

DEPARTMENT OF THE ARMY PERMIT

**PERMITTEE:**

U.S. Fish and Wildlife Service, Don Edwards San Francisco Bay Wildlife Refuge, Attn: Mr. Mendel Stewart  
California Department of Fish and Game, Attn: Mr. John Krause

**PERMIT NO.:** 2008-00103S

**ISSUING OFFICE:** San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

**PROJECT DESCRIPTION:**

**Project Description:**

This permit authorizes activities associated with on-going maintenance required for implementation of the South Bay Salt Pond (SBSP) restoration project. These activities will be performed periodically for all SBSP Project facilities, including reconfigured and managed ponds, recreational/public access facilities, and tidal habitat restorations. Activities include ongoing maintenance of existing levees and infrastructure including: dredge lock access and maintenance; placement of material to repair and protect levees; maintenance and installation of docks, existing marine crossings, intake channels, tide gates, brine ditches, pumps and water control structures and access facilities. Maintenance may also require installation of new pipes, culverts, siphons, intake structures, electrical distribution lines, and pumping facilities. Maintenance also requires the temporary storage of dredged material stockpiled after dredge lock and salt pond access. Work will be completed in accordance with the project description, titled "*USACE File #2008-00103S, USFWS/CDFG South Bay Salt Pond Operations and Maintenance, January 23, 2009*", provided as enclosure 1.

**Repair, replacement, and servicing of existing facilities:**

**1. Repair, replacement and servicing of existing and on-going facilities.**

- a) Repair and replacement of existing bay intake/outlet structures and related facilities, such as pumps, gates, pipelines, siphons, open channels and culverts, and removal of silts and algae from these structures. Excavated material shall be placed in an identified upland area unless specified otherwise in the advanced notification (e.g. tops of levees above the plane of high tide).
- b) Excavating, clearing, and retrenching of existing intake/outlet structures and conveying ditches so long as the existing configuration is not altered substantially. Excavated material shall be disposed onto levee tops above the plane of the high tide, or hauled off-site to a non-jurisdictional area.
- c) Repair and replacement of existing bridges, bridge foundations and abutments within the network of salt pond levees.
- d) Repair and replacement of other items such as existing fences, tide gates, siphons in non-tidal areas, power lines, boat launches etc, provided such repair and maintenance does not deviate from the as built plans of the original facility.
- e) Repair of ongoing and new authorized reaches of riprap. The authorized riprap areas would be designed to have approximately 3:1 slope. If additional work would exceed the existing reach by 10 linear feet or more, then the proposed design would be submitted for approval in the "Advanced Notification of Proposed Work".

**Ongoing and new work:**

Activities qualifying as ongoing and new work may require site specific review and approval by the Corps of Engineers in consultation with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS), the U.S. Environmental Protection Agency (US EPA), the California Department of Fish and Game (CDFG), and the San Francisco

Bay Conservation and Development Commission (BCDC), and the San Francisco Bay Regional Water Quality Control Board (RWQCB), (all collectively referred to as "the Agencies"), pursuant to the notification procedure described in special condition 3, and in accordance with the Best Management Practices (BMPs) referenced in special condition 2 below.

a) Placement of dredged and fill material on the pond side of salt pond levees below the plane of high water for the purpose of raising and fortifying the levees to prevent degradation. The material, either dredged mud from the salt pond or imported fill, will be placed along the inside and the top of the salt pond levee in accordance with BMPs. Alternatively, where possible, slough mud from outside the ponds may be used if the dredge has sufficient reach.

b) Dredging of existing and new borrow ditches within the salt ponds for the purpose of placing the dredged material on existing levees.

c) Dredging in salt ponds to allow a dredge to cross a pond. This includes the placement of dredged material within the pond. Placement of dredged material within the pond will occur on the pond bottom along the side of the dredge channel.

d) Dredging and placement of dredged material at 24 existing dredge locks within the SBSP project footprint, and at any newly constructed authorized dredge locks, to allow the dredge to access the salt ponds. Advanced notification for these activities would include: specific quantities of material to be dredged and placed, and drawings indicating pre-staked, designated areas for stockpiling, side-casting and borrowing material. Breached levee material, stockpiled from the last time the lock was accessed atop the main levee, will be used to dam the breach following entry. Upon dredge exit, breaching and plugging levees in a similar fashion to that described above. The salt marsh muds that were excavated and side-cast in the access cut would be retrieved and placed back into the access cut and channel, closing behind the dredge.

e) Dredging within shallow sloughs to provide up to four feet of clearance for access by the dredge to salt ponds. Dredge material that cannot be placed on salt pond levees may be placed on bar mud flats or side-cast following approval in accordance with the notification procedure. Some slough dredging may also be performed near dredge locks for the purpose of obtaining additional mud to bring the access cut fills to the desired elevation following the dredge access.

f) Installation of new intake/outlet structures, new pumps, siphons, culverts, power transmission lines, channels/ditches, crossing of channels and streams, in conjunction with new work, or relocation of existing structures.

g) Construction of new pumping donuts, internal coffer dams, and internal salt pond levees.

h) Placement of new riprap along outboard and inboard levees as needed to fortify the slopes and prevent erosion, so long as the permittee has adequately demonstrated that the proposed new riprap is placed below the high tide line and/or high pond level at a slope of about 3:1 where needed, taking care to minimize the number of voids between the rubble that might be utilized by red fox that are known to predate on birds. Riprap placed on top of non-eroding salt marsh is not authorized.

i) Repair and placement of siphons that cross salt marsh, sloughs, and channels that would require extensive trenching and side-casting of mud.

j) Dredging and placement of bay muds into eroded areas along selected outboard levees with the purpose of encouraging the expansion of established salt marsh vegetation to diffuse wave energy and prevent levee erosion. The quantities of dredging material to be moved would depend on site specific conditions and will be included in the notification procedures. The desired height of the constructed mounds will approximate the high-tide elevation. The purpose of this action is to maintain the integrity of the levee system without having to use artificial means such as rip-rap that can disrupt habitat continuity. The placement of Bay muds in this manner can create additional habitat, further satisfying the purpose and need for the SBSP Restoration Project.

k) General maintenance activities as described above, to maintain the Phase 1 elements of the SBSP restoration project once implementation is complete (the construction of the Phase 1 project elements is covered under a separate authorization). This also includes repair of water control structures and placement of materials on internal levees and nesting islands as needed to maintain ecological functions and values.

**PROJECT LOCATION:** Activities will occur in three former salt pond complexes: Alviso (8,000 acres), Ravenswood (1600 acres), and Eden Landing (5,500 acres). The Alviso pond complexes consist of 25 ponds on the shores of the South Bay in Fremont, San Jose, Sunnyvale and Mountain View, in Santa Clara and Alameda Counties. The Ravenswood pond complex consists of 7 ponds on the bayside of the Peninsula, along both sides of Highway 84 west of the Dumbarton Bridge, and on the bayside of the City of Menlo Park in San Mateo County. The Eden Landing pond complex consists of 23 ponds on the shores of the East Bay, west of Hayward and Union City in Alameda County, California. The project area is depicted in enclosure 1 titled *Project Vicinity Map* Dated October 2008.

**PERMIT CONDITIONS:**

**GENERAL CONDITIONS:**

1. The time limit for completing the work authorized ends on **February 1, 2019**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you 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.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (see Enclosure 2).
6. You must allow representatives from this office 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 your permit.
7. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, 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, you 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.

**SPECIAL CONDITIONS:**

1. This Corps permit does not authorize you to take a federally listed species. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit or a Biological Opinion (BO) under ESA Section 7 with "incidental take" provisions with which you must comply). The U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) BOs dated (January 15, 2009 and August 12, 2008; enclosures 3 & 4 respectively) contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BOs. Your authorization under this Corps permit is conditional upon your compliance with

all of the mandatory terms and conditions associated with incidental take authorized by the attached BOs, whose terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BOs, where a take of the listed species occurs, would constitute an unauthorized take and it would also constitute non-compliance with this Corps permit. The FWS and NMFS are the appropriate authorities to determine compliance with the terms and conditions of their BOs and with the ESA.

2. The permittee shall perform all of the activities in accordance with the Best Management Practices (BMPs) described in enclosure 5. Any specific exceptions to these practices shall be described case by case in the Final Notification of the annual work plan, described in special condition 3 below, and receive Corps approval.
3. The permittee shall circulate two reports annually. The first report, the **Advanced Notification of Proposed Work**, will provide descriptions of all work proposed to occur during the next annual work period occurring between 1 June through 31 May. The second report, the **Final Notification of Completed Work**, shall describe the work that was accomplished during the previous annual work period, monitoring results from the previous year (e.g. invasive weed establishment in dredge locks), and recommended measures to remediate any observed adverse conditions. The permittee shall be responsible for distributing the notifications to the Corps, BCDC, USFWS, CDFG, RWQCB, USEPA, and NMFS ("the Agencies"), and other interested parties retained on a list specific to this permit (referenced here as "the Public").

The Advanced Notification of Proposed Work will be provided annually by 15 March. Comments made by the reviewing Agencies will be provided to the Corps by 15 April. The Corps will consolidate these comments along with their own and make a good faith effort to send them to the permittee by 30 April. If required, the permittee shall respond to concerns, modify the proposed work plan, and submit a final Advanced Notification of Proposed Work. The final Advanced Notification of Proposed Work shall be provided to the Corps by 15 May. The final Advanced Notification of Proposed Work will be reviewed for conformance with the terms and conditions of this permit. Activities beyond the scope of the permit, or not specifically authorized here, will require specific authorization through a separate permit application. **No work may commence without activity-specific written approval from the Corps, which will be provided by 1 June.** The Final Notification of Completed Work will be provided 1 August. Comments made by the reviewing Agencies will be provided to the Corps no later than 30 days after the Agencies receive the Final Notification of Completed Work.

The Advanced Notification of Proposed Work shall include the following:

- a. A general list and description of both new and ongoing work proposed for the upcoming annual work period. The submitted materials will include site map indicating the locks to be accessed, channels, sloughs and ponds to be dredged, levees to be topped, any new facilities to be installed, etc. and approximate time sequence in which work will be accomplished. In addition, the plan should include estimates of the total volume and area of fill, source of fill, and method of placement required for the upcoming annual work. If off-site disposal of dredge is required the proposed disposal location should be identified. The Advanced Notification should specifically identify the purpose of performing each activity proposed in the Advanced Notification. A conclusion paragraph will summarize total estimates of linear feet of levee to be maintained, square footage of impacts associated with structure maintenance, and square footage of impacts associated with dredge lock access. The reported total estimates should reflect anticipated total impacts that will occur within the next year.
- b. If Agencies, after review of the Advanced Notifications of Proposed Work, determine that unusual or unanticipated adverse affects to the aquatic environment has or may occur then a summary of compensatory mitigation will be provided in the final Advanced Notifications of Proposed Work.

The Final Notification of Completed Work shall include the following:

- a. A detailed description of all activities completed during the previous year. The report should also summarize the results of any survey data that were obtained during the previous year. This report shall include a monitoring assessment designed to determine whether operations and maintenance activities

are having a negative impact on aquatic and wetland habitat (e.g. invasive weed species monitoring efforts).

- b. A conclusion paragraph will summarize the total linear feet of levee maintenance, square footage of impacts associated with structure maintenance, and square footage of impacts associated with dredge lock access. The reported total should reflect the total impacts that occurred in the previous year.
4. If approval of the proposed work plan is delayed by objections, the Corps will convene a meeting to try to resolve the objections within 30 days. The District Engineer shall have the final approval authority for the proposed plan.
5. At the culmination of the fifth year of performing activities authorized in this permit, the permittee shall submit a report to the Corps that summarizes the work completed in the first five years, a monitoring report on any unforeseen adverse affects to the aquatic environment, and a appraisal of how well the Best Management Practices are working with respect to consistent, effective application, and minimizing project impacts. The Corps will review this report in consultation with the Agencies and may require modifications to the permit if a more effective practice or condition to avoid or minimize impacts to habitat or sensitive species is identified.
6. The permittee may construct new dredge locks, if it is demonstrated that the new dredge lock will result in less damage to the aquatic environment and the lock is approved after submittal of the Advanced Notification of Proposed Work. Any new locks will be situated adjacent to salt pond levees at a location proposed by the permittee and approved by the Corps.
  - a. For approval, the permittee shall submit scale drawings of the proposed lock along with vicinity maps and an explanation as to why the proposed location is less environmentally damaging. The construction of the new dredge lock shall be in conjunction with the abandonment of a corresponding currently serviceable lock, which will be entered and exited one more cycle in order to construct the new lock.
7. In the event that an unforeseen emergency requires work of the type authorized in this permit to be performed without going through the normal notification procedures, the permittee shall notify the Corps and the Agencies, as soon as is practicable, of the situation and the proposed activities using a format similar to that described under special condition #3. The Corps will promptly acknowledge receipt of the permittee's request verbally after it is received, and issue a written response to the permittee's request after consultation with the Agencies. The permittee assumes the risk of permit violation in undertaking work prior to approval. Detailed descriptions and results of activities performed under this abbreviated review shall be included in the Final Notification of Completed Work. Work in excess of what could reasonably be expected to address the urgent situation may be considered a violation of the permit. Agency staff shall be granted immediate access to the affected areas.
8. All work shall be performed in accordance with the intentions of the South Bay Salt Pond Restoration program as presented in the Final Environmental Impact Statement / Report dated December 2007. Any maintenance work implemented for another purpose, or for another party, is not authorized by this permit.
9. A complete "*Invasive Weed Control Management Plan*" shall be provided to the Corps for review and approval within one year of the issuance of this permit. This plan shall include basic inventory, mapping, and control measures to be implemented based on the best available scientific and technical guidance for control of invasive species to mitigate the continued spread of invasive species (i.e. *Dittrichia graveolens*, *Spartina alterniflora* x *foliosa*, *Lepidium latifolium*, and *Limonium ramosissimum* var. *provinciale*). The plan should be scientifically peer-reviewed by the South Bay Salt Pond Restoration Scientific Team.

10. To remain in compliance with the ESA, all managed ponds within the project area will be operated as outlined in "South Bay Salt Pond Restoration Project Operations and Maintenance Activities for the U.S. Fish and Wildlife Service and California Department of Fish and Game Biological Assessment" Table 2 - "SBSP Water Intake Structures at Managed Ponds - Operational Measures to Protect Juvenile Salmon and Steelhead" as directed in the NMFS BO dated (January 14, 2009 enclosure 3). This table has been provided for reference as enclosure 6. The NMFS is the appropriate authority to determine compliance with the terms and conditions of their BOs and with the ESA.
11. You shall implement the Essential Fish Habitat recommendations as outlined in enclosure 2 to the NMFS letter dated January 14, 2009.

**FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - ( x ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
  - ( x ) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
  - ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
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 project.
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.

