



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103-1398

Regulatory Division

Subject: File Number 2012-00302S

JAN 15 2016

Mr. Edmund Sullivan
Santa Clara Valley Habitat Agency
535 Alkire Avenue
Morgan Hill, California 95037

Dear Mr. Sullivan:

Enclosed is one copy of Regional General Permit 18 and attachments, for work in waters and wetlands of the U.S. associated with covered activities in the Santa Clara Valley Habitat Plan (a Habitat Conservation Plan and Natural Community Conservation Plan) in Santa Clara County, California.

You may refer any questions on this matter to Sahrye Cohen of my Regulatory staff by telephone at 415-503-6779 or by e-mail at sahrye.e.cohen@usace.army.mil. All correspondence should be addressed to the Regulatory Division, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: <http://www.spn.usace.army.mil/Missions/Regulatory.aspx>

Sincerely,

A handwritten signature in blue ink that reads "Tori White".

Tori White
Acting Chief, Regulatory Division

Enclosures

Copies Furnished (w/o encls):
Gary Stern, NOAA NMFS
Joseph Terry, USFWS



Regional General Permit 18

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

Santa Clara Valley Habitat Plan Regional General Permit

EFFECTIVE: January 15, 2016
EXPIRES: (5 years from effective)

The U.S. Army Corps of Engineers, San Francisco District (District), hereby issues Regional General Permit 18 for implementation of covered activities in the Santa Clara Valley Habitat Plan (a Habitat Conservation Plan and Natural Community Conservation Plan) (U.S. Fish and Wildlife Service Native Endangered and Threatened Species Habitat Conservation Plan; Endangered and Threatened Wildlife; Migratory Birds, permit number TE94345A-O and California Natural Community Conservation Planning Act, permit number 2835-2012-002-03) in waters of the U.S. in Santa Clara County, California.

ISSUING OFFICE: U.S. Army Corps of Engineers, San Francisco District

ACTION ID: SPN-2012-00302S

AUTHORITIES: Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

LOCATION: Santa Clara County, California. The permit area includes all of the Uvas, Llagas, and Pajaro sub-watersheds within Santa Clara County, all of the Coyote Creek sub-watershed except for the Baylands, and a large portion of the Guadalupe River sub-watershed except for the Baylands. The permit area also encompasses small areas outside these sub-watersheds. The Uvas/Llagas/Pajaro sub-watersheds are part of the greater Pajaro River watershed draining to the Monterey Bay watershed (hydrologic unit code [HUC] 18060002). The Coyote Creek and Guadalupe River sub-watersheds are part of the greater San Francisco Bay watershed (HUC 18050006). Attachment 1 – Map of Regional General Permit Area

ACTIVITIES COVERED: The following RGP covered activities may be authorized under this permit:

1) Bridge removal and repair

Bridge removal would require demolition and removal of pilings, piers, abutments and/or pedestals, and bridge spans. Bridge materials to be salvaged would be removed and stockpiled near the site at a designated upland location. Repair activities may include widening existing piers and installing new or temporary piers, columns, and trestles to facilitate bridge repairs. Piles may be driven and concrete poured to construct bridge piers and footings. Enlarging the footings may require placing a sheet pile

cofferdam around the footing, excavating to the bottom of the footing, driving additional support piles, and expanding the footing with re-bar and concrete. Existing bridge superstructures are generally cast concrete and steel. Repairs may require concrete and steel reinforcement. Reinforcing steel would be placed as shown on project plans and securely held in position. Forms would be constructed adequately to prevent leaks while placing and curing the concrete.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.1 acre, 100 linear feet.

2) Bridge replacement, widening, and installation

Bridge construction activities may include installing bridge support structures (e.g., pilings, piers, abutments and/or pedestals, columns, and trestles). Piles may be driven and concrete poured to construct bridge piers and footings. Footing construction may require placing a sheet pile cofferdam around the footing, excavating to the bottom of the footing, driving additional support piles, and expanding the footing with re-bar and concrete. Existing bridge superstructures are generally cast concrete and steel. Replacement and installation of new bridges would require concrete and steel. These materials would be used as shown on plans and securely held in position. Forms would be constructed adequately to prevent leaks while curing the concrete.

Program Limits: 15 acres over 5 years.

Project Limits: 0.5 acre, 300 linear feet.

3) Culvert repair, replacement, and removal

Culvert repair and replacement may include removal and replacement of existing culverts, repairs to headwalls, end walls, down drains, flared end sections, rock energy dissipaters, and rock slope protection (RSP). Construction activities may include excavation and backfill with native soils or concrete around the culvert. Earth plugs may be used to contain slurry mixtures. Backfill areas may be paved after the culvert is repaired, replaced or removed; in rural settings the area may be left as compacted earth and gravel.

Program Limits: 8.5 acres over 5 years.

Project Limits: 0.25 acre each, 300 linear feet.

4) Culvert installation

Culvert installation may include construction of headwalls, end walls, downdrains, flared end sections, rock energy dissipaters, and RSP. Culverts may be installed by excavation and backfilling, or by pipe jacking (advancing the pipe through the ground with thrust). Native soils or concrete slurry may be used to backfill around the new culvert. Earth plugs may be used to contain slurry mixtures. The backfill areas may be paved after the new culvert is in place or, in rural settings, may be left as compacted earth and gravel.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.5 acre, 300 linear feet.

5) Outfall repair, replacement, removal, and installation

Repair and replacement of existing outfalls and installation of new outfalls associated with stormwater and water supply management facilities.

Program Limits: 5 acres over 5 years.

Project Limits: 0.1 acre, 50 linear feet.

6) Water intake structure repair, replacement, and installation

Activities associated with the repair or replacement of water intake structures, and installation of new water intake structures. Water intake structures in the RGP coverage area typically consist of concrete or metal culverts located at or near the top of stream channel banks or levees, in association with diversion structures such as gravel or inflatable dams. Water intake structure construction may include installation of concrete and/or rock riprap to stabilize banks and control erosion. Installation of new intakes would only occur in areas without anadromous fish (i.e., upstream of existing diversions).

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.25 acre, 100 linear feet.

7) Sediment removal

Mechanical sediment removal required when accumulated sediment reduces a channel's flow conveyance capacity and prevents facilities or appurtenant structures from functioning as intended. Sediment removal may occur along a channel reach, or at a small site such as a stream gauge, and would be done to match pre-sedimentation flow capacity (i.e., capacity would not be expanded) and pre-sedimentation geomorphic features (e.g., channel sinuosity). Sediment removal may also be needed for pond maintenance. Sediment removal may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment.

Program Limits: 10 acres over 5 years.

Project Limits: 0.25 acre, 300 linear feet.

8) Removal of vegetation and storm debris involving soil disturbance

Vegetation and storm debris management activities involving hand or mechanical removal of vegetation and storm debris by scraping, discing, grading, excavating or other methods that result in soil disturbance. Vegetation management activities may occur along creeks, near bridges or at stream gauges.

Program Limits: No program limits, but must report on quantity of removals.

Project Limits: No limit.

9) Temporary construction access and dewatering

Construction of temporary access ramps; construction of cofferdams and berms to temporarily isolate in-channel construction activities from the active stream, and pumping of wet areas to temporarily expose the channel bottom in the designated construction area.

Program Limits: No program limits.

Project Limits: 0.1 acre, 50 linear feet.

10) Recreational facility construction, reconstruction, and maintenance

Construction of recreational facilities including trails, boat ramps, ponds and other facilities. Other facilities may include portions of buildings, educational displays, and other non-water dependent structures that may encroach into jurisdictional waters when complete avoidance is not practicable. Maintenance of existing recreational trail stream crossings and construction of new recreational trail stream crossings may be authorized under this activity category. Activities associated with boat ramp installation may include grading, paving, and armoring. Construction may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment.

Program Limits: 6.25 acres over 5 years.

Project Limits: 0.25 acre, 200 linear feet.

11) Restoration, establishment, enhancement activities involving soil disturbance, including removal and modification of fish passage impediments.

Activities in waters of the United States associated with the restoration, enhancement, and establishment of streams, wetlands, and open waters, provided those activities result in net increases in aquatic resource functions and services.

Activities authorized under this category include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This activity category includes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. Except for the relocation of non-tidal waters, this category does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This activity category does not authorize stream channelization. Compensatory mitigation is not required as the included activities must result in net increases in aquatic resource functions and services.

Stream restoration activities include: geomorphic enhancement, including physical re-configuration of channels and installation of structures to enhance channel complexity, based on California Department of Fish and Wildlife and National Marine Fisheries Service guidelines for salmonid habitat enhancement; riparian planting; removal of invasive vegetation; creating and expanding existing floodplain habitats and side channel habitats; and gravel augmentation to enhance spawning habitat. To implement these improvements, short channel segments may require temporary dewatering or bypass to allow construction. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work.

Removal of fish passage impediments may include removal of in-stream concrete low-flow crossings, culverts, weirs, concrete aprons under bridges, and possibly other features that create shallow water depths, vertical drops, or water velocities that exceed the swimming and leaping ability of fish. Such impediments may be modified to allow passage, or completely removed. In some cases, existing small culverts that impede fish passage may be replaced with bridged weir structures to provide access to tributary streams.

Program Limits: No program limit, but must report on annual impacts.

Project Limits: No project limit, but must document net increases in aquatic resource functions and services.

12) Installation of fish screens when such installation involves soil disturbance

Fish screens may be installed on existing unscreened water intakes. Fish screens may also be installed to isolate creeks from off-channel recharge ponds and lakes to prevent movement of fish in and out of these lakes and to support recreational fishing opportunities in these lakes. These project actions may occur in association with actions to maintain and replace existing water intakes. Fish screen structures typically consist of concrete structures with metal screens with appropriately sized openings to prevent entrainment of fish with diverted water. Fish screen structures may include a minimum amount of concrete and/or rock riprap as needed to stabilize banks and control erosion. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work. Although most work can usually be accomplished with equipment operated from the top of bank, some projects may require equipment and vehicles to be operated in the stream channel. Where construction activities are required in flowing streams, cofferdams or berms would be used to dewater the work site and isolate it from flowing water.

Fish screen installation activities in streams supporting federally listed anadromous fish species or their designated critical habitat are eligible for authorization under this RGP if the Corps determines the activities would have no effect on federally listed anadromous fish species or their designated critical habitat or if the Corps completes the necessary level of Endangered Species Act section 7 consultation with National Marine Fisheries Service (NMFS) for the activity.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.10 acre.

13) Bank stabilization

Bank stabilization involves repairing and stabilizing channel banks and levees that are eroding or are in need of erosion protection. There are a wide range of potential bank repair treatment options depending

on site conditions and long-term maintenance issues. The primary treatment options include hard, hybrid or soft depending on the type of materials used. Hard materials include rip-rap, gabions, rock, concrete blocks or other hard materials. Soft materials include biotechnical treatments emphasizing vegetation and earthen banks. Hybrid materials include a mix of hard and soft materials.

During the bank stabilization assessment process, sites with destabilized banks are evaluated for their soil conditions, channel and bank scour velocities, slope stability, channel form/position, and other active geomorphic conditions. Consideration of the cause of the bank failure (overland runoff, bank slumping, undersized culvert upstream, etc.) is also critical to determination of the appropriate treatment approach. Where practicable and appropriate, bank stabilization projects would also address the cause of the bank failure. The use of hard material would be minimized where possible.

Program Limit: 2.5 acres over 5 years.

Project Limits: 0.1 acre, 300 linear feet.

14) Minor maintenance of levees, canals and ditches

Minor maintenance activities are routine small-scale activities performed to make repairs and keep facilities operational. Maintenance activities may occur along levees, canals, and ditches and at stream gauges and would not change the footprint of existing facilities. Specific actions could include trash and debris removal that requires minor ground disturbance; replacement of concrete linings, pipes, valves or similar structures; replacement of weirs; minor erosion repair; and other minor maintenance activities.

Program Limit: 4 acres over 5 years.

Project Limit: 0.2 acre.

15) Surveying activities, including installation and maintenance of scientific measurement devices

Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. Under this category, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This category includes the construction of temporary pads, provided the discharge does not exceed 0.08 acre in waters of the U.S. Discharges and structures associated with the recovery of historic resources are not authorized under this category. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized under this category; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized under this category. Surveying activities under this category do not include installation of any permanent survey structures. Projects to be authorized under this category must include anticipated start and end dates for the surveying activities.

Devices, whose purpose is to measure and record scientific data, such as staff gages, piezometers, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed

primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. Scientific measurement device installation projects to be authorized under this category must include anticipated start and end dates for use of the installed device. For devices that would be used for long-term surveying activities, the applicant shall include a written explanation of the need for long-term surveying, and an estimated duration of the long-term survey period.

Program Limit: 0.8 acre over 5 years.

Project Limit: 0.08 acre.

16) Utility repair, removal, replacement, and installation

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States. This category includes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

This category includes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Program Limit: 3 acres over 5 years.

Project Limit: 0.2 acre.

17) Discharges associated with development

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision is also authorized. This category includes the construction of building foundations and building pads and

attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, and yards.

Program Limit: 5 acres over 5 years.

Project Limit: 0.5 acre, 300 linear feet.

If there is any question as to which Activity category a proposed activity would apply to, the Corps will determine the applicable Activity category.

This RGP does not cover any activities in waters of the U.S. conducted in emergency situations.

TERMS:

1. **Applying for RGP authorization:** Prior to commencing a proposed activity, applicants seeking authorization under this RGP shall notify the Corps in accordance with the procedure detailed in the *Santa Clara Valley Habitat Plan Regional General Permit Notification and Program Management Process* (Attachment 2).
2. **Compensatory mitigation for RGP authorization:** Mitigation for unavoidable impacts to waters of the U.S. must be accomplished by conforming to the *Compensatory Mitigation Strategy for Santa Clara Valley Habitat Plan Regional General Permit Prior to Approval of a Proposed In-Lieu Fee Program Program-level Interim Mitigation Strategy* and all Appendices (Attachment 3) or an approved Mitigation Bank or In-Lieu Fee Program. Mitigation proposals are required to be consistent with the Corps' mitigation rule (33 CFR Part 332). A final mitigation plan must be approved by the Corps prior to initiating work under this RGP.
3. **Financial Assurance:** A finalized description of financial assurances consistent with the Corps' mitigation rule (33 CFR Part 332) is required 30 days prior to initiating work under this RGP.
4. **SCV Habitat Plan RGP Programmatic Not Likely to Adversely Affect (NLAA):** Project activities requesting inclusion in the Programmatic Consultation must comply with all general and specific criteria outlined in the *NMFS NLAA Programmatic Reporting Procedures, Procedural Overview, and Minimization Measures for the SCV RGP* (Attachment 4).
5. **Single and complete project:** The project must be a single and complete project. For example, if construction of a residential development involves phases, the sum of all impacted areas would be the basis for deciding whether or not the project will be covered by this RGP.
6. **After-the-fact projects:** This RGP may not be used to authorize activities after they have impacted Waters of the U.S.
7. **Compliance with SCV Habitat Plan Conditions:** Activities to be authorized under this RGP must be Habitat Plan Covered Activities and must fully comply with the Habitat Plan.

8. Special conditions: The Corps may add special conditions to an authorization to ensure the activity complies with the terms and conditions of the RGP, and/or that adverse impacts on the aquatic environment or other aspects of the public interest are individually and cumulatively minimal.
9. Activity completion: Any activity authorized by the Corps under the RGP must be completed prior to the RGP expiration date. Activities authorized under the RGP that are under construction or under contract for construction in reliance upon this authorization will remain authorized provided the activity is completed within 12 months of the date of the RGP's expiration, modification or revocation, unless the Corps exercises its discretionary authority to modify, suspend, or revoke the authorization of a specific project. The "authorization date" is the date the Corps verifies in writing that the activity meets the terms and conditions of the RGP.
10. Discretionary Authority: The Corps has the discretion to suspend, modify, or revoke authorizations under this RGP. This discretionary authority may be used by the Corps to also further condition or restrict the applicability of the RGP for cases in which it has concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any public interest factor. Should the Corps determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to aquatic resources or otherwise be contrary to the public interest, the Corps will modify the authorization to reduce or eliminate those adverse effects, or notify the applicant that the proposed activity is not authorized by the RGP and provide instructions on how to seek authorization under an individual permit. The Corps may restore authorization under the RGP at any time it determines that the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. The Corps may also use its discretionary authority to modify, suspend, or revoke the RGP at any time.
11. Expiration of RGP: This permit shall be valid for a period of five years from the date of issuance, unless suspended or revoked by issuance of a public notice by the District Engineer. A review will be conducted to determine if continuance of the permit is in the public interest after the 5-year expiration date. If this permit expires or is revoked prior to completion of the authorized work, authorization of activities that have commenced or are under contract to commence in reliance on this permit will remain in effect provided the activity is completed within 12 months of the date this permit expired or was revoked. If the Corps has not reissued or extended the RGP by the expiration date, the RGP will no longer be valid. This RGP may also be modified, suspended or revoked by the Corps at any time deemed necessary.

SPECIAL CONDITIONS:

1. Threatened and Endangered Species, U.S. Fish and Wildlife Service (USFWS): No activity is authorized under the RGP that does not comply with the mandatory terms and conditions of the USFWS's *Final Biological Opinion for the Corps' Regional General Permit (RGP) for the Santa Clara Valley Habitat Plan (SCVHP)* (USFWS file number 08ESMF00-2015-F-1169-2; Corps file number 2012-00302S), dated October 16, 2015 (Attachment 5). The Biological Opinion contains mandatory terms and conditions to implement the reasonable and prudent measures that

are associated with “incidental take” authorization under this RGP. Authorization under this RGP is conditional upon your compliance with all of the mandatory terms and conditions of the Biological Opinion. Failure to comply with the terms and conditions of the Biological Opinion would constitute non-compliance with the RGP. The USFWS is the appropriate authority to determine compliance with the terms and conditions of the Biological Opinion, and with the ESA. The permittee must comply with all applicable conditions of this Biological Opinion, including those ascribed to the Corps.

2. Threatened and Endangered Species, National Oceanic and Atmospheric Administration (NOAA) NMFS: Project activities authorized under the RGP may be eligible for inclusion in the SCV Habitat Plan RGP NLAA program. If the activity fits within the parameters of the program, the work must comply with the requirements and procedures in the *Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Santa Clara Valley Habitat Conservation Plan Regional General Permit [Corps File No. 2012- 00302S]* (NMFS file number WCR-2015-3821), December 23, 2015 (Attachment 6). NMFS concurred with the determination that the project was not likely to adversely affect Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) DPS, South-Central California Coast (SCCC) steelhead DPS, North American green sturgeon southern DPS (*Acipenser medirostris*) and designated critical habitat for these species. The criteria and work restrictions are incorporated as special conditions to this authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.

Project activities not eligible for inclusion in the SCV Habitat Plan RGP NLAA program, must obtain a NMFS project-specific threatened or Endangered Species consultation prior to verification under this RGP.

3. Protected Species: Incidents where any individuals of Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) DPS, South-Central California Coast (SCCC) steelhead DPS, North American green sturgeon southern DPS (*Acipenser medirostris*) listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this RGP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the San Francisco District of the U.S. Army Corps of Engineers at (415) 503-6795. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure, or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.
4. Water Quality Certification: Section 401 Water Quality Certification is required for activities to be authorized by this RGP, with the exception of those occurring entirely within Section 10

waters. The Corps may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal impacts, individually or cumulatively.

5. Historic Properties: No activity is authorized under the RGP if the activity may affect historic properties listed, or eligible for listing, in the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act (NHPA), as amended, have been satisfied. Applicants must notify the Corps if the 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 historic properties. The Corps will consult with the State Historic Preservation Officer (SHPO), as appropriate, following the policy and procedural standards of 33 CFR Part 325 Appendix C.
6. Unanticipated Cultural Resources Discoveries: If previously unidentified cultural materials are unearthed during construction, all work shall be halted until a qualified archaeologist can examine the deposit and determine its nature and significance. In the event of discovery of possible human remains, state law requires that the County Coroner be contacted.
7. Fills within 100-Year Floodplains: The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
8. Proper Maintenance: Permittee must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. Permittee is not relieved of this requirement if permittee abandons the permitted activity or sells the property associated with this permit. Permittee may make a good faith transfer to a third party. If permittee sells the property associated with this permit, permittee must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization. Should permittee wish to cease to maintain the authorized activity or should permittee desire to abandon it without a good faith transfer, permittee must obtain a modification of this permit from this office, which may require restoration of the area.
9. Aquatic Life Movements: No activity may substantially disrupt the necessary life cycle movement of aquatic species indigenous to the water body, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low-flow conditions. If feasible, they should be designed as open-bottom culverts.
10. Equipment: Heavy equipment working in wetlands must be placed on mats, or other measures, such as low-ground pressure equipment, must be implemented to minimize soil disturbance.
11. 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.
12. Suitable Material: Fill material must be clean and free of contaminants and noxious plants. Fresh cement or concrete is not allowed in waters unless it is placed in sealed forms. Unsuitable fill

material includes vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires, concrete with exposed rebar.

13. Removal of Temporary Fills: Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and re-vegetated in accordance with the plans authorized under this RGP.
14. Management of Water Flows: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration project).
15. Migratory Birds and Bald and Golden Eagles: The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
16. Access: The permittee must allow representatives from the Corps to inspect the authorized activity (and any avoidance or mitigation areas, if applicable) at any time deemed necessary to ensure that the activity is being, or has been, accomplished in accordance with the terms and conditions of the permit.
17. Transfer of RGP Authorization: If the permittee sells the property associated with this permit, the permittee must obtain the signature and mailing address of the new owner on the permit verification letter, and forward a copy to this office to validate the transfer.
18. Reporting Responsibilities: The permittee must submit an annual report in accordance with the procedures in in the *Santa Clara Valley Habitat Plan Regional General Permit Notification and Program Management Process* (Attachment 2).
19. For Section 10: For activities authorized through this permit under Section 10 of the Rivers and Harbors Act of 1899, 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.

20. For Section 408: Any proposed modification to an existing Corps projects (either federally or locally maintained) that go beyond those modifications required for normal Operations and Maintenance (O&M) require approval under 33 USC 408. There shall be no temporary or permanent alteration, occupation or use of these public works including but not limited to levees, sea walls, bulkheads, jetties and dikes for any purpose without the permission of the Secretary of the Army or his authorized representative for those cases where the proposed modification is determined to be minor. Under the terms of 33 USC 408, any proposed modification requires a determination by the Secretary that such proposed alteration or permanent occupation or use of a Federal project is not injurious to the public interest and will not impair the usefulness of such work.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to: Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344)
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed federal projects.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.

- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** The permit duration, as described above, establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.
7. Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from the Corps, such as a Nationwide Permit or Letter of Permission. The Corps will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may include additional special conditions to a verification under this permit to ensure the activity has minimal impact.

PERMIT DURATION: This permit is valid for five years from issuance, and will expire on January 15, 2021. The Corps may re-evaluate the terms and conditions of this permit at any time it deems necessary to protect the public interest. This permit may be re-issued, after public notice and documentation of the decision. Activities under this permit must be verified in writing by the Corps. Verifications are valid until the permit expires.

CONTACTS AND ADDITIONAL INFORMATION:

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San Francisco, California 94103
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ATTACHMENTS:

Attachment 1- Map of Regional General Permit Area
Attachment 2 - *Santa Clara Valley Habitat Plan Regional General Permit Notification and Program Management Process, January 2016*

Attachment 3 - *Compensatory Mitigation Strategy for Santa Clara Valley Habitat Plan Regional General Permit Prior to Approval of a Proposed In-Lieu Fee Program Program-level Interim Mitigation Strategy Document* and all Appendices, January 2016

Attachment 4 – *NMFS NLAA Programmatic Reporting Procedures, Procedural Overview and Minimization Measures for the SCV HCP Habitat Plan RGP, January 2016*

Attachment 5 - *Final Biological Opinion for the Corps' Regional General Permit (RGP) for the Santa Clara Valley Habitat Plan (SCVHP)* (USFWS file number 08ESMF00-2015-F-1169-2; Corps file number 2012-00302S)

Attachment 6 - *Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Santa Clara Valley Habitat Conservation Plan Regional General Permit [Corps File No. 2012- 00302S]* (NMFS file number WCR-2015-3821) , December 23, 2015

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



Tori White
Acting Chief, Regulatory Division



Date