

FOR CONTRACT NO.: 01-472904

INFORMATION HANDOUT

WATER QUALITY

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

401 Certification

PERMITS

**STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME**

**STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. R1-09-0169**

**UNITED STATES ARMY CORPS OF ENGINEERS
NON-REPORTING NATIONWIDE PERMIT No. 14**

**COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
COASTAL DEVELOPMENT USE PERMIT**

CASE NO. CDU 5-2009 - CALTRANS

ROUTE: 01-Men-1-74.7/75.9



California Regional Water Quality Control Board North Coast Region

Geoffrey M. Hales, Chairman



Linda S. Adams
Secretary for
Environmental Protection

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Arnold
Schwarzenegger
Governor

May 6, 2010

In the Matter of
Water Quality Certification

for the

**California Department of Transportation
Highway 1 – Westport Sink Storm Damage Repair Project
WDID No. 1B09080WNME**

APPLICANT: California Department of Transportation
RECEIVING WATER: Ephemeral Coastal Streams
HYDROLOGIC AREA: Mendocino Coast Hydrologic Unit No.113.00
Rockport Hydrologic Area 113.10
COUNTY: Mendocino
FILE NAME: CDOT - Hwy 1, Westport Sink Project

BY THE EXECUTIVE OFFICER:

1. On February 10, 2010, 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 (CWA), section 401, Water Quality Certification for activities related to the proposed Highway 1- Westport Sink Storm Damage Repair Project (project). Additional project information was received on February 16, 2010 and April 5, 2010. The proposed project will cause disturbances to waters of the United States (U.S.) and waters of the State associated with ephemeral coastal streams located within the Mendocino Coast Hydrologic Unit No.113.00 (Rockport Hydrologic Area 113.10). The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on March 10, 2010, and posted information describing the project on the Regional Water Board's website. No comments were received. Regional Water Board staff are proposing to regulate this project pursuant to Section 401 of the CWA (33 USC 1341) and/or Porter-Cologne Water Quality Control Act authority.
2. The project is located on Highway 1 at post mile (PM) 74.74 and PM 75.89, in Mendocino County. The purpose of the proposed project is to repair and upgrade the roadway and drainage facilities that were damaged during the winter of

California Environmental Protection Agency

Recycled Paper

2005/2006. Caltrans proposes: repairing two culverts; installing rock slope protection; excavating and reconstructing the roadway embankments; paving the roadway; and applying erosion control to stabilize slopes. The proposed project will result in temporary and permanent impacts to waters of the U.S and waters of the State.

3. The proposed project will result in temporary and permanent impacts to waters of the U.S and waters of the State. Caltrans has determined the temporary impacts to streams identified as waters of the U.S. and State would total approximately 66 feet² (17 linear feet). The proposed project would result in 1,487 feet² (264 linear feet) of permanent impacts to streams identified as waters of the U.S and State.
4. Caltrans will utilize Best Management Practices (BMPs) to provide erosion control and pollution prevention throughout the project area during construction. All disturbed soil areas affected by the construction activities will be stabilized and/or replanted with appropriate native vegetation and monitored to ensure success. Caltrans has evaluated implementing post-construction storm water treatment at the site and determined that implementing them within the project area was not feasible.
5. The proposed project will be conducted in summer months during low flow conditions. The proposed project is scheduled to be conducted between May 16, 2011 and October 14, 2011. The entire project is expected to take 100 days to complete and all project activities will be conducted between May 15th and October 15th.
6. Caltrans has applied for authorization from the United States Army Corps of Engineers to perform the project under their Nationwide Permits No. 14 (linear transportation projects) pursuant to Clean Water Act, section 404. In addition, Caltrans has applied to the California Department of Fish and Game (CDFG) for a 1602 Lake and Streambed Alteration Agreement. On November 13, 2008, Caltrans certified a Negative Declaration (State Clearing House No. 2008082087) for the project in order to comply with the California Environmental Quality Act. The Regional Water Board has considered the environmental document and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment

Receiving Water: Ephemeral Coastal Streams
Mendocino Coast Hydrologic Unit No.113.00;
Rockport Hydrologic Area 113.10

Filled or Excavated Area: Permanent stream impacts: 1,487 feet² new permanent impacts to waters of U.S
Temporary stream impacts: 66 feet² of temporary construction impacts

Total Linear Impact: Permanent stream impacts: 264 linear feet of new permanent impacts to water of U.S.
Temporary stream impacts: 17 linear feet of temporary construction impacts to waters of U.S.

Dredge Volume: None

Fill Volume : 100 cubic yards

Latitude/Longitude: 39.6073 N / 123.7829 W

Expiration: May 06, 2015

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE REGIONAL WATER BOARD CERTIFIES THAT THE CALTRANS – HIGHWAY 1 – WESTPORT SINK PROJECT, WDDID NO. 1B09080WNME, AS DESCRIBED IN THE 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 CALTRANS COMPLIES WITH THE FOLLOWING TERMS AND CONDITIONS:

1. 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.
2. 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.
3. The validity of any nondenial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under title 23, California Code of Regulations, section 3833, unless otherwise stated in writing by the certifying agency.
4. The Regional Water Board shall be notified in writing each year at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, water diversions, and significant concrete pours, with details regarding the construction schedule, in order to allow staff to be present onsite during installation and removal activities, and to answer any public inquiries that may arise regarding the project.
5. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed revegetation being

- completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the Basin Plan.
6. Caltrans shall construct the project in accordance with the project described in the application and the findings above, and shall comply with all applicable water quality standards.
 7. Any change in the 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 and written approval.
 8. Caltrans shall provide Regional Water Board staff access to the project site to document compliance with this order.
 9. 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.
 10. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
 11. All conditions required by this Order shall be included in the Plans and Specifications prepared by Caltrans for the Contractor. In addition, Caltrans shall require compliance with all conditions included in this Order in the bid contract for this project.
 12. BMPs for erosion, sediment and turbidity 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 or sediment discharges to surface water. The BMPs shall be implemented in accordance with the Caltrans Construction Site Best Management Practices Manual (CCSBMPM) and all contractors and subcontractors shall comply with the CCSBMPM.
 13. Caltrans shall take photos of all areas disturbed by project activities, including all excess materials disposal areas, after rainfall events that generate visible runoff from these areas in order to demonstrate that erosion control and revegetation measures are present and have been installed appropriately and successfully in accordance with the CCSBMPM. A brief report containing these photos shall be submitted within 60 days of the rainfall event that generated runoff from the disturbed areas. In addition, Caltrans shall provide photos of the completed work to the appropriate Regional Water Board staff person, in order to document compliance.

14. Caltrans shall utilize wildlife-friendly 100% biodegradable erosion control products. Photodegradable synthetic products are not considered biodegradable. Caltrans shall not use or allow the use of permanent erosion control products that contain synthetic (e.g., plastic or nylon) netting or materials. Permanent erosion control products are considered to be products left in place for two years or more or after the project is completed. If Caltrans finds that erosion control netting or products have entrapped or harmed wildlife at the site, the product shall be removed and replaced with wildlife-friendly biodegradable products. Caltrans shall not use or allow the use of soil stabilization products that contain synthetic materials within waters of the United States or waters of the State at any time, unless otherwise authorized by Regional Water Board staff.
15. The Resident Engineer shall hold on-site water quality permit compliance meetings (similar to tailgate safety meetings) to discuss permit compliance, including instructions on how to avoid violations and procedures for reporting violations. The meetings shall be held at least every other week, and particularly before forecasted storm events and when a new contractor or subcontractor arrives to begin work at the site. The contractors, subcontractors and their employees, as well as any inspectors or biological monitors assigned to the project, shall be present at the meetings. Caltrans shall maintain dated sign-in sheets for attendees at these meetings, and shall make them available to the Regional Water Board on request.
16. 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.
17. 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 or be placed where it may be washed by rainfall into waters of the State.
18. Water which has come into contact with wet concrete during construction shall be captured and disposed of in appropriate locations at least 100 linear feet beyond waters of the State. No excess concrete or concrete washings shall be allowed to contact waters of the State. In addition, all concrete contact water disposal locations as well as concrete washout basins shall have adequate BMPs in accordance with the CCSBMPM.
19. All materials used for cleaning concrete from tools and equipment, and any wastes generated by this activity, shall be adequately contained to prevent contact with soil and surface water and shall be disposed of properly within a clearly designated area at least 100 linear feet beyond waters of the State

20. 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 Standard Specification 7-1.13, Disposal of Material Outside the Highway Right of Way. 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.
21. 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 the 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.
22. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside of waters of the United States 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 United States. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality.
23. On-site mitigation/revegetation shall be conducted in accordance with the Caltrans-prepared *Mitigation and Monitoring Program*, dated January 2010.
24. 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.
25. 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.

26. This Order is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board. The successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of this Order to discharge dredged or fill material under this Order. The request must contain the following:
- requesting entity's full legal name
 - the state of incorporation, if a corporation
 - address and phone number of contact person
 - description of any changes to the project or confirmation that the successor-in-interest intends to implement the project as described in this Order.
27. The authorization of this certification for any dredge and fill activities expires on May 6, 2015. 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.
28. Please contact Jeremiah Puget of our staff at (707) 576-2835 or jpuget@waterboards.ca.gov if you have any questions.



Catherine Kuhlman
Executive Officer

100506_JJP_CDOT_Hwy1_WestportSink_401cert

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 sent to: Mr. Lupe Jimenez - Caltrans, 2800 Gateway Oaks Drive, Sacramento, CA 95833

Copies sent to: Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 1455 Market Street, San Francisco, CA 94103-1398
U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive, Box 14, Eureka, CA 95501
Ms. Encanta Engleby – Caltrans, P.O. Box 911, Marysville, CA 95901

California Environmental Protection Agency



California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Northern Region
601 Locust Street
Redding, California 96001
(530) 225-2367
www.dfg.ca.gov

ARNOLD SCHWARZENEGGER, Governor
DONALD KOCH, Director



RECEIVED

SEP 02 2009

D. F. G. – EUREKA

NOTIFICATION NO. R1-09-0169
Westport Sink, Highway 1 PM at 74.74, Culvert Extension/RSP
(1 encroachment)

Page 1 of 6

AGREEMENT REGARDING PROPOSED LAKE OR STREAMBED ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called DFG, and **Mr. Mike Yancheff representing the California Department of Transportation**, hereinafter jointly and severally called the Entity (Responsible Party), is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of the California Fish and Game Code (Code), the Responsible Party, on **May 18, 2009 and again on August 4, 2009 (request to remove Location #1 from the Notification)**, notified DFG of the intention to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed of, the following water: **Unnamed Tributary to the Pacific Ocean**, in the County of **Mendocino**. This water is located in **Section 8, T20N, R17W; Mount Diablo Base and Meridian**, in the **Inglenook USGS 7.5-minute quadrangle**; and

WHEREAS, DFG has determined that without implementation of the conditions contained within this Agreement, such operations may substantially adversely affect existing fish and wildlife resources including, but not limited to: **amphibians, reptiles**, and other aquatic and riparian species.

THEREFORE, DFG hereby proposes measures to protect fish and wildlife resources during the Responsible Party's work. The Responsible Party hereby agrees to accept and conduct all activities in accordance with the following:

ADMINISTRATIVE PROVISIONS:

- 1) If the Responsible Party's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to DFG. Failure to comply with the provisions of this Agreement and with other pertinent Code sections, including but not limited to Sections 5650, 5652, 5901, 5937, and 5948, may result in prosecution.
- 2) Additional projects may be added to this Agreement by amendment with approval by DFG.
- 3) DFG reserves the right to authorize minor language revisions to this Agreement provided both DFG and the Responsible Party concur with minor language changes and both initial and date changes on the respective documents belonging to both the Responsible Party and DFG.
- 4) Nothing in this Agreement authorizes the Responsible Party to trespass on any land or property, nor does it relieve the Responsible Party of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute DFG endorsement of the proposed operation, or assure DFG's concurrence with permits required from other agencies.

(over)

- 5) The provisions contained in this Agreement constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Responsible Party is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Code Section 1600 *et seq.*
- 6) In accordance with Code Section 1605, the Responsible Party may request one extension of this Agreement, provided that the request is made in writing prior to the expiration of its original term. DFG shall grant the extension if the appropriate extension fee is paid unless it determines that the Agreement requires modification because the measures contained in the Agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. If the Responsible Party fails to request the extension prior to the Agreement's termination then the Responsible Party shall submit a new notification with fees and required information to DFG. Any activity conducted under an expired Agreement is a violation of Code Section 1600 *et seq.*
- 7) The Responsible Party shall provide a copy of this Agreement to all contractors, subcontractors, and the Responsible Party's project supervisors. Copies of the Agreement and any amendment thereto shall be readily available at work sites at all times during periods of active work and must be presented to any DFG personnel, or personnel from another agency upon demand.
- 8) The Responsible Party agrees to allow DFG employees access to any property it owns and/or manages for the purpose of inspecting and/or monitoring the activities covered by this Agreement, provided DFG: a) provides 24 hours advance notice; and b) allows the Responsible Party or representatives to participate in the inspection and/or monitoring. This condition does not apply to DFG enforcement personnel.
- 9) All provisions of this Agreement remain in force throughout the term of the Agreement. Any provisions of the Agreement may be amended or the Agreement may be terminated at any time provided such amendment and/or termination are agreed to in writing by both parties. Mutually-approved amendments become part of the original Agreement and are subject to all previously negotiated provisions.
- 10) It is understood DFG will enter into this Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Responsible Party. It is further agreed all liability and/or incurred cost related to or arising out of the Responsible Party's project and the fish and wildlife protective measures of this Agreement, remain the sole responsibility of the Responsible Party. The Responsible Party agrees to hold harmless the State of California and DFG against any related claim made by any party or parties for personal injury or any other damages.
- 11) This Agreement is not intended as an approval of a project or of specific project features by DFG. Independent review and recommendations will be provided by DFG as appropriate on those projects where local, state, or federal permits or other environmental reports are required.
- 12) Suspension and Cancellation. DFG may suspend or cancel this Agreement if DFG determines that circumstances warrant suspension or cancellation. The circumstances that might warrant suspension or cancellation include, but are not limited to, the following:
- a) Failure by the Responsible Party, or his/her employees, agents, representatives, contractors, and/or subcontractors, to comply with any of the terms and measures of this Agreement.

- b) DFG determines that the information the Responsible Party provided to DFG to develop this Agreement, or the information contained in a notification, is incomplete or inaccurate.
- c) DFG obtains new information that shows the work authorized by this Agreement could substantially adversely affect fish and wildlife resources, notwithstanding Responsible Party's compliance with the Agreement.
- d) DFG determines that measures to protect fish and wildlife resources different from those included in this Agreement are necessary to protect those resources.
- e) There is a substantial change in conditions. For purposes of this Agreement, "substantial change in conditions" shall mean one or more of the following: 1) the work described in this Agreement is substantially changed; 2) conditions affecting fish and wildlife resources substantially change; and/or 3) the work conducted under this Agreement have adversely affected, or will adversely affect, fish and wildlife resources, notwithstanding that Responsible Party has complied, or will comply with, the terms and measures of this Agreement.

Scope of Suspension. At the discretion of DFG, any action to suspend this Agreement may be limited in scope to address the specific problem or problems resulting in the suspension. Hence, DFG may limit the suspension to specified work or specified areas. DFG shall notify Responsible Party of any suspension of the Agreement, or any part thereof, in writing. Any suspension shall take effect immediately upon receipt of such notice by Responsible Party, or in accordance with the instructions contained in the notice. Such notice will identify the reason or reasons for the suspension, the actions necessary to correct the problem, and the scope of the suspension.

Reinstatement Following Suspension. DFG may lift any suspension when it has determined that Responsible Party has adequately addressed the problem or problems resulting in the suspension and that reinstatement of the Agreement will not cause harm to fish and wildlife resources.

OPERATIONAL

NOTIFICATION MATERIALS AND PROJECT DESCRIPTION:

- 13) Except where otherwise stipulated in this Agreement, all work shall be in accordance with the project description, work plans, photos and emails, submitted with Notification No. R1-09-0169 as modified or amended as of August 4, 2009.
- 14) This Agreement pertains to one encroachment; extend an existing 24 inch reinforced concrete pipe and install 200 cubic yards of rock slope protection to stabilize a failing slope and to dissipate water flow at the culvert outlet on an Unnamed Tributary to the Pacific Ocean at Post Mile 74.74 on Highway 1.

PROJECT TIMING AND COORDINATION:

- 15) All work within the bed, bank and channel shall be confined to the period June 15 through October 15 of each year. Work may be conducted in or near the stream during the late season work period October 15 through November 1, provided adherence to all conditions in this Agreement and a) – d) below.

- a) The Responsible Party shall complete any unfinished encroachment work, including erosion control measures, within 24 hours of DFG directing the Responsible Party to do so.
- b) Prior to any work at a site, the Responsible Party shall stock-pile erosion control materials at the site. All bare mineral soil exposed in conjunction with crossing construction, deconstruction, maintenance or repair or removal shall be treated for erosion immediately upon completion of work on the crossing, and prior to the onset of precipitation capable of generating runoff.
- c) Road construction leading directly into or out of a proposed stream crossing shall only be performed when soils are sufficiently dry so that sediment is not discharged into streams.
- d) When a 7-day National Weather Service forecast of rain includes a minimum of 5 consecutive days with any chance of precipitation, 3 consecutive days with a 30% or greater chance of precipitation, or 2 consecutive days of 50% or greater chance of precipitation, the Responsible Party shall finish work underway at encroachment and refrain from starting any new work at encroachment prior to the rain event.

16) The Responsible Party shall contact DFG by phone at (707) 441-2075 or fax (707) 441-2021 within the 7-day period preceding the beginning of work permitted by this Agreement. Information to be disclosed shall include Agreement number and the anticipated start date. The Responsible Party shall contact DFG by phone at (707) 441-2075 or fax (707) 441-2021 within thirty days of completion of the work permitted by this Agreement.

GENERAL CONDITIONS FOR ALL ENCROACHMENTS

- 17) Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the ordinary high water mark before such flows occur or the end of the yearly work period, whichever comes first.
- 18) If water is present during construction, the Responsible Party shall divert all stream flow and completely isolate and dewater the culvert and work site. Any diversion structures shall be constructed of non-polluting materials including sand bags, rock, and/or plastic tarps. Flowing water shall be cleanly bypassed and/or prevented from entering the work area through pumping or gravity flow, and cleanly returned to the stream below the work area. Flow diversions shall be done in a manner that shall prevent pollution and/or siltation and provides flows to downstream reaches.
- 19) Refueling of equipment and vehicles and storing, adding or draining lubricants, coolants or hydraulic fluids shall not take place within or near streambeds, banks or channels. All such fluids and containers shall be disposed of properly. Heavy equipment parked within or near streambeds, banks or channels shall use drip pans or other devices (i.e., absorbent blankets, sheet barriers or other materials) as needed to prevent soil and water contamination.
- 20) No debris, soil, silt, sand, bark, chemicals, herbicides, pesticides, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any agricultural practice, or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into Waters of the State.

21) If a sediment delivery potential exists, bare mineral soil exposed in conjunction with crossing construction, deconstruction, maintenance or repair, shall be treated for erosion prior to the onset of precipitation capable of generating run-off or the end of the yearly work period, whichever comes first. Restoration shall include the use of native vegetation or other treatments including jute netting, straw wattles, and geotextiles to protect and stabilize soils. If seeding and mulching are used, at least 2 to 4 inches of certified weed-free straw mulch and 100 lbs/acre equivalent barley seed are required. No annual (Italian) ryegrass (*Lolium multiflorum*) shall be used.

SITE-SPECIFIC CONDITIONS

22) DFG will be provided copies of the vegetation monitoring reports described in number 12C in the Notification form for this Agreement.

23) Culverts shall extend lengthwise completely beyond the toe of fill.

24) Permanent culverts and their outfall structures shall be aligned with the stream channel and as wide as or wider than the channel width.

25) Permanent culverts shall be placed with the bottom set at or slightly below the natural streambed elevation to the maximum extent feasible. If permanent culverts cannot or will not be set to grade, they shall have downspouts and/or energy dissipators below the outfall as needed to effectively control erosion.

26) No heavy equipment shall enter the live flow of the channel under this agreement.

27) The Responsible Party shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be faxed to the Department at (707) 441-2021, Attn: Rick Macedo, Staff Environmental Scientist, or via e-mail at rmacedo@dfg.ca.gov

This Agreement becomes effective on the date of DFG's signature and terminates December 31, 2014.

CONCURRENCE

RESPONSIBLE PARTY

CALIFORNIA DEPARTMENT OF FISH AND GAME

Mike Yancheff
(Signature)

William Condon
by Kenneth C. Moore
Habitat Conservation Program Manager
Northern Region

MIKE YANCHEFF
(Print Name)

9/2/09
(Date)

PROJECT MANAGER - CALTRANS
(Title/Organization)

1 - SEPTEMBER - 2009
(Date)

18. Nature of Activity (Description of project, include all features)

Caltrans proposes to repair the roadway in two locations along SR 1 at PM 74.74 and 75.89 where winter rains heavily damaged it in 2005-2006. Reconstruction will include culvert repair, reinforced embankment construction, culvert extension, and necessary roadside drainage improvements. Please see Attachment A for further information.

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

The purpose of the project is to repair the roadway in a way that will reduce the likelihood of the same problems reoccurring at the same locations. Please see Attachment A.

USE BLOCKS 20-23 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

SR 1 alignment currently crosses streams that cannot be avoided. In order to repair this roadway, minimal discharges of construction materials (rock energy dissipater and culvert extension) will be necessary.

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type Amount in Cubic Yards	Type Amount in Cubic Yards	Type Amount in Cubic Yards
100 cubic yards rock slope protection (PM 74.74)		

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

Acres Total of approximately 0.036 acres (PM 74.74 = 0.006 acre and PM 75.89 = 0.030 acre)
Or
Liner Feet

23. Description of Avoidance, Minimization, and Compensation (see instructions)

See PCN form (Attachment A) and Mitigation and Monitoring Proposal.

24. Is Any Portion of the Work Already Complete? Yes No IF YES, DESCRIBE THE COMPLETED WORK

25. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

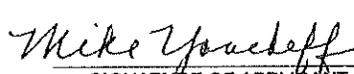
Address - PM 74.74: Siamex Investment Corp., 377 E. Chapman Ave., Ste 120, Placentia, CA 92870; PM 75.89 - Caltrans ROW
City - State - Zip -

26. List of Other Certifications or Approvals/Denials Received from other Federal, State, or Local Agencies for Work Described in This Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
RWQCB	401 Water Quality Certification		Submitted concurrent with this PCN		
CDFG	1602 LSAA Notification	R1-09-0169		05-13-2009	
Mendo CCC	Coastal Use Permit	CDU 5-2009		05-19-2009	

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

27. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.




SIGNATURE OF APPLICANT DATE: 27 January 2010 SIGNATURE OF AGENT DATE: 1/26/10

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

Nationwide Permit Information

I. Project Location and Contact Information

District No: 1 Project Title: Westport Sink Storm Damage Repair Project
County: Mendocino Route: SR-1 Post Mile: 74.74, 75.89 Project EA: 01-472900
Project Manager: Mike Yancheff Phone No.: 707/441-2097
Project Biologist: Encanta Engleby Phone No.: 530/741-4272
Quad Name: Ingenook, CA Waterway/Watershed: Unnamed Tributaries to the Pacific Ocean

II. Project Description:

Storm Damage Repair

Post Mile 74.74

Scour from the outfall of a 24-inch-diameter reinforced concrete pipe culvert at PM 74.74 on a 1:1 slope has caused severe headcutting into the highway embankment and the loss of several sections of pipe.

Work at this location includes armoring the eroding face with rock slope protection (RSP). The RSP will be keyed into the toe of the failing slope. Excavation of the toe trench and placement of the rocks will be done from the roadway level or by working directly on the slope. It will not be necessary to construct a separate access road. The culvert will be extended through the RSP to outlet at the new surface. Rocks above and to the sides of the culvert outlet will be infilled with dirt and reseeded. Rocks below the level of the culvert outlet will be left exposed.

Additional RSP will be placed along the drainage downstream of the culvert to dissipate the energy from the culvert outlet. Total amount of RSP to be placed is 100 cubic yards.

One-way traffic control on the existing pavement will be implemented during the 10-day construction period. All work will be within the Caltrans right-of-way.

Total pavement width will remain unchanged at 24.5 feet. There will be no increase in impervious surface area.

Post Mile 75.89

A 500-foot-long section of two-lane roadway has settled 2 to 3 feet as part of a larger landslide that includes the slopes above and below the road. An unrelated problem exists at the same location, where there is a large scour hole below a 24-inch corrugated metal pipe downdrain. The downdrain, which was originally 150 feet long, has been reduced to 50 feet by undermining of the anchor stakes and loss of pipe sections. The scour hole continues to grow toward the roadway.

Work at this location involves reconstructing a portion of the roadway with hot mix asphalt, regrading the roadside ditches and replacing the downdrain. To accommodate bicycle traffic in accordance with Coastal Development permit requirements, 4-foot shoulders will be included in the roadway reconstruction, increasing the total pavement width from approximately 26 feet to 32 feet. The increase in impervious surface area of 0.03 acre generates an increase in surface runoff that is small enough to be within the tolerances of variables in the hydraulic equations and therefore negligible.

The new downdrain will be constructed from black high density polyethylene pipe and will extend 250 feet to the surf zone.

All work will be approached from the roadway level. The downdrain will be placed by hand. It will not be necessary to construct a separate access road or drive construction equipment along the beach.

All work will be within the Caltrans right-of-way. All areas of soil disturbed by construction will be stabilized by hydroseeding or other means. The slide above the roadway will be hydroseeded.

III. Name of Lead Federal Agency Caltrans (NEPA Delegation)

IV. Endangered Species Act Section 7 Consultation Please attach a determination and/or result of informal/formal consultation.

List all federally-listed species potentially occurring within the project area.

Western Snowy Plover (*Charadrius alexandrinus nivosus*) - habitat within 10 miles of project site. Not likely to adversely affect determination.

Behren's silverspot butterfly (*Speyeria zerene behrensii*) - nectar source within project site. Not likely to adversely affect determination.

Has Section 7 Consultation concluded with USFWS? Yes No Date see attached USFWS letter (Attachment C)

Has Section 7 Consultation concluded with NMFS? Yes No Date Not applicable

Lead Federal agency (i.e. agency responsible for Section 7 Consultation with USFWS or NMFS) Caltrans

Determination (List species under the appropriate category below)

No effect _____

Not likely to adversely affect Western Snowy Plover (*Charadrius alexandrinus nivosus*) and Behren's silverspot butterfly (*Speyeria zerene behrensii*)

May affect _____

Appended to a programmatic _____

V. Essential Fish Habitat Consultation (EFH) Please attach a copy of determination and/or NMFS' EFH recommendations.

Select affected EFH Fishery Management Plan: Pacific Ground Fish Coastal Pelagic Pacific Salmon

Lead Federal agency EFH (i.e. agency responsible for section 7 consultation) _____

Has EFH Consultation concluded with NMFS? Yes No Date Not applicable

VI. Permit Being Requested (check one that applies)

Reporting Nationwide Permit Non-Reporting Nationwide Permit

14 Indicate which NWP(s) would appropriately authorize the proposed project.

VII. Corps' Authority Information

Section 10 (Attach Justification and Maps): Yes No

Section 404 (Attach Justification and Maps): Yes No

Has a preliminary jurisdictional determination report been verified by the Corps? Yes No Date _____

VIII. Minimal Impact Criteria

Explain whether or not the proposed project would result in minimum impact to the aquatic environment (attach additional information if necessary):

The proposed project will result in minimum impacts to the aquatic environment. To the maximum extent feasible, Caltrans is using the best road improvement technologies, taking costs and logistics into account, to incorporate structures or modifications beneficial to fish and wildlife. Bottomless and embedded culverts are not feasible at this time because Caltrans is not proposing to replace the existing culvert stream crossings.

Additionally, Caltrans is not filling more than 300 linear feet of waters. This project will have beneficial effects on bank stability and on adjacent property upstream and downstream of the activity because it will reduce erosion.

IX. Permit Compliance Information (Nationwide General Conditions and the San Francisco District's Regional Conditions)

Explain how the project complies with each of the following. Attach additional sheets if necessary.
For more information go to: http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_2007_final.pdf

1. Navigation: The project will not have an adverse effect on navigation.
2. Aquatic Life Movements: No federally listed aquatic species occur in the project area.
3. Spawning Areas: No spawning or juvenile rearing fish sites exist in the project area.
4. Migratory Bird Breeding Areas: The project will avoid migratory bird breeding areas to the maximum extent practicable.
Vegetation removal will occur outside the nesting period, or, if vegetation will be removed during the nesting season,

pre-construction nest surveys will be conducted 72 hours before project construction activities begin to survey trees and shrubs to be removed or trimmed.

5. Shellfish Beds: No shellfish beds exist within the project area.
6. Suitable Material: All materials will meet legal requirements regarding contaminants and toxic material.
7. Water Supply Intakes: There are no public water supply intakes in the project area.
8. Adverse Effects: The project will not cause any impoundments.
9. Management of Water Flows: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters will be maintained; culverts will be designed to handle maximum flows
10. Fills within 100-Year Floodplains: Does the activity comply with applicable FEMA-approved state or local floodplain management requirements?
Yes No
11. Equipment: To the maximum extent practicable, construction equipment will avoid impacting wetlands. If equipment must be placed within a wetland, it will be placed on a protective mat to ensure diesel fuel or oil does not drip into the wetland.
12. Soil Erosion and Sediment Controls: Appropriate soil erosion and sediment controls will be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the OHWM, will be permanently stabilized at the earliest practicable date.
13. Removal of Temporary Fills: Any temporary fills will be removed in their entirety and the affected areas will be returned to preconstruction elevations and contours. The affected areas will be revegetated, as appropriate and described in the PCN.
14. Proper Maintenance: Caltrans will maintain any authorized structure or fill, including maintenance to ensure public safety.
15. Wild and Scenic Rivers: Does the activity occur in a component of a National Wild and Scenic River System? Yes No Does the activity occur in a river officially designated by Congress as a study river? Yes No
16. Tribal Rights: The Westport Sink Storm Damage Repair Project will not impair reserved tribal rights, including, but not limited to, reserved water rights or treaty and fishing rights.
17. Endangered Species See section IV above. No effect to endangered species.
18. Historic Properties (attach documentation of determination): Is it possible that the activity may affect properties listed, or eligible for listing in the national Register of Historic Places? Yes No Lead Federal agency (i.e. agency responsible for Section 106 Compliance) Caltrans
19. Designated Critical Waters (select those that apply):
 NOAA-designated marine sanctuaries, National Estuarine Research Reserves,
 State natural heritage sites, Corps designated critical resource,
 Outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance.
Note: NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49 and 50: NWP authorization prohibited
NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38: PCN required
20. Mitigation
Has the activity been designed and constructed to avoid and minimize adverse effects to Waters of the U.S.? Yes No
Has mitigation been proposed? If yes, please attach detailed mitigation and monitoring plan. Yes No
Does mitigation meet required minimum 1:1 ratio? Yes No
If streams are affected by the project, are vegetated buffers with native plant species near streams maintained and / or restored?
Yes No
21. Water Quality
RWQCB 401 Certification Yes No Pending (provide date of application) Concurrent with 404 application
Point of Contact at RWQCB North Coast Regional Water Quality Control Board (707) 576-2220
Date 401 Certification issued TBD

22. Coastal Zone Management

Consistency Determination Yes No Pending (provide date of application) _____

Point of Contact at Coastal Commission _____

Date of Consistency Determination issued Mendocino County Final Findings and Conditions of Approval issued 5-19-2009

23. Regional and Case-by-Case Conditions (The following section summarizes the S.F. District's Regional Conditions)

Does the proposed project occur in Diked Baylands? Yes _____ No If Yes, a PCN is required

Does the proposed project occur within the Santa Rosa Plain? Yes _____ No If Yes, a PCN is required

Is the project proposed to occur within Eelgrass beds? Yes _____ No If Yes, a PCN is required

Is the project proposed to occur within EFH? Yes _____ No If Yes, a PCN is required with additional information

Will mitigation occur before or concurrently with project construction? Yes No _____

Are you requesting a waiver of the 300 linear foot threshold? Yes _____ No If Yes, a PCN is required with additional information

Specific NWP Regional Conditions

NWP 3: Excavation equipment shall work from an upland site; bank stabilization must incorporate structures or modification beneficial to fish and wildlife; and justification for work within special aquatic site is required (please attach).

NWP 11: Are any temporary structures proposed in wetlands or vegetated shallow water areas? Yes _____ No _____ If Yes, a PCN is required

NWP 12: Excess material removed from the trench shall be disposed of at an upland site; and authorization of substation facilities by this NWP is prohibited.

NWP 13: PCN required for stabilization of more than 300 linear feet; excavation of a toe trench is allowed as long as excess material is disposed of at an upland location; additional fill which extends beyond the original shoreline may not exceed one cubic yard per running foot; bank stabilization must incorporate structures or modification beneficial to fish and wildlife; and PCN should address up and downstream effects of stabilization.

NWP 14: PCN required for projects proposed to fill greater than 300 linear feet of channel; authorization prohibited for taxiways or runways; modifications must incorporate structures or modification beneficial to fish and wildlife; PCN should address up and downstream effects of fill.

NWP 23: PCN Required. Please refer to regional conditions for additional information on PCN requirements.

NWP 33: Access roads shall be designed to be the minimum width necessary; the road shall be properly stabilized; fill shall be placed to minimize encroachment of equipment within Waters of the U.S.; vegetative disturbance shall be minimized; borrow shall be taken from upland source; and stream channelization authorization by this NWP is prohibited.

NWP 35: PCN Required. Please refer to regional conditions for additional information on PCN requirements.

NWP 40: Work shall not impede flows during high volume events.

NWP 41: Mitigation may be required; PCN required if fill material will be re-deposited, re-graded, discharged, or if channel lining is installed; and PCN shall include an explanation of the project's benefit to water quality.

NWP 42: 404(b)(1) guidelines must be met if buildings are proposed in Waters of the U.S.

NWP 44: Revoked in Humboldt and Del Norte Counties.

24. Use of Multiple Nationwide Permits Yes _____ No

If yes, list NWP and acreage impact _____

25. Transfer of Nationwide Permit Verifications: Property along the SR 1 right-of-way corridor is unlikely to be sold or transferred from Caltrans.

26. Compliance Certification: A signed certification will be sent to the USACE upon completion of the project.

27. Notification:

NWPs 3, 7, 8, 12, 13, 14, 17, 18, 21, 22, 23, 27, 29, 31, 33, 34, 36, 37, 38, 29, 40, 41, 42, 43, 44, 45, 47, 48, 49, and 50; PCN Required

(for thresholds go to: http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_2007_final.pdf)

PCN Contents (please attach)

- Name, address, and telephone number of the applicant; Location of proposed project;
- Delineation of special aquatic sites and other Waters of the U.S.; Detailed mitigation and monitoring plan;
- Federally-listed species information; Historic properties information
- A project description including purpose, direct and indirect effects, additional Corps' authorizations for the project;

28. Is the activity a single and complete project? Yes No _____

X. Multiple Nationwide Permit Requested

If multiple Nationwide Permits are requested, list No. and Title, and explain how each activity complies with the NWP terms. (Attach additional sheets if necessary):

1. _____
2. _____
3. _____

XII. Project Impact Information [Area Affected (acres) and (cubic yards)]

Wetlands (permanent): _____

Wetlands (temporary): _____

Waters of the US (permanent): 0.034 acre

Waters of the US (temporary): 0.002 acre

Linear extent of impact within Corps' jurisdiction: Intermittent drainage (D-5) permanent impact= 47 linear feet (0.004 acre), temporary impact = 17 linear feet (0.002 acre). ; Intermittent drainage (D-8) permanent impact= 217 linear feet (0.030 acre).

XIII. Project Mitigation Information

Special Conditions (List conditions specified by specialist Division personnel): _____

Best Management Practices (attach additional information if necessary): Caltrans BMPs include Design Pollution Prevention BMPs (preservation of existing vegetation, slope surface protection), Treatment BMPs, Construction Site BMPs (temporary soil stabilization and sediment control, non-stormwater management, waste management), and maintenance BMPs (litter pickup, materials handling, waste management, street sweeping).

Caltrans will avoid or minimize potential construction-related water quality impacts through compliance with the North Coast Regional Water Quality Control Board (NCRWQCB) National Pollutant Discharge Elimination System (NPDES) stormwater permit for general construction activities. Caltrans's contractor will file a notice of intent (NOI) with the RWQCB, prepare a SWPPP, and implement an appropriate suite of temporary construction BMPs. The SWPPP for this project will include limiting soil disturbances during the winter rainfall season of October 15 through April 15 and fully stabilizing disturbed areas prior to December 1.

Standard sediment erosion control measures, such as silt fencing, straw bale barriers, sediment traps, or other measures, will directly reduce the off-site transport of sediment from disturbed slopes. Existing vegetation that can be preserved will be identified and flagged or fenced to avoid disturbance. Erosion in disturbed areas will be by conducting grading operations in a way that eliminates direct routes that would convey runoff to drainage channels. Soil stabilization BMPs such as mulching, erosion control fabrics, and reseeding with grass or other plants will be used where necessary. Standard staging area practices for reduction of sediment-tracking also will be used where necessary, including vehicle washing and street sweeping. Temporary concentrated flow conveyance systems, such as berms, ditches, and outlet flow velocity dissipation devices, may also be used to reduce erosion from newly disturbed slopes.

Caltrans and its contractor will identify, construct, regularly inspect, and maintain the BMPs in good working order. The construction contractor also will implement appropriate hazardous materials management practices to reduce the possibility of chemical spills or releases of contaminants, including any non-stormwater discharge to drainage channels. Standard hazardous materials management and spill control and response measures will minimize the potential for surface and groundwater contamination. Measures to contain hazardous materials include:

- prevent raw cement, concrete or concrete washings, asphalt, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to aquatic life from contaminating the soil or entering watercourses;
- establish a spill-prevention and countermeasure plan before project construction, that includes strict on-site handling rules to keep construction and maintenance materials out of drainages and waterways;
- clean up all spills immediately according to the spill prevention and countermeasure plan and notify DFG and the NCRWQCB immediately of any spills and cleanup activities; and
- provide areas located above the OHWM and outside wetlands for staging and storing equipment, materials, fuels, lubricants, solvents, and other possible contaminants.

Site Restoration Plan (attach additional information if necessary): See attached MMP

Proposed Mitigation (attach additional information if necessary): See attached MMP

Attachments

Site location map (Figure 1)

Reduced project plans showing all proposed impacts to aquatic resources: "Proposed Impacts to Waters of the U.S." (Exhibit A)

Delineation of jurisdictional boundaries (on aerial photo or contour map) prepared in accordance with November 2007 Memo titled, "San Francisco District's Information Requested for Verification of Corps' Jurisdiction", including Completed routine delineation data forms. (Attachment B)

Endangered Species Act Section 7 Consultation: No Effects Determination on Western Snowy Plover (Attachment C)

Mitigation information (Attachment D)

Historic properties information (Attachment E)

CEQA Document: Focused Initial Study with Negative Declaration (Attachment F)

Project Design Drawings (Attachment G)

FOR CALTRANS USE ONLY:

IX. Signatures

Based on the information provided above, I hereby certify that this project qualifies for a nationwide permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or Section 10 of the U.S. Rivers and Harbors Act (33 U.S.C. 406).

Prepared by: _____

Date: _____

Peer Review: _____

Date: _____

Supervisory Concurrence: _____

Date: _____

cc: U.S. Army Corps of Engineers Liaison
Environmental Planning Branch Nationwide Permit File
District Office Engineer
District Project Manager
Resident Engineer Pending File

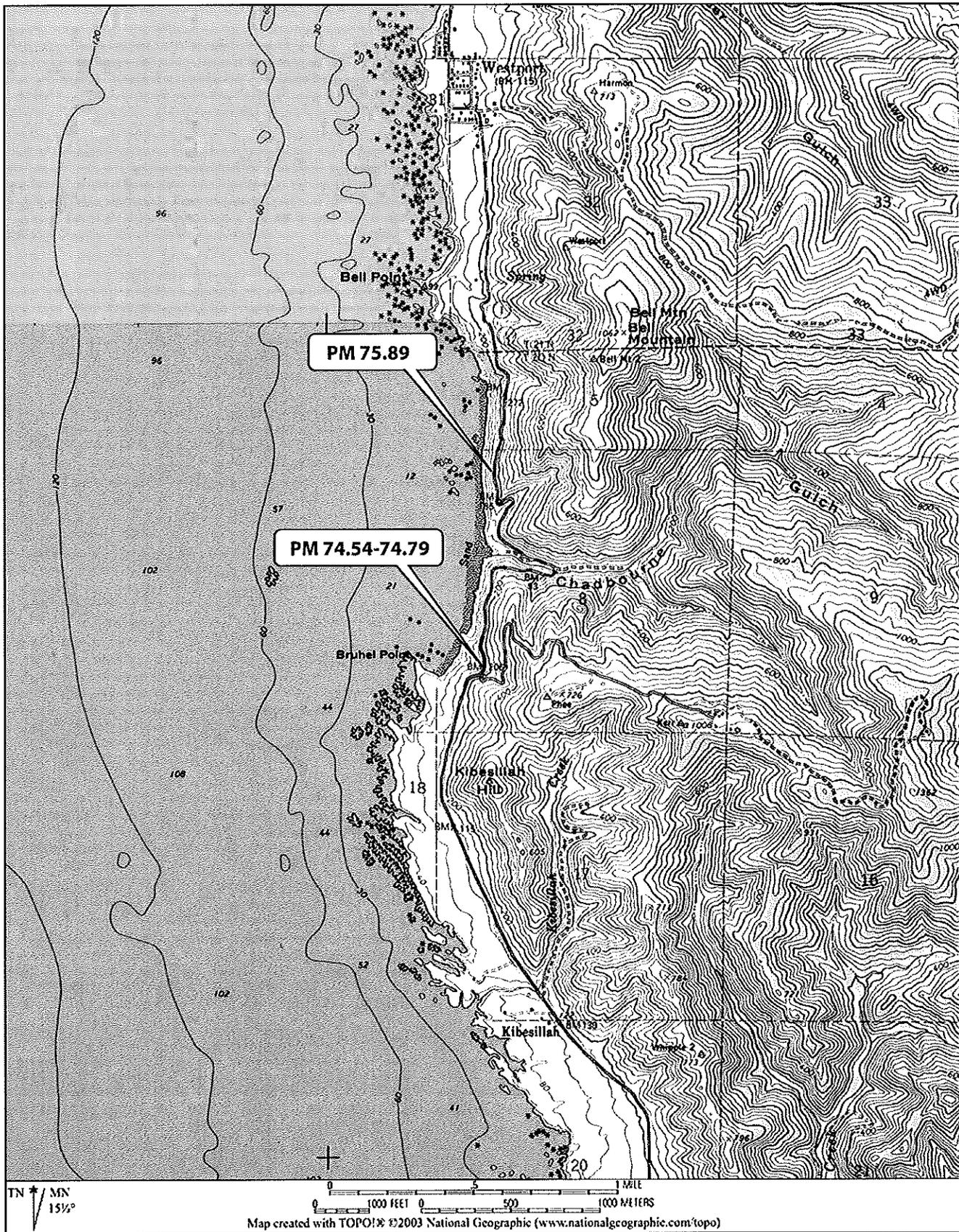


Figure 1
Project Location



U S Army Corps of
Engineers
Sacramento District

Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide Permits - March 19, 2007 includes corrections of May 8, 2007 and addition of regional conditions December 2007

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4)

A. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact

the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

1. Navigation.

- (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3 Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or

restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. Endangered Species.

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No

activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties.

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to

notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20 Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the

aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR

330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

25. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. Pre-Construction Notification.

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) **Contents of Pre-Construction Notification:**
The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);
- (4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
- (5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and
- (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic

property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant

submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

(a) **28. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

B. Regional Conditions:

I. Sacramento District (All States, except Colorado)

1. When pre-construction notification (PCN) is required, the prospective permittee shall notify the Sacramento District in accordance with General Condition 27 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a completed application form (ENG Form 4345). In addition, the PCN shall include:

a. A written statement explaining 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. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and size (in acreage) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the high tide line should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation; and

c. Pre-project color photographs of the project site taken from designated locations documented on the plan drawing.

2. The permittee shall complete compensatory mitigation required by special conditions of the NWP verification before or concurrent with construction of the authorized activity, except when specifically determined to be impracticable by the Sacramento District. When project mitigation involves use of a mitigation bank or in-lieu fee program, payment shall be made before commencing construction.

3. The permittee shall record the NWP verification with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property against areas (1) designated to be preserved as part of mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where structures such as boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed in or adjacent to navigable waters (Section 10 and Section 404). The recordation shall also include a map showing the surveyed location of the authorized structure and any associated areas preserved to minimize or compensate for project impacts.

4. The permittee shall place wetlands, other aquatic areas, and any vegetative buffers preserved as part of mitigation for impacts into a separate "preserve" parcel prior to discharging

dredged or fill material into waters of the United States, except where specifically determined to be impracticable by the Sacramento District. Permanent legal protection shall be established for all preserve parcels, following Sacramento District approval of the legal instrument.

5. The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.

6. For NWPs 29, 39, 40, 42, 43, 44, and 46, requests to waive the 300 linear foot limitation for intermittent or ephemeral waters of the U.S. shall include an evaluation of functions and services provided by the waterbody taking into account the watershed, measures to be implemented to avoid and minimize impacts, other measures to avoid and minimize that were found to be impracticable, and a mitigation plan for offsetting impacts.

7. Road crossings shall be designed to ensure fish passage, especially for anadromous fisheries. Permittees shall employ bridge designs that span the stream or river, utilize pier or pile supported structures, or involve large bottomless culverts with a natural streambed, where the substrate and streamflow conditions approximate existing channel conditions. Approach fills in waters of the United States below the ordinary high water mark are not authorized under the NWPs, except where avoidance has specifically been determined to be impracticable by the Sacramento District.

8. For NWP 12, clay blocks, bentonite, or other suitable material shall be used to seal the trench to prevent the utility line from draining waters of the United States, including wetlands.

9. For NWP 13, bank stabilization shall include the use of vegetation or other biotechnical design to the maximum extent practicable. Activities involving hard-armoring of the bank toe or slope requires submission of a PCN per General Condition 27.

10. For NWP 23, the PCN shall include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act, Essential Fish Habitat under the Magnussen-Stevens Act, and Section 106 of the National Historic Preservation Act.

11. For NWP 44, the discharge shall not cause the loss of more than 300 linear feet of streambed. For intermittent and ephemeral streams, the 300 linear foot limit may be waived in writing by the Sacramento District. This NWP does not authorize discharges in waters of the United States supporting anadromous fisheries.

12. For NWPs 29 and 39, channelization or relocation of intermittent or perennial drainage, is not authorized, except when, as determined by the Sacramento District, the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

13. For NWP 33, temporary fills for construction access in waters of the United States supporting fisheries shall be accomplished with clean, washed spawning quality gravels where practicable as determined by the Sacramento District, in consultation with appropriate federal and state wildlife agencies.

14. For NWP 46, the discharge shall not cause the loss of greater than 0.5 acres of waters of the United States or the loss of more than 300 linear feet of ditch, unless this 300 foot linear foot limit is waived in writing by the Sacramento District.

15. For NWPs 29, 39, 40, 42, and 43, upland vegetated buffers shall be established and maintained in perpetuity, to the maximum extent practicable, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 20. Except in unusual circumstances, vegetated buffers shall be at least 50 feet in width.

16. All NWPs except 3, 6, 20, 27, 32, 38, and 47, are revoked for activities in histosols and fens and in wetlands contiguous with fens. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions. For NWPs 3, 6, 20, 27, 32, and 38, prospective permittees shall submit a PCN to the Sacramento District in accordance with General Condition 27.

17. For all NWPs, when activities are proposed within 100 feet of the point of groundwater discharge of a natural spring, prospective permittees shall submit a PCN to the Sacramento District in accordance with General Condition 27. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this condition, springs do not include seeps or other discharges which lack a defined channel.

II. California Only

1. In the Lake Tahoe Basin, all NWPs are revoked. Activities in this area shall be authorized under Regional General Permit 16 or through an individual permit.

2. In the Primary and Secondary Zones of the Legal Delta, NWPs 29 and 39 are revoked. New development activities in the Legal Delta will be reviewed through the Corps' standard permit process.

III. Nevada Only

1. In the Lake Tahoe Basin, all NWPs are revoked. Activities in this area shall be authorized under Regional General Permit 16 or through an individual permit.

IV. Utah Only

1. For all NWPs, except NWP 47, prospective permittees shall submit a PCN in accordance with General Condition 27 for any activity, in waters of the United States, below 4217 feet mean sea level (msl) adjacent to the Great Salt Lake and below 4500 feet msl adjacent to Utah Lake.

2. A PCN is required for all bank stabilization activities in a perennial stream that would affect more than 100 linear feet of stream

3. For NWP 27, facilities for controlling stormwater runoff, construction of water parks such as kayak courses, and use of grout or concrete to construct in-stream structures are not authorized. A PCN is required for all projects exceeding 1500 linear feet as measured on the stream thalweg, using in stream structures exceeding 50 cubic yards per structure and/or incorporating grade control structures exceeding 1 foot vertical

drop. For any stream restoration project, the post project stream sinuosity shall be appropriate to the geomorphology of the surrounding area and shall be equal to, or greater than, pre project sinuosity. Sinuosity is defined as the ratio of stream length to project reach length. Structures shall allow the passage of aquatic organisms, recreational water craft or other navigational activities unless specifically waived in writing by the District Engineer.

V. Colorado Only

1. Final Regional Conditions Applicable to Specific Nationwide Permits within Colorado.

a. Nationwide Permit Nos. 12 and 14, Utility Line Activities and Linear Transportation Projects. In the Colorado River Basin, utility line and road activities crossing perennial water or special aquatic sites require notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification).

b. Nationwide Permit No. 13 Bank Stabilization. In Colorado, bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks) are limited to the placement of no more than 1/4 cubic yard of suitable fill* material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard may be authorized if the permittee notifies the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) and the Corps determines the adverse environmental effects are minimal. [* See (g) for definition of Suitable Fill]

c. Nationwide Permit No. 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

(1) For activities that include a fishery enhancement component, the Corps will send the Pre-Construction Notification to the Colorado Division of Wildlife (CDOW) for review. In accordance with General Condition 27 (Pre-Construction Notification), CDOW will have 10 days from the receipt of Corps notification to indicate that they will be commenting on the proposed project. CDOW will then have an additional 15 days after the initial 10-day period to provide those comments. If CDOW raises concerns, the applicant may either modify their plan, in coordination with CDOW, or apply for a standard individual permit.

(2) For activities involving the length of a stream, the post-project stream sinuosity will not be significantly reduced, unless it is demonstrated that the reduction in sinuosity is consistent with the natural morphological evolution of the stream (sinuosity is the ratio of stream length to project reach length).

(3) Structures will allow the upstream and downstream passage of aquatic organisms, including fish native to the reach, as well as recreational water craft or other navigational activities, unless specifically waived in writing by the District Engineer. The use of grout and/or concrete in

building structures is not authorized by this nationwide permit.

(4) The construction of water parks (i.e., kayak courses) and flood control projects are not authorized by this nationwide permit.

d. Nationwide Permits Nos. 29 and 39; Residential Developments and Commercial and Institutional Developments. A copy of the existing FEMA/locally-approved floodplain map must be submitted with the Pre-Construction Notification. When reviewing proposed developments, the Corps will utilize the most accurate and reliable FEMA/locally-approved pre-project floodplain mapping, not post-project floodplain mapping based on a CLOMR or LOMR. However, the Corps will accept revisions to existing floodplain mapping if the revisions resolve inaccuracies in the original floodplain mapping and if the revisions accurately reflect pre-project conditions.

2. Final Regional Conditions Applicable to All Nationwide Permits within Colorado

e. Removal of Temporary Fills. General Condition 13 (Removal of Temporary Fills) is amended by adding the following: When temporary fills are placed in wetlands in Colorado, a horizontal marker (i.e. fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction.

f. Spawning Areas. General Condition 3 (Spawning Areas) is amended by adding the following: In Colorado, all Designated Critical Resource Waters (see enclosure 1) are considered important spawning areas. Therefore, in accordance with General Condition 19 (Designated Critical Resource Waters), the discharge of dredged or fill material is not authorized by the following nationwide permits in these waters: NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50. In addition, in accordance with General Condition 27 (Pre-Construction Notification), notification to the District Engineer is required for use of the following nationwide permits in these waters: NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37 and 38".

g. Suitable Fill. In Colorado, use of broken concrete as fill material requires notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification). Permittees must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to cost, existing technology, and logistics), before broken concrete is allowed as suitable fill. Use of broken concrete with exposed rebar is prohibited in perennial waters and special aquatic sites.

h. Invasive Aquatic Species. General Condition 11 is amended by adding the following condition for work in perennial or intermittent waters of the United States: If heavy equipment is used for the subject project that was previously working in another stream, river, lake, pond, or wetland within 10 days of initiating work, one the

following procedures is necessary to prevent the spread of New Zealand Mud Snails and other aquatic hitchhikers:

(1) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and keep the equipment dry for 10 days. OR

(2) Remove all mud and debris from Equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with either a 1:1 solution of Formula 409 Household Cleaner and water, or a solution of Sparquat 256 (5 ounces Sparquat per gallon of water). Treated equipment must be kept moist for at least 10 minutes. OR

(3) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with water greater than 120 degrees F for at least 10 minutes.

3. Final Regional Conditions for Revocation/Special Notification Specific to Certain Geographic Areas

i. Fens: All Nationwide permits, except permit Nos. 3, 6, 20, 27, 32, 38 and 47, are revoked in fens and wetlands adjacent to fens. Use of nationwide permit Nos. 3, 20, 27 and 38, requires notification to the District Engineer, in accordance with General Condition 27 (Pre-Construction Notification), and the permittee may not begin the activity until the Corps determines the adverse environmental effects are minimal. The following defines a fen:

Fen soils (histosols) are normally saturated throughout the growing season, although they may not be during drought conditions. The primary source of hydrology for fens is groundwater. Histosols are defined in accordance with the U.S. Department of Agriculture, Natural Resources Conservation Service publications on Keys to Soil Taxonomy and Field Indicators of Hydric Soils in the United States (<http://soils.usda.gov/technical/classification/taxonomy>).

j. Springs: Within the state of Colorado, all NWP, except permit 47 (original 'C'), require preconstruction notification pursuant to General Condition 27 for discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs. A spring source is defined as any location where groundwater emanates from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges which do not have a defined channel.

4. Additional Information

The following provides additional information regarding minimization of impacts and compliance with existing general Conditions:

a. Permittees are reminded of the existing General Condition No. 6 which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, and trash are not suitable material. Also, General Condition 12 requires appropriate erosion and sediment controls (i.e. all fills must be permanently stabilized to

prevent erosion and siltation into waters and wetlands at the earliest practicable date). Streambed material or other small aggregate material placed along a bank as stabilization will not meet General Condition 12. Also, use of erosion control mats that contain plastic netting may not meet General Condition 12 if deemed harmful to wildlife.

b. Designated Critical Resource Waters in Colorado. In Colorado, a list of designated Critical Resource Waters has been published in accordance with General Condition 19 (Designated Critical Resource Waters). This list will be published on the Albuquerque District Regulatory home page (<http://www.spa.usace.army.mil/reg/>)

c. Federally-Listed Threatened and Endangered Species. General condition 17 requires that non-federal permittees notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project. Information on such species, to include occurrence by county in Colorado, may be found at the following U.S. Fish and Wildlife Service website:
http://www.fws.gov/mountain%2Dprairie/endspp/name_county_search.htm

C. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

D. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic

resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands

contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWP, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a "single and complete project" is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal

interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.



FINAL FINDINGS AND CONDITIONS OF APPROVAL
CASE # CDU 5-2009 – CALTRANS
JUNE 18, 2009

The Planning Commission approve Coastal Development Use Permit # CDU 5-2009, finding that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

CONDITIONS OF APPROVAL:

1. The proposed project shall comply with the all of the applicable mitigation measures contained in the *State Route 1 Point Arena/Westport Sink Storm Damage Permanent Restoration Project Focused Initial Study with Negative Declaration*, prepared by the State of California Department of Transportation, November 2008, and *Natural Environment Study*, prepared by Caltrans, dated July 2008 (located in the project file).
2. As a condition of approval, wherever such construction is feasible without significant detrimental environmental impacts and with availability of funds, Caltrans shall pave four foot wide shoulders within the project area limits. The intent of this requirement is to accommodate bicycle transportation and assure Local Coastal Program compliance.
3. Caltrans shall provide a list of specific Best Management Practices (BMPs) to be used to the County Water Agency and Planning and Building Services. Photo documentation shall be provided as soon as possible, that the BMPs were properly installed prior to the re-construction occurring if possible, otherwise concurrent with re-construction.

4. Prior to issuance of the Coastal Development Permit, Caltrans shall inform Planning and Building Services of the approved disposal site location for materials to be exported from the project site.
5. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
6. This permit shall become effective after all applicable appeal periods have expired, or appeal processes have been exhausted, and after any fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Department of Planning and Building Services. Failure of the applicant to make use of this permit within 3 years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date, June 18, 2012. The County will not provide a notice prior to the expiration date.

7. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Planning Commission.
8. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

9. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
10. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

5b. CASE#: CDU 5-2009

DATE FILED: 3/19/2009

OWNER: STATE OF CALIFORNIA

APPLICANT: CALTRANS

AGENT: BETH THOMPSON, CALTRANS DISTRICT 3

REQUEST: Storm damage road restoration at mile markers 74.74 and 75.89 including installation of "Rock Slope Protection" (rocks placed within areas eroded), culvert replacement, and reconstruction of sections of road that have sunk. A two-way traffic detour is proposed.

LOCATION: In the Coastal Zone, 1 ½ miles south of Westport, two locations along Highway One at mile markers 74.74 and 75.89.

PROJECT COORDINATOR: TERESA SPADE

Ms. Teresa Spade, Project Coordinator, reviewed the staff report and discussed the rock slope protection, culvert replacement, road work and two way traffic detour. She noted the project was within the Westport MAC, which had reviewed the project and commented that they would like bike lanes added if possible. She noted Caltrans had not included a bike area in the project proposal; however it had been added in the Special Conditions of approval. Ms. Spade commented that Caltrans was the lead agency and had filed a mitigated negative declaration, finding that no significant impacts would arise from the development. Lastly, she clarified that Caltrans was requesting permits on three separate sites; however one site was within the city limits of Point Arena and had not been included in the staff report.

Commissioner Holtkamp asked if the bike lanes were possible, would connect to other systems of bike lanes or would they be independent fragments of bike lanes where feasible.

Ms. Spade stated they would be increments of bike lanes.

Commissioner Calvert commented that every little bit of space helped where cars could pass a bike.

Commissioner Warner was confused by the reference to sites as north and south or two and three.

Ms. Spade was not clear on the sites from the comments submitted, but assumed that the southern site had an existing pullout.

Beth Thompson, agent for Caltrans, noted all relevant permits for the project would be acquired and asked if the length of the permit could be extended to three years. She also commented that because the project is storm damage restoration, she was not sure any funding was available for bike lanes and it could be difficult to add. She stated she would request the addition of bike lanes if feasible.

Robert Burnette, design for Caltrans, discussed the funding for storm damage and how Caltrans was reimbursed for the project. He also discussed the environmental issues associated with an increase in impervious material.

Chairman Nelson noted that in the future, the County would like Caltrans to plan on including bike lands in their project proposals as an efficient way to improve safety.

The public hearing was declared open, seeing no one come forward, the public hearing was declared closed.

Commissioner Calvert noted it was foolish to not consider the safety aspects with a project of this magnitude and thought this was an excellent opportunity to exact upgrades.

Ms. Spade noted that in Caltrans mitigated negative declaration on page 38, the area is referred to as the "Pacific Coast Bike Route".

Commissioner Little commented that a number of bicyclist use Highway One, which can be a dangerous areas, and agreed that construction to improve the roadway was prudent; however he noted Special Condition #2 should also consider appropriate funding for the bike lane.

Mike Canshaff, Project Manager for Caltrans, noted Highway One was designated as a bike route on the maps and his planners were looking into the development of a continuous bike route. He discussed the federal funding for the highway project to restore the roads.

Commissioner Calvert asked if there were ways to design the road to be more "user friendly" with the funding provided.

Mr. Canshaff stated that in general the answer was yes, but for this particular project they were struggling to achieve the minimum distance.

Commissioner Calvert noted she wanted to encourage improvements, if possible.

Chairman Nelson asked if staff had wording to modify Special Condition #2 for availability of funds.

Ms. Spade added "...without significant detrimental environmental impacts and with the availability of funds, Caltrans shall pave four foot wide shoulders...". She also modified Condition #6 to state three years as the expiration date.

Commissioner Little also felt Condition #3 was unnecessary since the applicant was required to obtain permits from Water Quality and Fish & Game and asked what the benefit was to having the County approve the BMPs.

Ms. Spade noted the condition had been added at the request of the water agency.

Mr. Lynch felt the only advantage would be in the exchange of information, because the County would not be the enforcer, but the information had merit. He stated the Commission could remove the "review and approval" from the condition.

Ms. Spade added that the Commission could also remove "prior to issuance".

Commissioner Warner read the condition as "~~Prior to issuance of the Coastal Development Permit~~, Caltrans shall provide a list of specific Best Management Practices (BMPs) to be used to the County Water Agency and Planning and Building Services ~~for review and approval~~. Photo documentation shall be provided as soon as possible, that the BMPs were properly installed prior to the re-construction occurring if possible, otherwise concurrent with re-construction.

Commissioner Calvert asked staff to read the changes to Condition #2.

Ms. Spade read Condition #2 as, "As a condition of approval, wherever such construction is feasible without significant detrimental environmental impacts and with the availability of funds, Caltrans shall pave four foot wide shoulders within the project area limits. The intent of this requirement is to accommodate bicycle transportation and assure Local Coastal Program compliance."

Upon motion by Commissioner Warner, seconded by Commissioner Hall and carried by the following roll call vote, IT IS ORDERED to approve CDU 5-2009 per the findings and conditions of approval contained in the staff report on pages PC 9 through PC 11, modifying Condition #2 to state "with the availability of funds", modifying Condition #3 by deleting prior to issuance and ending after Planning & Building Services "~~Prior to issuance of the Coastal Development Permit~~, Caltrans shall provide a list of specific Best Management Practices (BMPs) to be used to the County Water Agency and Planning and Building Services ~~for review and approval~~. Photo documentation shall be provided as soon as possible, that the BMPs were properly installed prior to the re-construction occurring if possible, otherwise concurrent with re-construction.", and to change Condition #6 for a three year expiration.

General Plan Consistency Finding: As discussed under pertinent sections of this report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The Planning Commission finds that the California Department of Transportation is the lead agency under the California Environmental Quality Act, and that Caltrans has

prepared a mitigated negative declaration for the project, and therefore the Planning Commission is not required to make an environmental determination; and that the Planning Commission certify that the information contained in the Final Mitigated Negative Declaration prepared by Caltrans was reviewed and considered prior to acting on this application.

Coastal Development Permit Findings: The Planning Commission finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, that:

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code, and preserves the integrity of the zoning district; and
4. The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and Coastal Element of the General Plan.

RECOMMENDED CONDITIONS:

1. The proposed project shall comply with the all of the applicable mitigation measures contained in the *State Route 1 Point Arena/Westport Sink Storm Damage Permanent Restoration Project Focused Initial Study with Negative Declaration*, prepared by the State of California Department of Transportation, November 2008, and Natural Environment Study, prepared by Caltrans, dated July 2008 (located in the project file).
2. As a condition of approval, wherever such construction is feasible without significant detrimental environmental impacts and with availability of funds, Caltrans shall pave four foot wide shoulders within the project area limits. The intent of this requirement is to accommodate bicycle transportation and assure Local Coastal Program compliance.
3. ~~Prior to issuance of the Coastal Development Permit~~, Caltrans shall provide a list of specific Best Management Practices (BMPs) to be used to the County Water Agency and Planning and Building Services ~~for review and approval~~. Photo documentation shall be provided as soon as possible, that the BMPs were properly installed prior to the re-construction occurring if possible, otherwise concurrent with re-construction.
4. Prior to issuance of the Coastal Development Permit, Caltrans shall inform Planning and Building Services of the approved disposal site location for materials to be exported from the project site.
5. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
6. This permit shall become effective after all applicable appeal periods have expired, or appeal processes have been exhausted, and after any fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Department of Planning and Building Services.

Failure of the applicant to make use of this permit within ~~2~~ three (3) years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date, June 18, ~~2011~~ 2012. The County will not provide a notice prior to the expiration date.

7. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Planning Commission.
8. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.
9. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
10. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

AYES: Little, Calvert, Hall, Holtkamp, Ogle, Nelson, and Warner
NOES: None
ABSENT: None

[Break 9:42- 9:50]

5c. CASE#: OA 1-2009

DATE FILED: 5/19/2009

APPLICANT: MENDOCINO COUNTY

AGENT: PLANNING & BUILDING SERVICES

REQUEST: Mendocino County adopted the current Housing Element on January 27, 2004, and subsequently amended it on December 14, 2004. Mendocino County is now proposing several amendments to the County's Inland and Coastal Zoning Codes in order to implement the Housing Element, to include the following:

- Establish a procedure for requesting reasonable accommodation for individuals with a disability in the administration and enforcement of building standards and zoning regulations.
- Remove single-family and two-family homes from the list of permitted uses in the Multiple-Family (R-3) District but still allow single-family houses and duplexes to be built on parcels zoned for multi-family housing though obtaining a minor use permit where such sites are found not suitable for the development of multi-family units.
- Revise density bonus provisions to be consistent with current state density bonus law.
- Add new definitions for "Emergency Shelters" and Transitional Housing", and revise the definition for "Group Care"