

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. Charles Armor

PERMIT NO.: 27703S

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:

Phase 1 of the South Bay Salt Pond (SBSP) project will restore 2,360 acres of tidal wetland and 709 acres of managed pond. The project will require the placement of approximately 787,943 cubic yards of fill into former salt ponds. The project excavation footprint will total approximately 180 acres (with additional temporary impacts of 289 acres). In total fill and excavation work will result in redistribution of approximately 1,675,542 cubic yards affecting 534.5 acres of Waters of the U.S. Additionally, redistribution of approximately 113,422 cubic yards of fill will result in affects to 9.6 acres of wetlands. Work will be completed in accordance with the project description, titled "*South Bay Salt Pond Restoration FWS/CDFG Phase I Project Description, November 19, 2008*", provided as enclosure 1 and the project plans and drawings titled "*USACE File #27703S, South Bay Salt Pond Restoration FWS/CDFG, November 19, 2008, Pages 1-13*" provided as enclosure 2. The monitoring plan titled "*South Bay Salt Pond Restoration Project Phase I Monitoring Plan*" dated 14 October 2008 will be fully implemented in order to monitor for and to prevent inadvertent adverse affects to the aquatic resource (enclosure 3).

PROJECT LOCATION: SBSP phase 1 activities will involve discharge of fill within former salt ponds located at the Ravenswood (SF2), Alviso (A5, A6, A7, A8, A16, & A17) and Eden Landing Ponds (E8, E9, E12, and E13). The approximately 4,155 acres of former salt ponds are located in San Mateo, Santa Clara, and Alameda Counties.

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on February 15, 2014. 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. A conditioned water quality certification has been issued for your project, (Order Number R2-2008-0078) on August 8, 2008. 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 as enclosure 4.

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 (August 12, 2008 and January 15, 2009; enclosures 5 & 6 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. You shall implement the Essential Fish Habitat recommendations as outlined in enclosure 2 to the NMFS letter dated January 14, 2009.
3. This permit does not authorize the off-site disposal of fill material. All excavated material will be used inside the ponds in various ways (e.g., borrow ditch blocks, raising the marsh plain, etc.) to expedite restoration. If for unforeseen reasons, off-site disposal is required, the project proponent shall contact the Corps to determine an appropriate disposal location and to acquire proper authorization.
4. The applicants shall employ all necessary Best Management Practices to reduce impacts to on-site and neighboring aquatic resources. The applicant shall employ erosion control measures and limit disturbance to sediments and vegetation to the greatest extent possible.

5. The applicants shall implement the “*South Bay Salt Pond Restoration Project Phase I Monitoring Plan*” dated 14 October 2008 (as provided in Enclosure 3). Annual reports shall be posted electronically via the SBSBSP Restoration Project’s official website. The Corps shall be notified in writing once the annual report is posted. Monitoring shall continue on an annual basis for fifteen years. At fifteen years the project proponent and the Corps shall re-evaluate the monitoring plan and determine if further monitoring of specific project elements is required.
6. If monitoring reveals the ecosystem is evolving along an undesirable trajectory as outlined in the “Management Triggers” column of Table 7 in the “*South Bay Salt Pond Restoration Project Phase I Monitoring Plan*” dated 14 October 2008 (as provided in Enclosure 7) then the applicant shall submit in writing any needed remedial action or adaptive management that would be necessary for project success. In addition, the applicant shall inform and coordinate with all other required federal and state agencies including agencies that have issued permits or biological opinions for this project.
7. Best Management Practices for control of non-native *Spartina* shall be fully implemented as outlined in the document titled “*Best Practices for Tidal Marsh Restoration and Enhancement in the San Francisco Estuary*” dated October 25, 2007, as provided in enclosure 8.
8. Prior to construction of the public access element at the Oliver Salt Works (elevated boardwalk) located in Pond E12 the applicant shall demonstrate by written submittal to USACE that the Lead Agency (USFWS for the purposes of applying the National Historic Preservation Act) has satisfied the requirements of Section 106 of the NHPA including correspondence with the State Historic Preservation Officer (SHPO).
9. Prior to implementation of future phases of the SBSBSP restoration project, the NHPA Lead Agency shall provide to USACE the cultural landscape analysis (understood to be in preparation by the USFWS), and the results of SHPO consultation to reach consensus on the effects of the project due to change from an industrial landscape to a mosaic of tidal wetlands and other habitats and treatment measures to be implemented.
10. The Lead Agency in cooperation with the USACE shall develop a contact list of Native American tribal communities and/or individual for notification of the project plans prior to implementation. The list shall rely on information from the California Native American Heritage Commission, previous communications, and professional experience. Any comments provided by the tribes must be specifically addressed by the Lead Agency in writing. A copy of the notifications, received input and response to comments shall be provided to USACE and the NHPA Lead Agency.
11. Should previously unknown historic or archeological remains be discovered while accomplishing the activities authorized by this permit, the applicant shall immediately notify USACE (attn: Paula Gill, (415) 503-6776 and Richard Stradford, (415) 503-6845). If notification of USACE is unsuccessful then the applicant shall contact the USFWS (attn: Nick Valentine, (503) 625-4377 and Mendel Stewart (510) 792-0222). Either agency shall implement the procedures outlined in the attached “*Standard Operating Procedures: Inadvertent Archaeological Discoveries*” provided as enclosure 9. The first agency contacted shall contact the second agency as soon as possible.
12. According to the “*Programmatic Agreement Among the U.S. Fish and Wildlife Service Region I, The Advisory Council on Historic Preservation, and the California State Historic Preservation Officer Regarding the Administration of Routine Undertakings in the State of California*” dated 19 February 1997, the applicants completes Section 106 compliance through submittal of a memorandum to the USFWS project leader which details the results of an Appendix A or Appendix B determination for the undertaking. Consultation and reporting to the SHPO occurs subsequently and in conjunction with all USFWS undertakings for the year, on an annual basis. A copy of the report provided to the SHPO shall be provided

to USACE, and a copy offered to any tribal representative who responds to the USFWS's above notifications.

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. Section 403) and Section 404 of the Clean Water Act (33 U.S.C. Section 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 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.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

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

(TRANSFeree)

(DATE)