



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

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Mr. Christopher Barr, U.S. Fish and Wildlife Service Don Edwards San Francisco Bay National Wildlife Refuge (USFWS Refuge)

PERMIT NO.: 2003-277030S

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: The project will implement the South Bay Salt Ponds Restoration, Phase 2 Project, a multi-component restoration and enhancement project that will also include improved public access, flood risk management and improved utility infrastructure activities within four former South Bay salt pond clusters. The project applicant will breach levees, lower levees, build habitat transition zones and habitat islands, excavate channels, place ditch blocks and sidecast fill material, maintain and improve existing utilities infrastructure, install and maintain structures (water control and bridges), and raise and improve levees. The project will restore 929 acres of tidal wetlands and enhance 321 acres of tidal wetlands and 900 acres of other waters (managed ponds). Work activities will require placing up 607,360 cubic yards of discharge within 105.31 acres of waters of the U.S. including 15.74 acres of wetlands and 89.75 acres of other waters of the U.S., including 104 acres of section 10 waters of the U.S. The project would dredge a total of 45,160 cubic yards of material from within 5.31 acres of wetland waters of the U.S. and from within 7.06 acres of other waters of the U.S., including 9.4 acres of section 10 waters of the U.S.

All work shall be completed in accordance with the plans and drawings titled "USACE File #SPN-2003-277030S South Bay Salt Pond Restoration Phase 2 Project Design Plans, Alameda, San Mateo & Santa Clara Counties, 29 August, 2018, Figure 1 to 108," provided as enclosure 1.

PROJECT LOCATION: Project activities will occur in former salt ponds located at Alviso (ponds A19, A20, A21, A8, A8S, A1, A2W), and Ravenswood (R3, R4, R5, S5). The approximately 9,600 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 September 7, 2023. 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. For your convenience, a copy of the water quality certification or waiver is attached. 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.
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. To remain exempt from the prohibitions of Section 9 of the Endangered Species Act, the non-discretionary Terms and Conditions for incidental take of federally-listed Species shall be fully implemented as stipulated in the Biological Opinions titled "Formal Consultation on the South Bay Salt Ponds Restoration Project, Phase 2, Alameda, Santa Clara and San Mateo Counties, California," (pages 81-83), dated November 21, 2017 (enclosure 2) and "Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the South Bay Salt Ponds Restoration Project Phase 2," (pages 84-88), dated May 24, 2018 (enclosure 3). Project authorization under this permit is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the authorization for your project. The USFWS and NMFS are, however, the authoritative federal agencies for determining compliance with the incidental take statement and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.
2. As the lead federal agency, the USFWS Refuge consulted with NMFS pursuant to the Magnuson-Stevens Fishery Conservation and Management Act to address project related impacts to Essential Fish Habitat (EFH). NMFS provided EFH conservation recommendations stipulated in the Biological Opinion titled "Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the South Bay Salt Ponds Restoration Project Phase 2," (page 90). You shall implement these EFH recommendations as stipulated.
3. As the lead federal agency, the USFWS Refuge initiated consultation with the SHPO to address project related impacts to the Alviso and Eden Landing Ecological Reserve pond complexes listed in the National Register of Historic Places. A Memorandum of Agreement (MOA) was signed on June 28, 2012, titled "Memorandum of Agreement between the U.S. Fish and Wildlife Service and the California State Historic Preservation Officer Regarding the South Bay Salt Pond Restoration Project Including Restoration of Former Industrial Salt Ponds to Tidal Salt Marsh and Other Wetland Habitats, Including the Former Salt Works Sites within the Alviso Unit on the Don Edwards San Francisco Bay National Wildlife Refuge and California Department of Fish and Game's,

Eden Landing Ecological Reserve; Alameda and Santa Clara, Counties, California.” Project authorization under this permit is conditional upon your compliance with the mandatory stipulations of the MOA cited in enclosure 4.

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.
 - 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.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to 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 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.


6. Extensions: General Condition 1 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.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


(PERMITTEE)

9/7/18
(DATE)

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


Travis J. Rayfield
Lieutenant Colonel, US Army
District Engineer

7 September 2018
(DATE)

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)