



# Regional General Permit 1

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

## Minimal Impact Activities East Contra Costa County, California

**EFFECTIVE:** June 6, 2017

**EXPIRES:** June 6, 2022

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**NOTE:** The term "you" and its derivatives, as used in this permit, means the permittee. The term "this office" refers to the U.S. Army Corps of Engineers, Sacramento District.

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Sacramento District

**ACTION ID:** SPK-2001-00147

**AUTHORITY:** Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

**PURPOSE:** The purpose of this RGP is to provide a simplified and expeditious means to authorize activities in waters of the United States (U.S.), including wetlands, that are substantially similar in nature and cause only minimal individual and cumulative impacts, within the area covered by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), dated December, 2006. This RGP is part of an overall strategy envisioned in the HCP/NCCP to balance the protection of important natural resources with long term economic development in the area covered by the HCP/NCCP. The HCP/NCCP is intended to enhance protection of important natural resources, including 28 listed and non-listed species and waters of the United States, by coordinating conservation activities at a regional and watershed scale, enabling protection of large, contiguous resource-rich areas and preservation of ecosystem processes and watershed functions. Appendix J of the HCP/NCCP contains a partial inventory and assessment of the functions and services of waters of the U.S. located within the HCP/NCCP Plan Area. The HCP/NCCP, associated documents and other program information are available to the public at: <http://www.cocohcp.org>. Definitions associated with this RGP are provided under the "Definitions" section at the end of the RGP.

**LOCATION:** The area covered by this RGP is east Contra Costa County, including the cities of Clayton, Brentwood, Oakley, and Pittsburg, and other areas of east Contra Costa County. It is geographically coincident with the "Plan Area" of the HCP/NCCP (see *Figures 1a* and *1b*).

**ACTIVITIES COVERED:** This RGP authorizes specific categories of activities with minimal individual and cumulative impacts on the aquatic environment that meet the terms and conditions of this permit. Temporary structures, fills, and work necessary to construct an activity authorized by this RGP (e.g., cofferdams, access roads) are allowed, provided such

work complies with the terms and conditions of this RGP inclusive of special conditions that the Corps may add. This RGP applies only to HCP/NCCP Covered Activities, as set forth in Section 2.3 of the HCP/NCCP (also see Definitions section). Any question as to whether a proposed activity is considered a Covered Activity under the HCP/NCCP shall be subject to confirmation by the East Contra Costa County Habitat Conservancy (Conservancy) (see Definitions section). The HCP/NCCP Covered Activities are divided among the following Activity categories in this RGP for purposes of assigning Activity-specific conditions (see section Activity Specific Conditions):

1. Residential, commercial, industrial, institutional, and other urban developments and associated infrastructure inside the Urban Limit Line of Contra Costa County or inside the City Limits of the Cities of Brentwood, Clayton, Oakley and Pittsburg, including but not limited to roads, utilities, parks, storm water management facilities, and water supply and delivery facilities. (Activity-specific conditions: 1 through 4).
2. Recreation projects, including parks, picnic areas, staging areas, trails and park maintenance facilities. Applies only to the activities set forth in Sections 2.3.2 and 2.3.4 of the HCP/NCCP. (Activity-specific conditions: 1 through 4).
3. Flood control detention basins, reservoirs<sup>1</sup>, channels, and related facilities. Applies only to the specific planned facilities set forth in Section 2.3.2 of the HCP/NCCP. (Activity-specific conditions: 1 through 4).
4. Transportation projects, including road construction and widening, bicycle trails, rail projects, bridges and safety-related projects. Applies only to the specific planned facilities set forth in Section 2.3.2 of the HCP/NCCP. (General conditions apply only).
5. Wetland and stream restoration, creation, enhancement and management. Applies only to activities set forth in Sections 2.3.2 and 2.3.4 of the HCP/NCCP. (Activity-specific conditions: 1, 2 and 4).
6. Utility projects, including electrical transmission projects, cellular communication projects and pipelines. Applies only to the activities set forth in Sections 2.3.2 and 2.3.4 of the HCP/NCCP. (Activity-specific condition 4).
7. Maintenance, repair, rehabilitation or replacement of any previously authorized (under the RGP or other Corps permit), currently serviceable, structure or fill. Applies only to the maintenance activities set forth in Sections 2.3.1 and 2.3.3 of the HCP/NCCP. (General conditions apply only).

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

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<sup>1</sup> The proposed Los Vaqueros Reservoir Expansion project is not covered by the HCP/NCCP as per Section 2.4 of the HCP/NCCP

**PERMIT DURATION:** This permit is valid for five years from issuance, and will expire on June 6, 2022. If this RGP is not modified or reissued by the expiration date, it automatically expires and becomes null and void. 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.

**TERMS OF AUTHORIZATION:**

1. **Applying for RGP authorization.** Prior to commencing a proposed activity, applicants seeking authorization under this RGP shall notify the Corps in accordance with RGP general condition number 18 (Notification). If the Corps determines that an activity is not an eligible activity under the RGP, it will notify the applicant in writing within thirty (30) calendar days and provide instructions on the procedures to seek authorization under a standard permit, letter of permission or Nationwide permit. If the Corps determines that a proposed activity is eligible for coverage under the RGP, it will notify the applicant within 45 calendar days of receipt of a complete application. If the Corps does not provide a written response to the applicant within 45 calendar days following receipt of a complete application, the applicant may presume the proposed activity is an eligible activity that may be covered under the RGP, provided the activity complies with all other terms and conditions of the RGP.
2. **Impact Thresholds for waters of the U.S.** Impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. The loss of waters of the U.S. (including wetlands) resulting from individual project impacts may not exceed a total of 1.5 acres or more than 300 linear feet of perennial, intermittent or 3rd or higher order ephemeral streams (as defined in Table 2 of the RGP and further described in the HCP/NCCP), unless the linear foot limit is waived in writing by the Corps. Additional restrictions are listed in the General and Activity-Specific Conditions.
3. **Single and complete project.** The activity must be a single and complete project (see Definitions section). The same RGP authorization cannot be used more than once for the same single and complete project.
4. **After-the-fact projects.** This RGP may not be used to authorize activities after they have impacted waters of the U.S.
5. **Compliance with HCP/NCCP Conditions.** Activities to be authorized under this RGP must be HCP/NCCP Covered Activities and must fully comply with the HCP/NCCP. Compliance with the HCP/NCCP requires applicants to implement the appropriate conservation measures outlined in Chapter 6 of the HCP/NCCP.
6. **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.

7. **Activity completion.** Any activity authorized by the Corps under the RGP shall be completed by the date specified in "Permit Duration," above. Furthermore, activities authorized under this RGP that have commenced or are under contract to commence will have 12 months from the date of the RGP's expiration, reissuance, modification or revocation to complete the activity under the terms and conditions of the RGP.

8. **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.

### **GENERAL CONDITIONS:**

The following general conditions apply to all Activity categories:

1. **Threatened and Endangered Species:** No activity is authorized under the RGP that does not comply with the mandatory terms and conditions of the USFWS's "Programmatic Biological Opinion for a Regional General Permit for the East Contra Costa Habitat Conservation Plan/Natural Community Conservation Plan, Contra Costa County, California" (USFWS #81420-2011-F-0655, dated April 30, 2012) (copy attached). 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. If the proposed activity may affect Federally-listed endangered or threatened species that are not covered under the Programmatic Biological Opinion, specifically, species under the authority of the National Marine Fisheries Service, the Corps will initiate consultation with the National Marine Fisheries Service, pursuant to Section 7 of the Endangered Species Act, as appropriate.

**2. Water Quality Certification:** Section 401 Water Quality Certification is required for activities to be authorized by this RGP. 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.

**3. 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 .

**4. Unanticipated Cultural Resources Discoveries:** If any previously unknown historic, cultural or archeological remains or artifacts are discovered while accomplishing an activity authorized by this RGP, this permit, the applicant must immediately notify the Corps, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**5. Fills within 100-Year Floodplains:** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**6. Bed and Bank Stabilization:** Bank stabilization activities are limited to: a) using the minimum amount of material needed for erosion protection; b) no more than 500 feet in length along the bank, unless this criterion is waived in writing by the Corps; and c) no more than an average of 1 cubic yard of material per running foot placed along the bank below the plane of the ordinary high water mark or high tide line, unless this criterion is waived in writing by the Corps.

**7. Best Management Practices:** Best Management Practices (BMPs) must be employed during construction and in project design to protect water quality and minimize impacts of stormwater runoff on aquatic resources. BMPs should be appropriately located in or adjacent to waters of the U.S. (e.g., silt curtains). The applicant shall employ the following BMPs, as appropriate and feasible, in designing and constructing the project. The applicant shall describe which BMPs are practicable as part of the notification procedure as per general condition #18, subpart (b):

- a. Preservation of natural resource features on the project site (e.g., floodplains, wetlands, streams, and other drainageways, grasslands, woodlands, and native soils);
- b. Preservation of natural water infiltration and storage characteristics of the site;

- c. Minimization of new impervious surfaces in project design (impervious surfaces may be minimized through practices such as reducing road widths and clustering developments designed around open space);
- d. Structural measures that provide water quality and quantity control;
- e. Construction BMPs;
- f. Low impact development (LID) BMPs.

Examples of structural BMPs include: vegetated natural buffers, grassed swales, infiltration trenches, level spreaders and channel grade controls. Examples of construction BMPs include: matting and filter fencing, or other barrier methods to intercept/capture sediment.

**8. Proper Maintenance:** Any authorized structure or fill shall be properly maintained, including maintenance necessary to ensure public safety and the movement of aquatic organisms.

**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 taken 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. Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake, except where the discharge is for the repair or improvement of the intake structure(s), and/or adjacent bank stabilization.

**13. Suitable Material:** No discharge of dredged or fill material may consist of unsuitable material and material discharged must be free from toxic pollutants in toxic amounts (section 307 of the Clean Water Act). Unsuitable material includes, but is not limited to, trash, debris, car bodies, and asphalt.

**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 Bird Breeding Areas:** Activities in waters of the U.S. that serve as breeding areas for migratory birds shall be avoided to the maximum extent practicable.

**16. Removal of Temporary Fills and Restoration of Affected Areas:** Temporary fills shall be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas shall be revegetated with native vegetation upon completion of the project. A restoration plan, which includes a 1-foot contour topographic map, must be submitted with the notification to the Corps.

**17. Compensatory Mitigation:** Compensatory mitigation for unavoidable impacts to waters of the U.S. must be accomplished by conforming to the minimum mitigation ratios set by the HCP/NCCP, as summarized in Table 1. Mitigation proposals are required to be consistent with the Federal mitigation rule (33 CFR Part 332).

a. The preferred mechanism for providing compensatory mitigation is by acquiring mitigation bank credits or in-lieu fee (ILF) program credits from a Corps-approved bank or ILF program, respectively. However, if an appropriate number and type of mitigation bank or ILF credits are not available at the time of notification (see general condition #18), permittee-responsible mitigation may be proposed. Pursuant to the Federal mitigation rule, the preference hierarchy for use of banks, ILF programs and permittee-responsible to fulfill compensatory mitigation requirements can be overridden based on project-specific considerations (33 CFR 332[b][2]).

b. Prior to proceeding with the activity authorized by this RGP, a final mitigation plan must be approved by the Corps, and mitigation fees (if applicable, e.g., bank and/or ILF program) must be paid. When mitigation fees are applicable, evidence of fee payment must be provided to the Corps before commencement of the activity authorized by this RGP can be initiated.

c. If the RGP verification includes permittee-responsible compensatory mitigation, the mitigation plan must contain a reporting procedure consistent with the Corps' mitigation rule (33 CFR Part 332.4[c][10]), Monitoring Requirements, as well as any Sacramento District and/or South Pacific Division compensatory mitigation guidance applicable at the time of application review.

**18. Notification:** The applicant shall provide written notification (i.e., a complete application) for a proposed activity to be authorized under the RGP prior to commencing the activity. The Corps' receipt of the complete application is the date when the Corps receives all required notification information from the applicant (see below). Written notification shall include all of the following:

- a. A letter signed by the applicant requesting authorization under the RGP, identifying the Activity Category(s), a description of the proposed activity, the location of the activity (with latitude and longitude), and the area (in acres, and/or linear feet as applicable) of waters of the U.S., including wetlands, to be impacted;
- b. For each general and applicable activity-specific condition of this RGP, a brief narrative describing how the activity would comply with the condition, or that the condition does not apply;
- c. A vicinity map, plan-view and cross-section drawings clearly depicting the location, size and dimensions of the proposed activity, including areas to be used for access and staging. The drawings shall contain a title block, legend and scale, nearby structures, parcel boundaries, and dimensions of the proposed dock and associated access. Unless waived on a case by case basis at the Corps' discretion, all drawings shall comply with the Updated Map and Drawing Standards for the South Pacific Division Regulatory Program, which can be found at <http://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/Article/651327/updated-map-and-drawing-standards/>.
- d. A delineation of aquatic resources in accordance with the Sacramento District's Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (available at [http://www.spk.usace.army.mil/Portals/12/documents/regulatory/jd/minimum-standards/Minimum\\_Standards\\_for\\_Delineation\\_with\\_Template-final.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/jd/minimum-standards/Minimum_Standards_for_Delineation_with_Template-final.pdf)), or updated standards adopted by the Sacramento District, unless specifically waived by the Sacramento District.
- e. A written statement explaining how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S.
- f. A cultural resource survey report for the project site, including all staging, access and construction areas. The report must be prepared in accordance with the March 24, 2014, Sacramento District Guidelines for Compliance with Section 106 of the NHPA, which can be found at [http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL\\_2014-03-24\\_Section-106-Guidelines.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL_2014-03-24_Section-106-Guidelines.pdf) (or more recent guidance, if applicable).

If the Corps determines that the activity complies with the terms and conditions of the RGP, including confirmation that proposed impacts to aquatic resources are minimal, the Corps will notify the applicant in writing and include any special conditions deemed necessary. If the Corps determines the impacts of the proposed activity are more than minimal, the Corps will notify the applicant that the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit.



19. **Reporting Responsibilities:** The permittee must submit a letter report to the Corps within 30 days of project completion. The report will contain the following:

- a. The Corps' file number;
- b. Photographs showing pre- and post-construction project conditions;
- c. A completed compliance certification.

20. **Access:** The permittee must allow representatives from the Corps to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of the permit.

21. **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.

#### **ACTIVITY SPECIFIC GENERAL CONDITIONS:**

The following general conditions apply to Activity categories specified at the end of each condition.

1. **Stream Setbacks.** Consistent with the requirements of the HCP/NCCP, stream setbacks shall be established. See the HCP/NCCP for detailed stream setback requirements, summarized in Table 2 of this RGP. Waters of the U.S. shall not be filled in order to meet the buffer requirements (Activity categories 1, 2, 3 and 5).

2. **Permanent Protections.** All preserved, created, restored or enhanced waters of the U.S. and adjacent buffers on the project site shall be preserved and permanently protected through a deed restriction, conservation easement, or other appropriate real estate or legal instrument, consistent with the requirements of the HCP/NCCP as determined by the Corps. A recorded copy of the real estate instrument must be provided to the Corps prior to proceeding with any activity otherwise authorized by this RGP (Activity categories 1, 2, 3 and 5).

3. **Fencing and Signage.** Preserved areas on the project site must be fenced and signed as sensitive areas to discourage human disturbance (Activity categories 1, 2 and 3).

4. **Utility Lines.** All utility lines shall be constructed in accordance with the following:

- a. The construction area for linear utility line projects shall be limited to a width of 75 feet, unless this limit is waived in writing by the Corps.
- b. For utility line projects, directional drilling, clear span or other techniques that do not contact the waterbody shall be used if the waterbody contains perennial flow.
- c. Material resulting from trench excavation may be temporarily sidecast (up to 60 days) into waters of the U.S., provided that the material is not placed in such a manner

that is dispersed by currents or other forces. The Corps may extend the period of temporary side casting for no more than a total of 180 days, where appropriate.

d. Utility lines must not adversely alter existing hydrology, including draining of wetlands. In wetland areas, utility line trenches shall be lined with clay, or other impermeable materials or structures (such as cut-off walls) to ensure that the trench through which the utility line is installed does not drain waters of the U.S. In addition, to prevent a french drain effect, gravel cannot be used as backfill material in the top 10 feet of the trench.

e. In wetland areas, the top 6"-12" of the trench shall be backfilled with topsoil excavated from the trench in the same stratification in which it was removed.

f. Excess material shall be removed to upland areas immediately upon completion of utility line construction in any segment of the project containing waters of the U.S. In no case shall the excess material be left in place until the entire utility line is completed.

g. The construction area, including unprotected slopes and streambanks, shall be stabilized (e.g., blanketed and seeded) immediately upon completion of the utility line construction in any segment of the project. In no case shall soil stabilization be delayed until the entire utility line is completed.

h. Temporarily disturbed construction areas must be restored to pre-construction conditions, including grading to original contours and revegetating (with native vegetation or other appropriate vegetation approved by the Corps) immediately upon completion of the project. A restoration plan, which includes a 1-foot contour topographic map, shall be submitted with notification (Activity categories 1, 2, 3, 5 and 6).

## **DEFINITIONS:**

Activity is any discharge of dredged or fill material into waters of the U.S. under Section 404 of CWA.

Activity categories are descriptions of HCP/NCCP Covered Activities listed in this RGP for purposes of assigning activity-specific conditions.

Activity-specific conditions are RGP conditions that would apply to specified Activity categories defined in this RGP.

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

Authorization is written verification by the Corps that an activity qualifies for, and may proceed under, the RGP provided all terms and conditions of the RGP are followed.

Compensatory mitigation is the restoration, establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. See also “in-lieu fee” definition.

Complete application is all required notification materials that must be submitted by the applicant to the Corps, as listed in general condition #18. If all materials are not submitted, the application is considered incomplete.

Conservancy is the East Contra Costa County Habitat Conservancy, a joint exercise of powers agency formed by the Cities of Brentwood, Clayton, Oakley and Pittsburg and Contra Costa County to perform the role of Implementing Entity for the HCP/NCCP.

Emergency refers to the guidance provided in 33 CFR 325.2(e)(4): “...a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. This RGP does not cover any activities in waters of the U.S. conducted in emergency situations.

General conditions are RGP conditions that would apply to all activities authorized.

HCP/NCCP is the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan dated December, 2006. The United States Fish and Wildlife Service (“USFWS”), under incidental take permit TE 160958-0, and the California Department of Fish and Game (“CDFG”), under incidental take permit 2835-2007-01-03, have approved the HCP/NCCP and have authorized the “HCP/NCCP Permittees” to take certain species of plants and wildlife listed under the ESA and/or covered under the state of California’s Natural Community Conservation Planning Act (NCCPA) while carrying out or approving certain development and other “covered activities.” Take is defined under Federal and state laws.

HCP/NCCP Covered Activity means an activity or project within one of the categories of activities set forth in Section 2.3 of the HCP/NCCP that has been approved by an HCP/NCCP Permittee for coverage under the HCP/NCCP.

HCP/NCCP Permittee is any of the following eight local agencies that have approved the HCP/NCCP and have been authorized by USFWS and CDFG to take certain species, as take is defined respectively under Federal and state law. These are the Cities of Brentwood, Clayton, Oakley and Pittsburg, Contra Costa County, the Contra Costa County Flood Control and Water Conservation District, the Conservancy, and the East Bay Regional Park District.

Historic properties are as defined in 36 CFR Part 800.16(l). It means any prehistoric or historic district, site, building, structure, or 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.

Impact is the direct and indirect loss of waters of the U.S., including wetlands, which results from the discharge of dredged and/or fill material into waters of the U.S. associated with implementation of a proposed activity. See also “loss of waters” definition.

Independent utility is a test to determine what constitutes a single and complete non-linear 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.

In-lieu fee refers to an in-lieu fee (ILF) program as defined in 33 CFR Part 332.2. An ILF program involves the restoration, establishment (creation), enhancement and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation (see above definition) requirements for Department of the Army (DA) permits. As required by 33 CFR Part 332.8(a), all ILF programs must be approved prior to being used to provide compensatory mitigation for projects authorized by the Corps.

Loss of waters of the U.S. refers to waters that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredge or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of an aquatic feature. The acreage of loss of waters of the U.S. is a threshold measurement of the impact to jurisdictional waters for determining if the project may qualify for the RGP; 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 acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity.

Mitigation bank is a site where aquatic resources (e.g., wetlands, streams) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits.

Notification is the submission of required information by the applicant to the Corps for a complete application.

Permittee is an entity that has received authorization to conduct activities in waters of the U.S. under this RGP.

Permittee-responsible mitigation refers to a type of compensatory mitigation as defined in 33 CFR Part 332.2, entailing aquatic resource restoration, establishment, enhancement, and/or

preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Plan Area is the area shown in Figure 1-1 of the HCP/NCCP and *Figures 1a* and *1b* of this RGP. It is the area analyzed by the HCP/NCCP and covered by the USFWS and CDFG incidental take permits issued pursuant to the HCP/NCCP. In the HCP, the Plan Area is also referred to as the “Inventory Area.” This RGP uses the term Plan Area.

Project site is the land, including waters of the U.S. and uplands, utilized for a single and complete project. The project site includes the land cleared, graded, and/or filled to construct the single and complete<sup>2</sup> project, including any buildings, utilities, stormwater management facilities, roads, yards, and other attendant features. Temporary construction areas (e.g., access and staging) are included. The project site also includes any other land and attendant features that are used in conjunction with the single and complete project, such as open space, roads and utilities.

Single and complete linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations, as defined in the Final Rule for Issuance of the 2017 Nationwide Permits (Federal Register Vol. 82[4], January 6, 2017).

Single and complete non-linear project is the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”).

Special conditions are conditions added by the Corps for projects on a case-by case basis to ensure an activity has minimal impacts on aquatic resources and complies with the RGP. The Corps’ authority to require special conditions is provided in 33 CFR Part 325.4(a).

Stream order refers to the numeric identification of the reaches within a stream network. This document follows the stream ordering system of Strahler (1964)<sup>3</sup>. In this system, a first order stream is a stream with an identifiable bed and bank, without any tributary streams. A second order stream is formed by the confluence of two first order streams. A third order stream is formed by the confluence of two second order streams, and so on. Addition of a lesser order stream does not change the stream order of the trunk stream.

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

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<sup>2</sup> Linear or non-linear (see definitions below).

<sup>3</sup> Strahler, A.N. 1964. Quantitative Geomorphology of drainage basins and channel networks; section 4-2, in *Handbook of Applied Hydrology*, ed. Ven te Chow, McGraw-Hill, New York.

Terms and conditions are the parameters, including thresholds, limitations and requirements, for completing an activity under the RGP. These parameters are described in each Activity category and in the general conditions and Activity-specific conditions. Special conditions may also be added by the Corps on individual authorizations to ensure an activity has minimal individual and cumulative impacts.

Urban Limit Line is the boundary for urban growth that has been set for Contra Costa County in the Contra Costa County General Plan, as amended from time to time.

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

Waters of the U.S. are as defined in 33 CFR Part 328.3(a).

Definitions found at 33 CFR Parts 320-323, 325-329, and 331-332 and 40 CFR Part 230 are also applicable to this RGP and are incorporated by reference herein.

#### **FURTHER INFORMATION:**

1. Congressional Authorities: This RGP has been issued under Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. District Engineers have the authority to determine if an activity complies with the terms and conditions of this RGP.
3. This RGP does not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.
4. This RGP does not grant any property rights or exclusive privileges.
5. This RGP does not authorize any injury to the property or rights of others.
6. This RGP does not authorize interference with any existing or proposed Federal project.
7. Limits of Federal Liability. In issuing this RGP, 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.

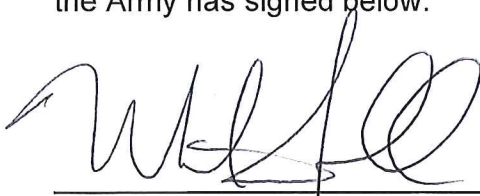
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
8. Reevaluation of Permit Decision. This office may reevaluate its decision on this RGP at any time the circumstances warrant. 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.
9. Activities not meeting the terms and conditions of this RGP may be authorized through another type of permit, such as a Nationwide Permit, Letter of Permission, or Standard Permit. 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 any verification under this RGP to ensure the activity has minimal impact.

**CONTACTS AND ADDITIONAL INFORMATION:** For additional information about RGP 1, please contact the U.S. Army Corps of Engineers, Sacramento District at the address below, phone number (916) 557-5250.

**ATTACHMENTS:**

1. *Figure 1a:* General Location of HCP/NCCP Plan Area and Area Covered by RGP
2. *Figure 1b:* HCP/NCCP Plan Area and Area Covered by RGP
3. *Table 1:* Required Ratios and Estimated Preservation, Restoration, and Creation Requirements for Aquatic Land-Cover Types Under Initial and Maximum Urban Development Area
4. *Table 2:* Stream Setback Minimum Requirements for Streams
5. Programmatic Biological Opinion for a Regional General Permit for the East Contra Costa Habitat Conservation Plan/Natural Community Conservation Plan, Contra Costa County, California (USFWS #81420-2011-F-0655, dated April 30, 2012)

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



Michael S. Jewell  
Chief, Regulatory Division

*6 June 2017*

Date