentially impacting eelgrass require evaluation through a PCN to ensure minimal impacts

given mitigation constraints and provide necessary information for efficient consultation with NMFS pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.

3.2.4 Essential Fish Habitat

A joint Regional General Condition similar to the District's former General Regional Condition 4, requiring a PCN for any proposed fill discharge verified by a NWP proposed to take place in EFH, was developed. This condition is being applied consistently within the Sacramento, San Francisco, and Los Angeles Districts. As discussed in Section 8.0 below, pursuant to Magnuson-Stevens Fishery Conservation and Management Act, fill discharges with an adverse effect to EFH must be referred to NMFS so that they may provide recommendations to minimize impacts and enhance EFH. Required PCN for fill discharge, structures, or work within EFH will ensure consultation occurs; required additional PCN information (i.e. type of habitat and estimate of areal extent of affected area) will ensure timely and efficient consultation.

3.2.5 Requests to Waive the 300 Linear Foot Limit

General Regional Condition 6 was developed in coordination with the Sacramento and Los Angeles Districts. In accordance with this condition, any request to waive the 300 linear foot limitation for intermittent and ephemeral streams must include an analysis of potential effects on the stream environment. Such analysis should include information on measures taken to avoid and minimize losses, other measures to avoid and minimize filling that were found not to be practical, and a mitigation plan detailing how the unavoidable losses will be offset.

Headwater streams, including ephemeral streams, in the District are very important to the downstream ecosystem and often connect with many tributaries within a watershed. The upper reaches of small seasonal streams within the District are commonly associated with plunge pools that offer breeding habitat for amphibians, aquatic invertebrates and also contribute incrementally to the overall water quality and wetland functions of the watercourse. These seasonal streams contribute to sediment retention, reduced downstream erosion, water storage, flood de-synchronization, wildlife habitat, movement corridors for wildlife, etc. We believe the District's regional condition requirement to provide the above information will enable the District to gain a better perspective on proposed project's total impacts in order to make case-by-case assessments regarding minimal effects.

4.0 Alternatives

4.1 No Regional Conditions

The purpose of the regional conditions is to ensure that NWPs only authorize activities that result

in minimal adverse effects on the aquatic environment, individually or cumulatively, when applied in the District. Only the joint General Regional Conditions 1-7 and the District's General Regional Conditions 1 – 3 apply to NWP 14. Revoking these regional general conditions would reduce the ability of the District to properly evaluate fill discharges potentially affecting aquatic resources within the Diked Baylands, eelgrass beds, and EFH (see section 3.2 (1-5)). In addition, the provision requiring a PCN for activities proposed to occur in these areas allows the District to track and evaluate cumulative effects of multiple NWP authorizations to the above mentioned aquatic resources. The joint General Regional Condition 5 further requires that mitigation be provided by the project proponent prior to or concurrently with commencement of construction. As stated in general comments section 2.1, multiple organizations expressed concern that the District requires proper mitigation that meets the “no net loss” policy of the Corps, including safeguards against temporal losses of aquatic function. The implementation of joint general regional conditions and general regional conditions ensure that the District both evaluates projects in specified waters (i.e. EFH, eelgrass beds, and Diked Baylands) at an appropriate level and that mitigation for unavoidable losses is attained.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

The District considered possible outcomes of implementing further limitations on NWP 14 including increased threshold limits in EFH, eelgrass beds, and Diked Baylands. The District also considered implication of revoking NWP 14 in EFH and eelgrass beds. In all of these areas it was determined that current NWPs, national PCN thresholds, and regional limits already effectively ensure that only minimal adverse effects on the aquatic environment, individually or cumulatively, are authorized by the NWP. Thus implementing additional regional limits or lowering PCN thresholds would not effectively safeguard against more than minimal impacts, and would lead to increased District workload, less timely evaluation of proposals, and increased regulatory burden for the applicant. Additionally, it is believed that requiring a PCN for all activities proposed to occur within specified aquatic resources will ensure case-by-case review and coordination with the USFWS and NMFS in compliance with the CWA, ESA, and the Magnuson-Stevens Fishery Conservation and Management Act.

4.3 Alternative Regional Nationwide Permit Conditions

Additional regional conditions, beyond those stated above, were not considered necessary as the District believes current general conditions and guidelines provide the appropriate safeguards to ensure that NWP 14 does not authorize activities with more than minimal adverse effects on the aquatic environment. Implementation of additional regional conditions would only create unnecessary regulatory burden and increased applicant cost.

5.0 Endangered Species Act

5.1 General Considerations

Information available on federally-listed species for the District includes the California Natural Diversity Database, county species lists, reports provided by the applicant, recovery plans,

programmatic Biological Opinions, and institutional knowledge. The District ensures that activities authorized by NWP comply with the ESA by reviewing all applications for possible effects on federally-listed species and their critical habitat. If the District determines that a proposed activity will have ‘no effect’ on a federally listed species (or a species proposed for federal listing), or on critical habitat, then the District does not initiate consultation with the appropriate Service and proceeds to complete the application evaluation. If the District determines that a proposed project is ‘not likely to adversely affect’ a federally listed species (or a species proposed for federal listing), or a critical habitat, then the District initiates informal consultation in writing with the appropriate Service and requests a written concurrence with the District’s determination within 30 days. If the District determines that a proposed project ‘may affect’ a listed or proposed species or critical habitat, then the District initiates formal consultation with the appropriate Service. In the cases of informal and formal consultation, the District notifies the applicant that construction may not proceed until consultation is completed and the District issues a written authorization. The process has successfully safeguarded federally-listed species within the District in the previous five years. No changes have been recommended to this process.

5.2 Local Operating Procedures for Endangered Species

The District will continue to consult on federally-listed species with the appropriate resource agencies as described in Section 5.1 above. There are multiple species-specific programmatic agreements that are often utilized in the District. Additionally, staff from the USFWS California-Nevada Operations Office, Corps South Pacific Division, and NMFS Southwest Region jointly developed guidelines (*U.S. Army Corps of Engineers Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California* dated November 16, 2006) regarding proposed actions that are determined to not likely adversely affect 66 listed species, distinct population segments (DPS), or evolutionarily significant units (ESU). District staff will continue to utilize these programmatic agreements when determined appropriate.

6.0 National Historic Preservation Act

6.1 General Considerations

Section 106 of National Historic Preservation Act (NHPA) requires federal agencies to consult with the appropriate State Historic Preservation Officer (SHPO) to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the National Register of Historic Places (historic properties). Section 106 of NHPA further requires federal agencies to consult with the appropriate Tribal Historic Preservation Officer (THPO) or any Indian Tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian Tribes attach historic, religious, and cultural significance. The requirements under Section 106 of NHPA apply to both standard and general permits.

6.2 Local Operating Procedures for National Historic Preservation Act

In accordance with Appendix C of 33 C.F.R pt. 325 and 36 C.F.R. pt. 800, implementing procedures for complying with Section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f, the District ensures that activities authorized by NWP's comply with the NHPA by reviewing all applications for possible effects on historic properties. Provided information generally includes archival research at the Northwest Information Center, Sonoma State University and often field surveys of the project features within the Area of Potential Effect. If the District determines the project may affect a historic property, based on the provided information, then consultation is completed with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), recognized Tribes, and, if necessary, the Advisory Council on Historic Preservation (ACHP). The applicant is notified that the activity cannot be verified under the NWP until all Section 106 requirements have been satisfied. Additionally, the district engineer may assert discretionary authority to require an individual permit for the proposed activity and initiate consultation through the individual permit process. If the District determines that the activity would have no potential to cause effects on any historic properties, the District proceeds to a NWP authorization without further consultation.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On December 7, 2010, each Tribe within our area of responsibility was contacted through formal correspondence to provide an early notification of the anticipated reissuance of the Corps' NWP's and associated District's Regional Conditions. On February 11, 2011, additional correspondence was provided which included draft documents of the proposed NWP's and the District's Regional Conditions. The Lytton Band of Pomo Indians, Federated Indians of Graton Rancheria, and Yocha Dehe Wintun Nation responded to the District request for Government-to-Government consultation. Consultation was concluded with the Lytton Band of Pomo Indians through their formal submission of comments on May 27, 2011. These comments have been incorporated into the general comments section (2.1) above. The Federated Indians of Graton Rancheria responded with a request to review all NWP's requests within the Graton Rancheria's ancestral territory. The District agreed to continue to work with Graton Rancheria to establish a procedure for providing appropriate information to the tribe for review. The District determined this type of agreement for programmatic level review would best be accomplished with a Memorandum of Agreement (MOA) between the District and the Tribe. The District made multiple unsuccessful efforts to arrange a meeting with representatives from the Federated Indians of Graton Rancheria and the Yocha Dehe Wintun Nation. Consultation was concluded with these tribes on November 10, 2011. The District hopes to continue to work with Graton Rancheria towards the establishment of a MOA which addresses the Tribe's request.

7.2 Local Operating Procedures for Protecting Tribal Resources

The District has no procedures beyond those described in sections 6.1 and 6.2 above.

8.0 Essential Fish Habitat

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act Provisions for EFH, NMFS has established guidelines to assist in the identification of adverse effects to EFH and has identified actions required to conserve and enhance EFH. NMFS' regulations detail procedures for federal agencies to coordinate, consult, or provide recommendations on actions that may adversely affect EFH, 50 C.F.R. pt. 600. In addition to these regulations, the District abides by procedures for coordination, consultation, and recommendation requirements of section 305(b)(1)(D) and 205 (b)(2-4) of the Magnuson-Stevens Act as provided in 50 C.F.R. pt. 600. See above sections 2.1, 3.2.3, and 3.2.4 for further discussion.

On October 11, 2011 a programmatic consultation with NMFS was completed. This consultation pertained to construction and maintenance of overwater structures in the San Francisco Bay area and considered new or replacement overwater structure construction, modification, maintenance, and associated indirect activities. District staff will continue to utilize this programmatic agreement when determined appropriate.

9.0 Supplement to National Impact Analysis

9.1 Public interest review factors (33 C.F.R. 320.4(a)(1))

In addition to the discussion in the national decision document for this NWP, the District has considered the local impacts expected to result from the activities authorized by this NWP, including the reasonably foreseeable cumulative effects of those activities.

(a) Conservation: Same as discussed in the national decision document.

(b) Economics: Same as discussed in the national decision document. Also, there may be an incremental increase in cost associated with required supplemental PCN information and increased cost associated with additional review time by the District. Any mitigation that might be required could also add to the cost of a project, however, these costs would also be required by state regulatory agencies.

(c) Aesthetics: Same as discussed in the national decision document.

(d) General environmental concerns: Same as discussed in the national decision document. The PCN requirement will further ensure proper evaluation of proposed activities on the Santa Rosa Plain.

(e) Wetlands: Same as discussed in the national decision document. Regional conditions for notification will ensure minimal impacts to wetlands in regionally sensitive areas, including Diked Baylands and the Santa Rosa Plain.

(f) Historic properties: Same as discussed in the national decision document.

(g) Fish and wildlife values: Same as discussed in the national decision document. The regional

condition for notification will help ensure minimal impacts to wetlands on the Santa Rosa Plain and will ensure compliance with the ESA.

- (h) Flood hazards: Same as discussed in the national decision document.
- (i) Floodplain values: Same as discussed in the national decision document.
- (j) Land use: Same as discussed in the national decision document.
- (k) Navigation: Same as discussed in the national decision document.
- (l) Shore erosion and accretion: Same as discussed in the national decision document. In addition, the regional conditions for NWP 14 require applicants proposing to impact more than 300 linear feet of channel to consider effects on the opposite streambank and adjacent properties. This could serve to further reduce adverse effects resulting from erosion of streambanks and downstream accretion.
- (m) Recreation: Same as discussed in the national decision document.
- (n) Water supply and conservation: Same as discussed in the national decision document.
- (o) Water quality: Same as discussed in the national decision document. The regional condition for notification will ensure minimal impacts to water quality.
- (p) Energy needs: Same as discussed in the national decision document.
- (q) Safety: Same as discussed in the national decision document.
- (r) Food and fiber production: Same as discussed in the national decision document.
- (s) Mineral needs: Same as discussed in the national decision document.
- (t) Considerations of property ownership: Same as discussed in the national decision document. In addition, the regional conditions for NWP 14 require applicants proposing to impact more than 300 linear feet of channel to consider effects on the opposite streambank and adjacent properties. This would ensure that adverse effects to other properties in the vicinity of the proposed project area would be minimized to the maximum extent possible.

9.2 National Environmental Policy Act Cumulative Effects Analysis (40 C.F.R. 1508.7)

The terms and conditions of the NWP, including the PCN requirements and the regional conditions discussed above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in General Condition 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the PCN

process, the District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the PCN process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. In 2007 the San Francisco District estimated that this NWP would be used approximately 35 times per year on average, and result in the average annual loss of approximately 1 acre of waters of the United States. To compensate for this loss, 1 acre of mitigation for loss of waters of the United States would be, on average, required annually. Review of the number of NWP 14 authorizations, during the last three years, showed that, on average, 48 authorizations were issued per year by our District. During that time period, NWP 14 was issued most frequently in Marin, Humboldt, and Alameda counties.

9.3 Section 404(b)(1) Guidelines Impact Analysis (Subparts C-F)

- (a) Substrate: Same as discussed in the national decision document.
- (b) Suspended particulates/turbidity: Same as discussed in the national decision document.
- (c) Water: Same as discussed in the national decision document.
- (d) Current patterns and water circulation: Same as discussed in the national decision document.
- (e) Normal water level fluctuations: Same as discussed in the national decision document.
- (f) Salinity gradients: Same as discussed in the national decision document.
- (g) Threatened and endangered species: Same as discussed in the national decision document. All projects that would adversely affect federally listed threatened and endangered species must go through the Section 7 process if a Corps permit is required. By reducing the PCN threshold, to 300 linear feet of stream channel, this would avoid and minimize adverse effects to listed species by requiring additional review by the appropriate resource agency.
- (h) Fish, crustaceans, molluscs, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed

below:

- (1) Sanctuaries and refuges: Same as discussed in the national decision document.
- (2) Wetlands: Same as discussed in the national decision document. The PCN requirement for activities proposed on the Santa Rosa Plain and Diked Baylands will also help ensure that no more than minimal adverse effects are authorized for these ecologically sensitive regions.
- (3) Mud flats: Same as discussed in the national decision document. Mitigation could be required for special aquatic sites as necessary to ensure that impacts are no more than minimal.
- (4) Vegetated shallows: Same as discussed in the national decision document. Mitigation could be required for vegetated shallows as necessary to ensure that impacts are no more than minimal.
- (5) Coral reefs: Not applicable.
- (6) Riffle and pool complexes: Same as discussed in the national decision document. Mitigation could be required for riffle pool complexes as necessary to ensure impacts are no more than minimal.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (m) Water-related recreation: Same as discussed in the national decision document.
- (n) Aesthetics: Same as discussed in the national decision document.
- (o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: Same as discussed in the national decision document.

9.4 Section 404(b)(1) Guidelines Cumulative Effects Analysis (40 C.F.R. 230.7(b)(3))

The cumulative effects of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Based on an analysis of the types of activities authorized by the District during previous years, the District estimates that this NWP will be used approximately 40 -50 times per year, resulting in the loss of approximately 1.75 – 2.0 acres of waters of the United States. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the District estimates that compensatory mitigation at an appropriate minimum 1:1 or higher ratio (consistent with the 2008 Mitigation Rule) would occur to offset the authorized losses of waters of the United States. This mitigation

requirement in combination with all of the NWP terms and conditions (national and regional) will ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 14

The following Regional Conditions apply to NWP 14:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for all projects filling greater than 300 linear feet of channel. For projects involving greater than 300 linear feet of bank stabilization, the project proponent shall address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.
2. This permit does not authorize construction of new airport runways and taxiways.
3. If this NWP has been used to authorize previous project segments within the same linear transportation project, justification must be provided demonstrating that the cumulative impacts of the proposed and previously authorized project segments do not result in more than minimal impacts to the aquatic system.
4. To the maximum extent practicable, any new or additional bank stabilization required for the crossing must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable. Bottomless and embedded culverts are encouraged over traditional culvert stream crossings.

A. General Regional Conditions that apply to all NWPs in the Sacramento, San Francisco, and Los Angeles Districts:

1. When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, San Francisco District (Corps) in accordance with General Condition 31 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:
 - a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
 - b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated

waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for activities located within the boundaries of the Los Angeles District shall comply with the September 15, 2010 Special Public Notice: *Map and Drawing Standards for the Los Angeles District Regulatory Division*, (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

- c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the activities site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart b of this Regional Condition.
2. The permittee shall submit a PCN, in accordance with General Condition 31, For all activities located in areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007, 72 C.F.R. 11,092, in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.
 3. For activities in which the Corps designates another Federal agency as the lead for compliance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended, 16 U.S.C. §§ 1531-1544, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH), 16 U.S.C. § 1855(b)(4)(B) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, 16 U.S.C. §§ 470-470h, the lead Federal agency shall provide all relevant documentation to the appropriate Corps demonstrating any previous consultation efforts, as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.
 4. For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed unless determined to be impracticable by the Corps.
 5. The permittee shall complete the construction of any compensatory mitigation required by

special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

6. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51 and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:
 - a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;
 - b. An analysis of the proposed impacts to the waterbody, in accordance with General Condition 31;
 - c. Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and
 - d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be offset, in accordance with 33 C.F.R. 332.

B. General Regional Conditions that apply to all NWPs in the San Francisco District:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **San Francisco Bay diked baylands** (see figure 1) (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)). The notification shall explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable (see General Condition 23).
2. Notification to the Corps (in accordance with General Condition No. 31) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **Santa Rosa Plain** (see figure 2). The notification will explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable in accordance with General Condition No. 23.

3. Notification to the Corps (in accordance with General Condition No. 31), including a compensatory mitigation plan, habitat assessment, and extent of proposed-project impacts to Eelgrass Beds are required for any activity permitted by NWP if it will take place within or adjacent to **Eelgrass Beds**.

11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

Pursuant to Section 401 of the Clean Water Act, Tribal or State Water Quality Certification, or waiver thereof, is required for activities authorized by NWPs that may result in a discharge of fill material into waters the United States. In accordance with Corps regulations at 33 C.F.R. 330.5 (c) and (d), State 401 conditions for a particular NWP become regional conditions for that NWP. The District recognizes that for some Tribes there may be a need to add regional conditions, or for individual Tribal review for some activities to ensure compliance with water quality standards.

Similarly the California Coastal Commission (CCC) must determine if the re-issuance of the NWP program is consistent with Section 30233 of the California Coast Act. In the past the CCC has determined the NWP is not consistent with the California Coast Act and has recommended that procedures followed during the previous years by the Corps and the Commission continue to be implemented for the NWP program. The San Francisco Bay Conservation and Development Commission (BCDC) must also review the NWP in light of the California Coast Act. In the past, BCDC has requested that Corps state that NWP verifications shall not become effective until the Commission has issued a Commission permit that authorizes the proposed activity. The inclusion of this language with NWP authorizations will continue to be standard practice for the District.

The Environmental Protection Agency must also provide conditional water quality certification of the NWPs for activities proceeding on tribal lands within Region 9. In San Francisco District, the Hoopa Valley Tribe has been delegated certifying authority by EPA. The EPA's conditional water quality certification does not apply to activities proposed to occur within the Hoopa Tribe's lands but would apply on other tribal lands.

12.0 Measures to Ensure Minimal Adverse Environmental Effects

The terms and conditions of the NWP, including the pre-construction notification requirements and the regional conditions listed in Section 10.0 of this document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 22, the regional conditions discussed in this document and the PCN requirements of the NWP. Through the PCN process, the District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to an NWP authorization to ensure that the activity results in minimal adverse effects on the aquatic

environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that use of the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 C.F.R. 330.4(e) or 33 C.F.R. 330.5 will be used.

13.0 Final Determination

Based on the considerations discussed above, and in accordance with 33 C.F.R. 330.4(e)(1) and 330.5(c), I have determined that this NWP, including its terms and conditions, all regional conditions, and limitations, will authorize only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively.

Date: _____

Michael C. Wehr, P.E.
Col (P), EN
Division Engineer
South Pacific Division

San Francisco District Regional Conditions

A. General Regional Conditions that apply to all NWP's in the Sacramento, San Francisco, and Los Angeles Districts:

1. When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, San Francisco District (Corps) in accordance with General Condition 31 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:
 - a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
 - b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for activities located within the boundaries of the Los Angeles District shall comply with the September 15, 2010 Special Public Notice: *Map and Drawing Standards for the Los Angeles District Regulatory Division*, (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and
 - c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the activities site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart b of this Regional Condition.
2. The permittee shall submit a PCN, in accordance with General Condition 31, For all activities located in areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007, 72 C.F.R. 11,092, in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.
3. For activities in which the Corps designates another Federal agency as the lead for compliance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended, 16 U.S.C. §§ 1531-1544, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH), 16 U.S.C. § 1855(b)(4)(B) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, 16 U.S.C. §§ 470-470h, the lead Federal agency shall provide all relevant documentation to the appropriate Corps demonstrating any previous consultation efforts, as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.

4. For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed unless determined to be impracticable by the Corps.
5. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.
6. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51 and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:
 - a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;
 - b. An analysis of the proposed impacts to the waterbody, in accordance with General Condition 31;
 - c. Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and
 - d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be offset, in accordance with 33 CFR 332.

B. General Regional Conditions that apply to all NWPs in the San Francisco District:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **San Francisco Bay diked baylands** (see figure 1) (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)). The notification shall explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable (see General Condition 23).
2. Notification to the Corps (in accordance with General Condition No. 31) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **Santa Rosa Plain** (see figure 2). The notification will explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable in accordance with General Condition No. 23.
3. Notification to the Corps (in accordance with General Condition No. 31), including a compensatory mitigation plan, habitat assessment, and extent of proposed-project impacts

to Eelgrass Beds are required for any activity permitted by NWP if it will take place within or adjacent to **Eelgrass Beds**.

C. Regional Conditions that apply to specific NWPs in the San Francisco District:

3. MAINTENANCE:

1. To the extent practicable, excavation equipment shall work from an upland site (e.g., from the top of the bank, the road bed of the bridge, or culverted road crossing) to minimize adding fill into waters of the U.S. If it is not practicable to work from an upland site, or if working from the upland site would cause more environmental damage than working in the stream channel, the excavation equipment can be located within the stream channel but it must minimize disturbance to the channel (other than the removal of accumulated sediments or debris). As part of the notification to the Corps (in accordance with General Condition No. 31), an explanation as to the need to place excavation equipment in waters of the U.S. is required, as well as a statement of any additional necessary fill (e.g., cofferdams, access road, fill below the OHW mark for a staging area, etc.).
2. If the activity is proposed in a special aquatic site, the notification to the Corps (in accordance with General Condition No. 31) shall include an explanation of why the special aquatic site cannot be avoided, and the measures to be taken to minimize impacts to the special aquatic site.

11. TEMPORARY RECREATIONAL STRUCTURES:

1. Notification to the Corps (in accordance with General Condition No. 31) is required if any temporary structures are proposed in wetlands or vegetated shallow water areas (e.g. in eelgrass beds). The notification shall include the type of habitat and areal extent affected by the structures.

12. UTILITY LINE ACTIVITIES:

1. Excess material removed from a trench, associated with utility line construction, shall be disposed of at an upland site away from any wetlands or other waters of the U.S. so as to prevent this material from being washed into aquatic areas.
2. This NWP permit does not authorize the construction of substation facilities. Utility line substations can usually be constructed in uplands.

13. BANK STABILIZATION:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for all activities stabilizing greater than 300 linear feet of channel. Where the removal of wetland vegetation (including riparian wetland trees, shrubs and other plants) or submerged, rooted, aquatic plants over a cumulative area greater than 1/10 acre or 300 linear feet is proposed, the Corps shall be notified (in accordance with General Condition No. 31). The notification shall include the type of vegetation and extent (e.g., areal dimension or number of trees) of the proposed removal. The notification shall also address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.
2. This permit allows excavating a toe trench in waters of the U.S., and, if necessary, to use the material for backfill behind the stabilizing structure. Excess material is to be disposed of in a manner that will have only minimal impacts to the aquatic environment. The notification to the Corps (in accordance with General Condition No. 31) shall include location of the disposal site.
3. For man-made banks, roads, or levees damaged by storms or high flows, the one cubic yard per running foot limit is counted only for that additional fill which encroaches (extends) beyond the pre-flood or pre-storm shoreline condition of the waterway. It is not counted for

the fill that would be placed to reconstruct the original dimensions of the eroded, man-made shoreline.

4. For natural berms and banks, the one cubic yard per running foot limit applies to any added armoring.
5. To the maximum extent practicable, any new or additional bank stabilization must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable.

14. LINEAR TRANSPORTATION PROJECTS:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for all projects filling greater than 300 linear feet of channel. For projects involving greater than 300 linear feet of bank stabilization, the project proponent shall address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.
2. This permit does not authorize construction of new airport runways and taxiways.
3. If this NWP has been used to authorize previous project segments within the same linear transportation project, justification must be provided demonstrating that the cumulative impacts of the proposed and previously authorized project segments do not result in more than minimal impacts to the aquatic system.
4. To the maximum extent practicable, any new or additional bank stabilization required for the crossing must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable. Bottomless and embedded culverts are encouraged over traditional culvert stream crossings.

23. APPROVED CATEGORICAL EXCLUSIONS:

1. Use of this NWP requires notification to the Corps (in accordance with General Condition No. 31). The notification shall include the following:
 - a. A copy of the Federal Categorical Exclusion (Cat/Ex) document signed by the appropriate federal agency. If the Cat/Ex is signed by a state or local agency representative instead of by a federal agency representative, then copies of all documentation authorizing alternative agency signature shall be provided.
 - b. Written description of Corps authority (e.g., Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act.);
 - c. a list of conditions described in the Cat/Ex and/or attachments outlining measures that must be taken prior to, during, or after project construction to minimize impacts to the aquatic environment;
 - d. a copy of the jurisdictional delineation performed by qualified specialists showing the project limits and the location (delineated boundaries) of Corps jurisdiction within the overall project limits;
 - e. map(s) showing the locations of potentially permanent and temporary project impacts to areas within Corps jurisdiction;

- f. a clear and concise description of all project impacts including, but not necessarily limited to:
 - 1. quantification and description of permanent project impacts to areas within Corps jurisdiction,
 - 2. quantification and description of temporary impacts to areas within Corps jurisdiction, and
 - 3. linear extent of Corps jurisdiction affected by the project;
 - g. a general description of activities covered by the Cat/Ex that do not require Corps authorization but are connected or related to the activities in Corps jurisdiction;
 - h. a complete description of any proposed mitigation and/or restoration including, but not necessarily limited to, locations of any proposed planting, short- and long-term maintenance, proposed monitoring, success criteria and contingency plans;
 - i. written justification of how the project complies with the Nationwide Permit Program including less than minimal impact to the aquatic environment and compliance with the General Conditions.
 - j. For Federal Highway Administration (FHWA) Cat/Ex projects, the notification should describe how activities described in the Cat/Ex meet the description of the Cat/Ex project published in the August 28, 1987 Federal Register part 771.117 (a)(b)(c) and (d) (Volume 52, No. 167) or any updated version published in the Federal Register.
2. Only activities specifically described in the Cat/Ex project description will be covered by the NWP 23 authorization. If other activities not described in the Cat/Ex project description will be performed (e.g., dewatering, slope protection, etc.), these activities must receive separate NWP authorizations.
 3. Notification to the Corps (in accordance with General Condition 31) must include a copy of the signed Cat/Ex document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act (ESA), Essential Fish Habitat (EFH) under the Magnusson-Stevens Act, and Section 106 of the National Historic Preservation Act.

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

1. Notification to the Corps (in accordance with General Condition 31) must include documentation of a review of project impacts to demonstrate that at the conclusion of the work that the project would result in a net increase in aquatic function. Additionally, the documentation must include a review of project impacts on adjacent properties or structures and must also discuss cumulative impacts associated with the project.

29. Residential Developments:

1. When discharge of fill results in the replacement of wetlands or waters of the U.S. with impervious surfaces, to ensure that the authorized activity does not result in more than minimal degradation of water quality (in accordance with General Condition 25), the residential development shall incorporate low impact development concepts (e.g. native landscaping, bioretention and infiltration techniques, and constructed green spaces) to the extent practicable. A description of the low impact development concepts proposed in the project shall be included with the permit application. More information including low impact development concepts and definitions is available at the following website:
<http://www.epa.gov/owow/NPS/lid/>.
2. Use of this NWP is prohibited within the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map (see figure 1) below the 5-foot

contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)).

33. TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING:

1. Access roads shall be designed to be the minimum width necessary and shall be designed to minimize changes to the hydraulic flow characteristics of the stream and degradation of water quality (in accordance with General Conditions 9 and 25). The following Best Management Practices (BMPs) shall be followed to the maximum extent practicable to ensure that flow and circulation patterns of waters are not impaired and adverse effects on the aquatic environment will be kept to a minimum:
 - a. The road shall be properly stabilized and maintained during and following construction to prevent erosion.
 - b. Construction of the road fill shall occur in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself.
2. Vegetative disturbance in the waters of the U.S. shall be kept to a minimum.
3. Borrow material shall be taken from upland sources whenever feasible.
4. Stream channelization is not authorized by this NWP.

35. MAINTENANCE DREDGING OF EXISTING BASINS:

1. Use of this NWP will require notification to the Corps (in accordance with General Condition No. 31). The notification information should be provided on the Consolidated Dredging-Dredged Material Reuse/Disposal Application. This application and instructions for its completion can be found on our web site at: <http://www.spn.usace.army.mil/conops/applications.html>. The information must include the location of the proposed upland disposal site. A jurisdictional delineation of the proposed upland disposal site prepared in accordance with the current method required by the Corps may also be required.
2. The U.S. Coast Guard will be notified by the permittee at least 14 days before dredging commences if the activity occurs in navigable waters of the U.S. (Section 10 waters).
3. The permittee will be required to provide the following information to the Corps:
 - a. Dredge Operation Plan: Submit, for approval by this office, no earlier than 60 calendar days and no later than 20 calendar days before the proposed commencement of dredging, a plan which includes the following: **Corps file number**, a copy of the dredging contract or description of the work under which the contractor will do the permitted work; name and telephone numbers of the dredging contractor's representative on site; proposed dredging start and completion dates; quantity of material to be removed; dredging design depth and typical cross section including overdepth; and date of last dredging episode and design depth. The Dredge Operational Plan shall also provide the following information: The controls being established to insure that dredging operations occur within the limits defined by the basin or channel dimensions and typical channel section.
 - b. Pre-Dredge Survey: Submit no earlier than 60 calendar days and no later than 20 calendar days before commencement of dredging, a survey with accuracy to one-tenth foot that delineates and labels the following: areas to be dredged with overdepth allowances; existing depths; estimated quantities to be dredged to the design depth; and

estimated quantities for overdepth dredging. **All surveys shall be signed by the permittee to certify their accuracy. Please include the Corps file number.**

- c. Solid Debris Management Plan: Submit no earlier than 60 calendar days and no later than 20 calendar days before commencement of work, a plan which describes measures to ensure that solid debris generated during any dredging operation is retained and properly disposed in areas not under Corps jurisdiction. **At a minimum, the plan shall include the following: source and expected type of debris; debris retrieval method; Corps file number; disposal method and site; schedule of disposal operations; and debris containment method to be used, if floatable debris is involved. (Please note that failure to provide all of the information requested in a, b, and c above may result in delays to your project. When your Dredge Operation Plan has been approved, you will receive a written authorization to commence with your project.)**

- d. Post-Dredge Survey: Submit, **within 30 days of the last disposal activity** ("last" is defined as that activity after which no further activity occurs for 15 calendar days), a survey with accuracy to one-tenth foot that delineates and labels the areas dredged and provides the dredged depths. **Also, include the Corps file number, actual dates of dredging commencement and completion, actual quantities dredged for the project to the design depth, and actual quantities of overdepth.** The permittee shall substantiate the total quantity dredged by including calculations used to determine the volume difference (in cubic yards) between the Pre- and Post-Dredge Surveys and **explain any variation in quantities greater than 15% beyond estimated quantities or dredging deeper than is permitted (design plus overdepth allowance). All surveys shall be accomplished by a licensed surveyor and signed by the permittee to certify their accuracy.** A copy of the post dredge survey should be sent to the National Ocean Service for chart updating:
NOAA/National Ocean Service,
Nautical Data Branch
N/CS26, SSMC3, Room 7230
1315 East-West Highway
Silver Spring, Maryland 20910-3282.

- e. **The permittee or dredge contractor shall inform this office when: 1) a dredge episode actually commences, 2) when dredging is suspended (suspension is when the dredge contractor leaves the dredge site for more than 48 hours for reasons other than equipment maintenance), 3) when dredging is restarted, and 4) when dredging is complete. Each notification should include the Corps file number.** Details for submitting these notifications will be provided in the verification letter (to whom and how).

39. Commercial and Institutional Developments:

- 1. When discharge of fill results in the replacement of wetlands or waters of the U.S. with impervious surfaces, to ensure that the authorized activity does not result in more than minimal degradation of water quality (in accordance with General Condition 25), the commercial and institutional development shall incorporate low impact development concepts (e.g. native landscaping, bioretention and infiltration techniques, and constructed green spaces) to the extent practicable. A description of the low impact development concepts proposed in the project shall be included with the permit application. More information including low impact development concepts and definitions is available at the following website: <http://www.epa.gov/owow/NPS/lid/>.

- 2. Use of this NWP is prohibited within the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map (see figure 1) below the 5-foot

contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)).

40. AGRICULTURAL ACTIVITIES:

1. This NWP does not authorize discharge of fill into the channel of a perennial or intermittent watercourse that could impede high flows. This limitation does not apply to watercourses that flow only when there is an irregular, extraordinary flood event.

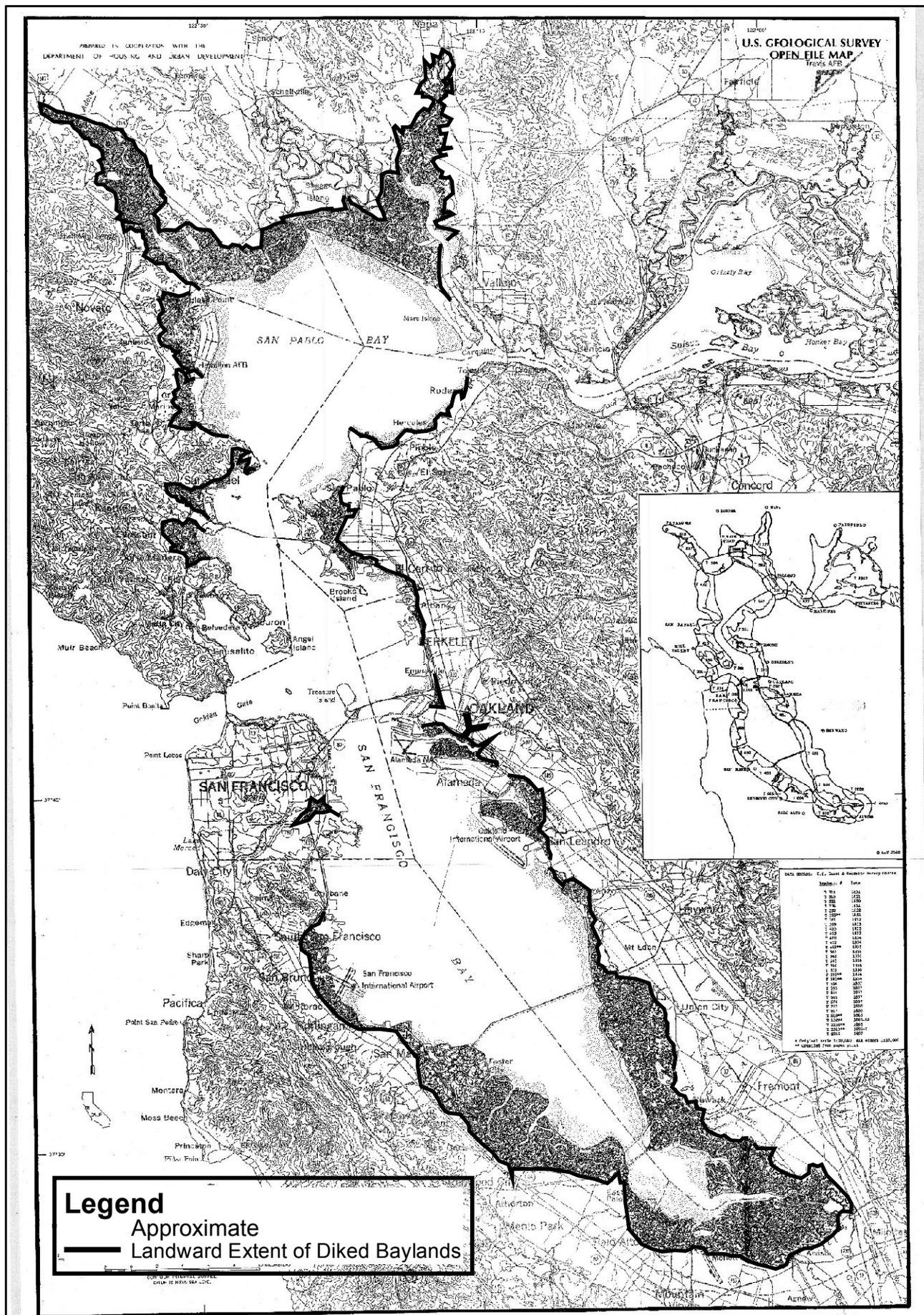
41. RESHAPING EXISTING DRAINAGE DITCHES:

1. Compensatory mitigation may be required if the Corps determines there will be a detrimental impact to aquatic habitat.
2. Notification to the Corps (in accordance with General Condition 31) is required if the applicant proposes to re-grade, discharge, install channel lining, or redeposit fill material.
3. The notification to the Corps (in accordance with General Condition 31) shall include an explanation of the project's benefit to water quality and a statement demonstrating the need for the project.

42. RECREATIONAL FACILITIES:

1. If buildings are proposed to be built in waters of the United States, including wetlands, the applicant must demonstrate that there is no on-site practicable alternative that is less environmentally damaging as defined by the Section 404(b)(1) guidelines.

Figure 1: Map of Diked Baylands



Revised in cooperation with the DEPARTMENT OF HIGHWAYS AND URBAN DEVELOPMENT

U.S. GEOLOGICAL SURVEY
 OPEN FILE MAP
 Travis AFB

PRELIMINARY MAP OF HISTORIC MARGINS OF MARSHLAND
 SAN FRANCISCO BAY, CALIFORNIA

By
 Donald R. Nichols and Nancy A. Wright
 1971

This map is preliminary and has not been reviewed for accuracy by the U.S. Geological Survey standards and procedures.

