

INFORMATION HANDOUT

For Contract No. 02-3C0714

At 02-Las-395-61.5/R76.6

**Identified by
Project ID 0212000037**

PERMITS

United States Army Corps of Engineers

Department of the Army U.S Engineer District, Sacramento Corps of Engineers.
(SPK 2010-01267)

WATER QUALITY

California Regional Water Quality Control Board

General 401 Water Quality Certification

WDID NO: 6A181107003

AGREEMENTS

California Department of Fish and Wildlife-- Lake or Streambed Alteration Agreement

Notification No. 1600-2011-0175-R1

PLAC CONDITION RESPONSIBILITY (PCR) SUMMARY

General:

This PCR Summary clarifies various PLAC requirements. Perform all work described in the PLACs on behalf of the Department unless otherwise stated below in Table 2. If a discrepancy exists between the PCR Summary and the PLAC, the PCR Summary governs.

Definitions:

Agency: A board, agency, or other entity that issues a PLAC

Activity: A task, event or other project element

PLAC Condition: a work activity and/or submittal required by a PLAC

Table 1 - Clarification of PLAC Requirements		
PLAC Name	Section of the PLAC	PLAC Requirement
All PLACs	Applicable PLAC sections	<p>Submittals: Submit to the Engineer when PLAC conditions require: 1. Communications. The Engineer will contact the agencies. 2. Records to be maintained, within 5 working days after the activity. 3. Submittals 5 days before the agencies require them. The Engineer will review and submit to the agencies.</p>
California Regional Water Quality Control Board General 401 Water Quality Certification for Johnstonville Pavement Focused Rehabilitation Project (PFR), Lassen County, WDID 6A181107003	Standard Conditions	<p>Condition 5 Project description in this condition is included in the work required for this contract.</p>
Department of the Army - U.S. Army Engineer District, Sacramento Corps of Engineers Regulatory Division (SPK-2010-01267)	Special Conditions	<p>Condition 4 Submit a dewatering plan for review and approval.</p>
	Special Conditions	<p>Condition 5 See section 14-1.02A of the special provisions.</p>
	2012 Nationwide Permit 23 summary sheets	<p>All conditions Work described in these conditions is included in the plans and special provisions.</p>

PLAC CONDITION RESPONSIBILITY (PCR) SUMMARY

	Final Sacramento District Nationwide Permit Regional Conditions for California, excluding the Lake Tahoe Basin	Conditions 1 through 13 and Conditions 15 through 26 Work described in these conditions is included in the plans and special provisions.
	Final Sacramento District Nationwide Permit Regional Conditions for California, excluding the Lake Tahoe Basin	Condition 14 Both the Contractor and the Department will allow Army Corps personnel to enter the project site.
California Department of Fish and Game Lake or Streambed Alteration Agreement Notification No: 1600-2011-0175-R1	Measures to Protect Fish and Wildlife Resources- Administrative Measures	Measure 1.4 Both the Contractor and the Department will allow DFG personnel to enter the project site.
	Measures to Protect Fish and Wildlife Resources- Administrative Measures	Measure 1.7 Documents referenced in this condition are incorporated into the work required for the contract.
	Measures to Protect Fish and Wildlife Resources-Habitat and Species Protection	Measure 2.6 Mitigation measures include avoidance and minimization measures. All requirements in Exhibit B are incorporated into the contract plans and special provisions.
	Measures to Protect Fish and Wildlife Resources-Habitat and Species Protection	Measures 2.7 and 2.8 The Department will provide the necessary pre-construction bird surveys.
	Measures to Protect Fish and Wildlife Resources- Avoidance and Minimization Measures-Culvert and Instream Structures	Measures 2.9 through 2.16 These conditions are incorporated into the plans and special provisions.
	Measures to Protect Fish and Wildlife Resources- Avoidance and Minimization Measures-Erosion and Sediment Control	Measures 2.25 Quantity is included in the contract items.

PLAC CONDITION RESPONSIBILITY (PCR) SUMMARY

	<p align="center">Measures to Protect Fish and Wildlife Resources- Avoidance and Minimization Measures-Erosion and Sediment Control</p>	<p align="center">Measure 2.29 The dewatering plan must include language that demonstrates this measure is satisfactorily incorporated.</p>
--	--	--

Table 2 - Work to be Performed by the Department		
PLAC Name	Section of the PLAC	PLAC Requirement
<p align="center">California Regional Water Quality Control Board General 401 Water Quality Certification for Johnstonville Pavement Focused Rehabilitation Project (PFR), Lassen County, WDID 6A181107003</p>	<p align="center">Standard Conditions</p>	<p align="center">Conditions 1 through 3 and Condition 8</p>
	<p align="center">Additional Conditions</p>	<p align="center">Condition 1</p>
<p align="center">Department of the Army U.S. Engineer District, Sacramento Corps of Engineers Regulatory Division (SPK-2010-01267)</p>	<p align="center">Special Conditions</p>	<p align="center">Conditions 1 through 3 and Condition 8</p>
	<p align="center">Final Sacramento District Nationwide Permit Regional Conditions for California, excluding the Lake Tahoe Basin</p>	<p align="center">Condition 14 Both the Contractor and the Department will allow Army Corps personnel to enter the project site.</p>
<p align="center">California Department of Fish and Game Lake or Streambed Alteration Agreement Notification No: 1600-2011-0175-R1</p>	<p align="center">Measures to Protect Fish and Wildlife Resources- Administrative Measures</p>	<p align="center">Measure 1.4 Both the Contractor and the Department will allow DFG personnel to enter the project site.</p>
	<p align="center">Measures to Protect Fish and Wildlife Resources- Habitat and Species Protection</p>	<p align="center">Measure 2.4</p>
	<p align="center">Measures to Protect Fish and Wildlife Resources- Habitat and Species Protection</p>	<p align="center">Measures 2.7 and 2.8 The Department will provide the necessary pre-construction bird surveys.</p>

PLAC

California Regional Water Quality Control Board
General 401 Water Quality Certification for
Johnstonville Pavement Focused Rehabilitation
Project (PFR), Lassen County
WDID 6A181107003



California Regional Water Quality Control Board
Lahontan Region



Matthew Rodriguez
Secretary for
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
 (530) 542-5400 • Fax (530) 544-2271
 www.waterboards.ca.gov/lahontan

Edmund G. Brown Jr.
Governor

SEP 22 2011

Amber Kelley
 Caltrans District 2
 P.O. Box 496073
 Redding, CA 96049-6073

**ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY
 CERTIFICATION FOR JOHNSTONVILLE PAVEMENT FOCUSED REHABILITATION
 (PFR) PROJECT, LASSEN COUNTY, WDID 6A181107003**

The California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) has received a complete Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) application and application filing fee from the California Department of Transportation (Applicant) for the Johnstonville PFR (Project) in Lassen County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A181107003. Please use this reference number in all future correspondence regarding this Project.

Any person aggrieved by this action of the Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

PROJECT DESCRIPTION

Table of Project Information:

WDID Number	6A181107003
Applicant	Eric Orr Caltrans District 2 P.O. Box 496073 Redding, CA 96049-6073

Table of Project Information continued:

Contact	Amber Kelley – (530) 225-3510
Project Name	Johnstonville PFR
Project Purpose and Description	The purpose of the project is to rehabilitate deteriorating pavement along a 20-mile stretch of Highway 395. Paved shoulders ranging from four to eight feet wide will be added along a 3.4-mile segment of the project to address safety issues. The paved shoulders and associated culverts will encroach into wetlands and other waters of the U.S.
Location (closest City & County)	Johnstonville, Lassen County
Location Latitude/Longitude	Latitude: 40.3797; Longitude: -120.5572
Hydrologic Unit(s)	Susan River Hydrologic Area, 637.20
Project Area	68 acres
Receiving Water(s) Name	Unnamed minor surface waters and wetlands
Water Body Type(s)	Creeks and wetlands
Area and Linear Feet of Water(s) of the U.S. (WOUS) within the project area	0.92 acres (Channels and Wetlands) 1,220 linear feet (Channels)
Area of Permanent Impacts to WOUS	Creek Channels - 0.01 acres Wetlands – 0.33 acres
Linear Feet of Permanent Impact to WOUS	Creek Channels - 80 linear feet
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit No. 23, pursuant to Clean Water Act section 404.
Non-Compensatory Mitigation	The Project will be implemented when ephemeral flows have ceased. Sediment and erosion control Best Management Practices (BMPs), as well as other standard BMPs required under the Applicant's storm water program, will be used throughout the construction period to control erosion.
Compensatory Mitigation	Applicant shall expend mitigation credits from the Honey Lake Wetland Mitigation Bank (HLWMB) at the mitigation to disturbed lands area ratio of 3 to 1. The total mitigation credits required from the HLWMB for the project are 0.99 acres based on the 0.33 acre impact from the project
Applicable Fees	\$2,060.00 (\$640.00 application fee + \$512.00 for 80 linear feet of permanent impacts to creek channels at \$6.40 per foot + \$908.00 for 0.33 acres of permanent impacts to wetlands at \$2,753 per acre).
Fees Received	\$2,060.00

CEQA COMPLIANCE

The Lahontan Water Board has determined that the project qualifies as a Class 1 Categorical Exemption (Existing Facilities) under California Environmental Quality Act Guidelines Section 15301. A Notice of Exemption will be filed with the California State Clearinghouse.

SECTION 401 WATER QUALITY CERTIFICATION

Authority

Section 401 of the CWA (33 U.S.C., paragraph 1341) requires that any applicant for a CWA Section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to waters of the United States, must provide to the permitting agency a certification that the discharge will be in compliance with applicable water quality standards of the state in which the discharge will originate. No Section 404 permit may be granted (or valid) until such certification is obtained. The Applicant submitted a complete application and the \$2,060.00 fee required for WQC under Section 401 for the Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit No. 23 pursuant to CWA section 404.

California Code of Regulations (CCR) title 23, section 3831(e) grants the Water Board Executive Officer the authority to grant or deny WQC for projects in accordance with CWA section 401. The Project qualifies for such WQC.

Standard Conditions

Pursuant to CCR title 23, section 3860, the following standard conditions are requirements of this certification:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code Section 13330 and CCR title 23, section 3867.
2. This certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license unless the pertinent certification application was filed pursuant to CCR title 23, section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action must be conditioned upon total payment of the full fee required under CCR title 23, section 3833, unless

otherwise stated in writing by the certifying agency.

4. Neither project construction activities nor operation of the project may cause a violation of the Water Quality Control Plan for the Lahontan Region (Basin Plan), may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the Water Code.
5. The project must be constructed and operated in accordance with the project described in the application for WQC that was submitted to the Water Board. Deviation from the project description constitutes a violation of the conditions upon which the certification was granted. Any significant changes to this project that would have a significant or material effect on the findings, conclusions, or conditions of this certification, including project operation, must be submitted to the Executive Officer for prior review and written approval.
6. This WQC is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
7. The Lahontan Water Board may add to or modify the conditions of this certification as appropriate to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act, or as appropriate to coordinate the operations of this project with other projects where coordination of operations is reasonably necessary to achieve water quality standards or protect the beneficial uses of water. Notwithstanding any more specific conditions in this certification, the project must be constructed and operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.
8. This certification does not authorize any act that results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under the California Endangered Species Act (Fish and Game Code section 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. sections 1531 et seq.). If a "take" will result from any act authorized under this certification, the applicant must obtain authorization for the take prior to construction or operation of the project. The Applicant is responsible for meeting all applicable requirements of the Endangered Species Act for the project authorized under this certification.



Additional Conditions

Pursuant to CCR title 23, section 3859(a), the following additional conditions are requirements of this certification:

1. Prior to beginning construction activities, the Applicant must provide a written accounting of the status of the Honey Lake Wetland Mitigation Bank crediting system to the Lahontan Water Board. The accounting must indicate the total acreage/credits available to the Applicant, the credits used to date, and the credits to be expended on the Johnstonville PFR Project.
2. No debris, cement, concrete, concrete washout waste, oil or petroleum products must enter into or be placed where it may be washed from the Project site by rainfall or runoff into waters of the State. When operations are completed, any excess material must be removed from the Project work area, and from any areas adjacent to the work area where such material may be transported into waters of the State.
3. The Applicant must immediately notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. A written notification of the adverse condition must be provided to the Water Board within two weeks of occurrence. The written notification must identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.
4. The Applicant must ensure that the Contractor employs necessary measures to prevent the introduction or spread of noxious/invasive weeds within the Project and staging area. These measures may include the treatment of on-site infestations, the cleaning of all equipment and gear that has been in an infested site, the use of weed-free erosion control materials (including straw), and the use of weed-free seeds and plant material for revegetation of disturbed areas.
5. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
6. An emergency spill kit must be at the Project site at all times.
7. A copy of this Order must be maintained at the Project site so as to be available at all reasonable times to site operating personnel and Water Board staff.



Enforcement

1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of Clean Water Act section 401(d), the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
2. In response to a suspected violation of any condition of this certification, the State Water Resources Control Board (State Water Board) or the Lahontan Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring report the State Water Board or Lahontan Water Board deems appropriate, provided that the burden, including costs, of the reports must be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
3. In response to any violation of the conditions of this certification, the Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

Section 401 Water Quality Certification Requirements Granted

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of State law. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this WQC.

Except insofar as may be modified by any preceding conditions, all WQC certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Applicant's project description and the terms specified in this WQC order, and (b) compliance with all applicable requirements of the Basin Plan.

We look forward to working with you in your efforts to protect water quality. If you have questions, please contact Bud Amorfini, Engineering Geologist, at (530) 542-5463 or Alan Miller at (530) 542-5430.



HAROLD J. SINGER
EXECUTIVE OFFICER

cc: California Department of Fish and Game, Northern Region
Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Jason Deters / U.S. Army Corps of Engineers, South Branch Sacramento Office
Bill Orme / State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)

BA/clhT: R6_Johnstonville_PFR_6A181107003.doc
File Name: New - Johnstonville PFR Project - WDID 6A181107003

PLAC

Department of the Army - U.S. Army Engineer
District,
Sacramento Corps of Engineers Regulatory Division
SPK 2010-01267



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

REPLY TO
ATTENTION OF

February 14, 2013

Regulatory Division (SPK-2010-01267)

Mr. Eric Orr
California Department of Transportation
1031 Butte Street, Suite 205, MS 30
Redding, California 96001

Dear Mr. Orr:

We are responding to your agency's February 5, 2013 request for a Department of the Army Nationwide Permit verification for the U.S. Route 395 Johnstonville Pavement Focused Rehabilitation (PM 56.7/76.6, EA 02-3C070) project. This approximately 34-acre project involves activities, including discharges of dredged or fill material, in waters of the United States to perform roadway widening and rehabilitation on U.S. Route 395. The project is located on U.S. Route 395, between State Route 36 and Lake Leavitt, Section 7, Township 29 North, Range 13 East, Mount Diablo Meridian, Latitude 40.379733°, Longitude -120.557216°, near the City of Susanville, Lassen County, California.

We understand the State of California, Department of Transportation (Caltrans) is the National Environmental Policy Act (NEPA) lead Federal agency for this project, and as such, will ensure the authorized work complies with the NEPA, the Endangered Species Act, the National Historical Preservation Act, and any other applicable federal laws.

Based on the information you provided in your Pre-construction Notification (PCN), the proposed activity, resulting in the permanent loss of approximately 0.33 acres of wetlands, is authorized by Nationwide Permit Number 23, Approved Categorical Exclusions. Your work must comply with the general terms and conditions listed in the enclosed 2012 Nationwide Permit 23 summary sheets, the Final Sacramento District Nationwide Permit Regional Conditions for California, and the following special conditions:

Special Conditions

1. All terms and conditions of the September 22, 2011 Section 401 Water Quality Certification are expressly incorporated as conditions of this permit.
2. To mitigate for the permanent loss of approximately 0.33 acre of wetland, you shall submit a check in the amount of \$49,500.00 (\$150,000/acre x 0.33 acre) payable to the National Fish and Wildlife Foundation (NFWF) for the creation of 0.33 acre of seasonal wetland. Honey-Eagle Lakes Hydrologic Unit Code #18080003 must be indicated on the check in order to insure the proper location of future mitigation. Prior to commencing construction, you shall submit a copy of the payment receipt to this office for recordation.
3. The drawings entitled *Project Plans for Construction on State Highway in Lassen County at and near Johnstonville 0.4 mile south of Bangham Lane to 0.3 mile south of Wendel Road, Layout Sheets (L 1-14) & Drainage Profiles (DP 1-4)*, revised December 10, 2012, are incorporated by reference as a condition of this authorization. Any deviations from the work as authorized, which result in additional impacts to waters of the U.S., including wetlands, must be coordinated with this office prior to impacts.

4. No construction activities shall occur within standing or flowing waters. Dewatering plans must be approved, in writing, by this office prior to commencement of construction activities. Plans, maps and/or drawings may be submitted electronically to regulatory-info@usace.army.mil.

5. No construction activities shall occur within avoided waters of the U.S. Environmentally Sensitive Areas (ESA) areas must be reviewed and approved by this office prior to commencement of construction activities. Plans, maps and/or drawings may be submitted electronically to regulatory-info@usace.army.mil.

6. Excavated materials from the permit area shall not be stockpiled or disposed of outside the permit area. Disposal and stockpile areas must be reviewed and approved by this office prior to commencement of construction activities. Plans, maps and/or drawings may be submitted electronically to regulatory-info@usace.army.mil.

7. If any of the above conditions are violated or unauthorized activities occur, you shall stop work immediately and notify this office. You shall provide us with a detailed description of the unauthorized activity(s), photo documentation, and any measures taken to remedy the violation.

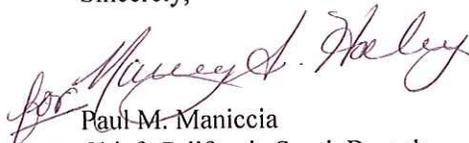
8. You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work.

This verification is valid for two years from the date of this letter or until the Nationwide Permit is modified, reissued, or revoked, whichever comes first. Failure to comply with the General and Regional Conditions of this Nationwide Permit, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We would appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*.

Please refer to identification number SPK-2010-01267 in any correspondence concerning this project. If you have any questions, please contact Ms. Leah M. Fisher at our California South Regulatory Branch at 1325 J Street, Room 1350, Sacramento, California 95814-2922, email Leah.M.Fisher@usace.army.mil, or telephone 916-557-6639. For more information regarding our program, please visit our website at www.spk.usace.army.mil/Missions/Regulatory.aspx.

Sincerely,


Paul M. Maniccia
Chief, California South Branch

Copies Furnished

California Regional Water Quality Control Board, Lahontan Region, 2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150

California Department of Fish and Wildlife, Northern Region, 601 Locust Street, Redding, California 96001
U.S. Environmental Protection Agency, Wetlands Office, WTR9, 75 Hawthorne Street, San Francisco, California 94105-3920

Sharon Stacey, California Department of Transportation, District 2, 1031 Butte Street, Suite 205, MS 30, Redding, California 96001

Chris Quiney, California Department of Transportation, District 2, 1031 Butte Street, Suite 205, MS 30, Redding, California 96001

COMPLIANCE CERTIFICATION

Permit Identification Number: SPK-2010-01267

Permit File Name: U.S. Route 395 Johnstonville Pavement Focused Rehabilitation Project

Nationwide Permit Number: NWP 23 - Approved Categorical Exclusion

Permittee: Mr. Eric Orr
California Department of Transportation
1031 Butte Street, Suite 205, MS 30
Redding, California 96001

County: Lassen

Date of Verification: February 14, 2013

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers
Sacramento District
1325 J Street, Room 1350
Sacramento, California 95814-2922
Or
Email: DLL-CESPK-RD-Compliance@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the Corps of Engineers.

* * * * *

I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.

Signature of Permittee

Date



U S Army Corps of Engineers
Sacramento District

Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide Permits – March 19, 2012

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at:

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/GuidanceLetters.aspx>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site

A. Regional Conditions

1. Regional Conditions for California, excluding the Tahoe Basin

http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-CA.pdf

2. Regional Conditions for Nevada, including the Tahoe Basin

http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-NV.pdf

3. Regional Conditions for Utah

http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-UT.pdf

4. Regional Conditions for Colorado.

http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-CO.pdf

B. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters,

BUILDING STRONG®

U.S. ARMY CORPS OF ENGINEERS – SACRAMENTO DISTRICT

1325 J ST. – SACRAMENTO, CA 95814

www.spk.usace.army.mil

www.facebook.com/sacramentodistrict

www.youtube.com/sacramentodistrict

www.twitter.com/USACEsacramento

www.flickr.com/photos/sacramentodistrict

the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. 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 or relocation activities).
10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
13. **Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
16. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
17. **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.
18. **Endangered Species.**
- (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
- (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to

demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at

<http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. **Historic Properties.**

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has

no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer 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.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan

that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

- (4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
- (5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.
- (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.
- (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.
- (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate

form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For

example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification.

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information

necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2)..

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) A description of the proposed project; the project’s purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP

activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with

Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: he standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization

should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

C. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10- acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity

complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

Nationwide 23 Permit Summary

3. NWP's do not grant any property rights or exclusive privileges.
4. NWP's do not authorize any injury to the property or rights of others.
5. NWP's do not authorize interference with any existing or proposed Federal project.

E. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), 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.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other 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 (36 CFR part 60).

Independent utility: 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; 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 linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWP's, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are

considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a

turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A 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. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as 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”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Nationwide 23 Permit Summary

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

Final Sacramento District Nationwide Permit
Regional Conditions for California, excluding the Lake Tahoe Basin
(Effective March 19, 2012 until March 18, 2017)

1.* When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, Sacramento District (Corps) in accordance with General Condition 31 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:

a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for activities located within the boundaries of the Los Angeles District shall comply with the September 15, 2010 Special Public Notice: *Map and Drawing Standards for the Los Angeles District Regulatory Division*, (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart b of this Regional Condition.

2. For all Nationwide Permits (NWP), the permittee shall submit a PCN in accordance with General Condition 31 and Regional Condition 1, in the following circumstances:

a. For all activities that would result in the discharge of fill material into any vernal pool;

b. For any activity in the Primary and Secondary Zones of the Legal Delta, the Sacramento River, the San Joaquin River, and the immediate tributaries of these waters;

c. For all crossings of perennial waters and intermittent waters;

d. For all activities proposed within 100 feet of the point of discharge of a known natural spring source, which is any location where ground water emanates from a point in the ground excluding seeps or other discharges which lack a defined channel; and

e.* For all activities located in areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.

3. The permittee shall record the NWP verification with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property for areas (1) designated to be preserved as part of compensatory mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed or placed in or adjacent to navigable waters. The recordation shall also include a map showing the surveyed location of the preserved area or authorized structure.

* Regional Condition developed jointly between Sacramento District, Los Angeles District, and San Francisco District.

4. For all waters of the U.S. proposed to be avoided on a site, unless determined to be impracticable by the Corps, the permittee shall:

- a. Establish and maintain, in perpetuity, a preserve containing all avoided waters of the U.S. to ensure that the functions of the aquatic environment are protected;
- b. Place all avoided waters of the U.S. and any upland buffers into a separate parcel prior to discharging dredge or fill material into waters of the U.S., and
- c. Establish permanent legal protection for all preserve parcels, following Corps approval of the legal instrument;

If the Corps determines that it is impracticable to require permanent preservation of the avoided waters, additional mitigation may be required in order to compensate for indirect impacts to the waters of the U.S.

5. For all temporary fills, the PCN shall include a description of the proposed temporary fill, including the type and amount of material to be placed, the area proposed to be impacted, and the proposed plan for restoration of the temporary fill area to pre-project contours and conditions, including a plan for the re-vegetation of the temporary fill area, if necessary. In addition, the PCN shall include the reason(s) why avoidance of temporary impacts is not practicable.

In addition, for all activities resulting in temporary fill within waters of the U.S., the permittee shall:

- a. Utilize material consisting of clean and washed gravel. For temporary fills within waters of the U.S. supporting anadromous fisheries, spawning quality gravel shall be used, where practicable, as determined by the Corps, after consultation with appropriate Federal and state fish and wildlife agencies;
- b. Place a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing ground elevation of the waters temporarily filled during construction; and
- c. Remove all temporary fill within 30 days following completion of construction activities.

6. In addition to the requirements of General Condition 2, unless determined to be impracticable by the Corps, the following criteria shall apply to all road crossings:

a.* For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed;

b. Road crossings shall be designed to ensure that no more than minor impacts would occur to fish and wildlife passage or expected high flows, following the criteria listed in Regional Condition 6(a). Culverted crossings that do not utilize a bottomless arch culvert with a natural stream bed may be authorized for waters that do not contain suitable habitat for Federally listed fish species, if it can be demonstrated and is specifically determined by the Corps, that such crossing will result in no more than minor impacts to fish and wildlife passage or expected high flows;

c. No construction activities shall occur within standing or flowing waters. For ephemeral or intermittent streams, this may be accomplished through construction during the dry season. In perennial streams, this may be accomplished through dewatering of the work area. Any proposed dewatering plans must be approved, in writing, by the Corps prior to commencement of construction activities; and

* Regional Condition developed jointly between Sacramento District, Los Angeles District, and San Francisco District.

d. All bank stabilization activities associated with a road crossing shall comply with Regional Condition 19.

In no case shall stream crossings result in a reduction in the pre-construction bankfull width or depth of perennial streams or negatively alter the flood control capacity of perennial streams.

7.* For activities in which the Corps designates another Federal agency as the lead for compliance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended, pursuant to 50 CFR Part 402.07, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH), pursuant to 50 CFR 600.920(b) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, pursuant to 36 CFR 800.2(a)(2), the lead Federal agency shall provide all relevant documentation to the Corps demonstrating any previous consultation efforts, as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.

8. For all NWPs which require a PCN, the permittee shall submit the following additional information with the compliance certificate required under General Condition 30:

a. As-built drawings of the work conducted on the project site and any on-site and/or off-site compensatory mitigation, preservation, and/or avoidance area(s). The as-builts shall include a plan-view drawing of the location of the authorized work footprint (as shown on the permit drawings), with an overlay of the work as constructed in the same scale as the permit drawings. The drawing shall show all areas of ground disturbance, wetland impacts, structures, and the boundaries of any on-site and/or off-site mitigation or avoidance areas. Please note that any deviations from the work as authorized, which result in additional impacts to waters of the U.S., must be coordinated with the appropriate Corps office prior to impacts; and

b. Numbered and dated post-construction color photographs of the work conducted within a representative sample of the impacted waters of the U.S., and within all avoided waters of the U.S. on and immediately adjacent to the proposed project area. The compass angle and position of all photographs shall be similar to the pre-construction color photographs required in Regional Condition 1(c) and shall be identified on the plan-view drawing(s) required in subpart a of this Regional Condition.

9. For all activities requiring permittee responsible mitigation, the permittee shall develop and submit to the Corps for review and approval, a final comprehensive mitigation and monitoring plan for all permittee responsible mitigation prior to commencement of construction activities within waters of the U.S. The plan shall include the mitigation location and design drawings, vegetation plans, including target species to be planted, and final success criteria, presented in the format of the *Sacramento District's Habitat Mitigation and Monitoring Proposal Guidelines*, dated December 30, 2004, and in compliance with the requirements of 33 CFR 332.

10.* The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

11. The permittee is responsible for all authorized work and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of the permit authorization. The permittee shall ensure

that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all construction activities are completed.

12. The permittee shall clearly identify the limits of disturbance in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencement of construction activities within waters of the U.S. The permittee shall maintain such identification properly until construction is completed and the soils have been stabilized. The permittee is prohibited from any activity (e.g. equipment usage or materials storage) that impacts waters of the U.S. outside of the permit limits (as shown on the permit drawings).

13. For all activities in which a PCN is required, the permittee shall notify the appropriate district office of the start date for the authorized work within 10 days prior to initiation of construction activities.

14. The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.

15. For all activities located in the Mather Core Recovery Area in Sacramento County, as identified in the U.S. Fish and Wildlife Service's *Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* dated December 15, 2005, NWPs 14, 18, 23, 29, 39, 40, 42, 43 and 44 are revoked from use in vernal pools that may contain habitat for Federally-listed threatened and/or endangered vernal pool species.

16. For activities located in the Primary or Secondary Zone of the Legal Delta, NWPs 29 and 39 are revoked.

17. For all activities within the Secondary Zone of the Legal Delta, the permittee shall conduct compensatory mitigation for unavoidable impacts within the Secondary Zone of the Legal Delta.

18. For NWP 12: Permittees shall ensure the construction of utility lines does not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by the Corps) to seal the trench. For utility line trenches, during construction, the permittee shall remove and stockpile, separately, the top 6 – 12 inches of topsoil. Following installation of the utility line(s), the permittee shall replace the stockpiled topsoil on top and seed the area with native vegetation. The permittee shall submit a PCN for utility line activities in the following circumstances:

a. The utility line crossing would result in a discharge of dredged and/or fill material into perennial waters, intermittent waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs;

b. The utility line activity would result in a discharge of dredged and/or fill material into greater than 100 linear feet of ephemeral waters of the U.S.;

c. The utility line installation would include the construction of a temporary or permanent access road, substation or foundation within waters of the U.S.; or

d. The proposed activity would not involve the restoration of all utility line trenches to pre-project contours and conditions within 30 days following completion of construction activities.

19. For NWP 13 and 14: All bank stabilization activities shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g. rip-rap) and native vegetation or bioengineered design

techniques, unless specifically determined to be impracticable by the Corps. The permittee shall submit a PCN for any bank stabilization activity that involves hard-armoring or the placement of any non-vegetated or non-bioengineered technique below the ordinary high water mark or, if tidal waters, the high tide line of waters of the U.S. The request to utilize non-vegetated techniques must include information on why the sole use of vegetated techniques is not practicable.

20. For NWP 23: The permittee shall submit a PCN for all activities proposed for this NWP, in accordance with General Condition 31 and Regional Condition 1. The PCN shall include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with ESA, EFH and NHPA, in accordance with General Conditions 18 and 20 and Regional Condition 7.

21. For NWP 27: The permittee shall submit a PCN for aquatic habitat restoration, establishment, and enhancement activities in the following circumstances:

a. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into perennial waters, intermittent waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs; or

b. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into greater than 100 linear feet of ephemeral waters of the U.S.

22. For NWPs 29 and 39: The channelization or relocation of intermittent or perennial drainages is not authorized, except when, as determined by the Corps, the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

23.* Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51 and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:

a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;

b. An analysis of the proposed impacts to the waterbody, in accordance with General Condition 31 and Regional Condition 1;

c. Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and

d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be offset, in accordance with 33 CFR 332.

24. For NWPs 29, 39, 40, 42, and 43: The permittee shall establish and maintain upland vegetated buffers in perpetuity, unless specifically determined to be impracticable by the Corps, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 23(f). Except in unusual circumstances, as determined by the Corps, vegetated buffers shall be at least 50 feet in width.

* Regional Condition developed jointly between Sacramento District, Los Angeles District, and San Francisco District.

25. For NWP 46: The discharge shall not cause the loss of greater than 0.5 acres of waters of the United States or the loss of more than 300 linear feet of ditch, unless specifically waived in writing by the Corps.

26. All NWPs except 3, 6, 20, 27, 32, and 38 are revoked for activities in histosols, fens, bogs and peatlands and in wetlands contiguous with fens. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions. For NWPs 3, 6, 20, 27, 32, and 38, the permittee shall submit a PCN to the Corps in accordance with General Condition 31 and Regional Condition 1. This condition does not apply to NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35 or 36, as these NWPs either apply to Section 10 only activities or do not authorize impacts to special aquatic sites.

PLAC

California Department of Fish and Game
Lake or Streambed Alteration Agreement
Notification No. 1600-2011-0175-R1

CALIFORNIA DEPARTMENT OF FISH AND GAME
NORTHERN REGION
601 LOCUST STREET
REDDING, CA 96001



LAKE OR STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2011-0175-R1
UNNAMED TRIBUTARIES TO THE SUSAN RIVER

CALIFORNIA DEPARTMENT OF TRANSPORTATION
JOHNSTONVILLE PAVEMENT FOCUSED REHABILITATION

This Lake or Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and California Department of Transportation (Permittee) as represented by Mr. Eric Orr.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified DFG on July 20, 2011 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, DFG has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located at unnamed tributaries to the Susan River, tributary to Honey Lake in the County of Lassen, State of California; Section 7, 16, 17 and 18, Township 29N, Range 13E; U.S. Geological Survey (USGS) map Johnstonville, Mount Diablo Base and Meridian. Culvert crossing locations along State Route 395 at the following Postmile Markers: 62.51, 62.7, 62.95, 63.14, 63.26, 63.36, 63.39, and 63.98.

PROJECT DESCRIPTION

The project is limited to the jurisdictional activities associated with the widening of Lassen State Route 395. Impacts will occur at 8 out of the 18 crossings planned for the road widening project (See Exhibit A for details) and all areas within the 100-year floodplain. Specific crossing work includes extending either both ends or only one end of culverts, depending on project specific needs, and installing flared end sections to the extended culverts along with rock slope protection when necessary.

PROJECT IMPACTS

DFG has determined that without implementation of the conditions contained within this Agreement, such activities could substantially adversely affect existing fish or wildlife resources within and downstream of the project area including, but not limited to: Swainson hawk (*Buteo swainsoni*), greater sandhill crane (*Grus Canadensis tabida*), tricolored blackbird (*Agelaius tricolor*), yellow-headed blackbird (*Xanthocephalus xanthocephalus*), willow flycatcher (*Empidonax traillii*), other game and non-game fishes, amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

The adverse effects the project could have on the fish or wildlife resources identified above include: increased turbidity and/or sedimentation; short-term release of contaminants (e.g., incidental from construction); and disturbance from project activity to nesting birds.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to DFG personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify DFG if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, DFG shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that DFG personnel may enter the project site at any time to verify compliance with the Agreement, provided DFG: a) provides 24 hours advance notice; and b) allows the Permittee or representatives to participate in the inspection and/or monitoring.
- 1.5 Stream and Lake Defined. A stream is defined as a body of water that flows perennially, intermittently, or ephemeraly. Streams can include a channel, banks, bed, and floodplains where these features are present. Lake is defined as a perennial, intermittent, or ephemeral body of water substantially at rest within a defined basin.

- 1.6 **Bank Defined.** The land, including its vegetation that confines or otherwise defines the outermost boundary of a lake, or stream when its waters rise to the highest level of confinement.
- 1.7 Permittee's notification (Notification of Lake or Streambed Alteration together with all maps, plans, photographs, drawings, and all other supporting documents submitted with notification to describe the activity) is hereby incorporated by reference into this Agreement. Permittee shall conduct project activities within the work areas and using the mitigative features described in the notification and supporting documents, unless such project activities, work areas or mitigative features are modified by the provisions of this Agreement, in which case the activities shall be conducted as described in this Agreement.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

PROJECT TIMING AND COORDINATION

- 2.1 All work shall be confined to the period commencing May 1 and ending October 15, provided the stream is dry or at its lowest flow. If weather conditions permit and the stream is dry or at its lowest flow, the Permittee may perform work within the stream channel or on the banks outside of the above referenced work window, provided a written request is made to DFG at least five (5) days before the proposed work period variance. Written approval from DFG for the proposed work period variance must be received by the Permittee prior to the start or with the continuation of work outside of the above referenced work window.
- 2.2 If work is performed outside of the above referenced work window, the Permittee shall do all of the following:
- a) Stage erosion and sediment control materials at the work site.
 - b) Cease work and implement erosion control measures when there is a forecast of more than 50% chance of rain, or at the onset of any precipitation. Monitoring of the 72 hour forecast from the National Weather Service is recommended.
- 2.3 The Permittee shall instruct all persons who will be completing any ground disturbing activity at a worksite to comply with the conditions set forth in this Agreement and shall inspect each work site before, during, and after completion of any ground-disturbing activity at the work site.

HABITAT AND SPECIES PROTECTION

- 2.4 All work areas described in this Agreement shall be flagged or fenced with temporary fencing to prohibit unauthorized and unnecessary disturbance of vegetation. The work area shall be identified to all workers, as represented in plans, maintained throughout the construction of the project, and removed at project completion.

- 2.5 Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations.
- 2.6 The Permittee shall follow all mitigation measures outlined in the Draft Natural Environment Study (Exhibit B).
- 2.7 The Permittee shall not begin site preparation or construction activities in the project area until after August 15th to avoid impacts to breeding/nesting birds. OR, two (2) weeks prior to construction or site preparation the Permittee shall have a qualified biologist conduct preconstruction surveys to determine the presence of Swainson hawk (*Buteo swainsoni*) breeding/nesting pairs in the vicinity of the project site. If project activities are delayed or suspended for more than two (2) weeks after the preconstruction survey the site shall be resurveyed.

If no breeding/nesting birds are observed site preparation and construction activities may begin. If active nests are found, a no-disturbance buffer radius of up to 0.5 mile will be required around the nest. The actual size of the buffer may be modified based on an evaluation by a qualified biologist of the sensitivity of the birds to the level of project disturbance and/or the no-disturbance buffer lifted prior to August 15, if it is determined safe to do so by a qualified biologist and approved by DFG in writing.

- 2.8 The Permittee shall not begin site preparation or construction activities in the project area until after August 31st to avoid impacts to breeding/nesting willow flycatchers (*Empidonax traillii*). OR, two (2) weeks prior to construction or site preparation the Permittee shall have a qualified biologist conduct surveys for the presence of willow flycatchers. If active nests are discovered the Permittee shall contact DFG immediately.

CULVERTS AND INSTREAM STRUCTURES

- 2.9 All crossing sites shall be designed to accommodate the estimated 100-year flow including sediment load and debris without diverting, and shall be installed in accordance with submitted plans and diagrams.
- 2.10 All crossing structures shall be designed and sized to assure resistance to washout and erosion of the streambed, stream banks, and/or fill.
- 2.11 Completed culvert pipe installations shall result in water flow that is neither impeded nor impounded at the pipe inlet, nor accelerated down stream of the crossing structure.
- 2.12 Culvert inlets and outlets shall be protected from erosion, as appropriate, through armoring constructed of rock rip-rap or other non-erodible material (e.g., concrete head wall). Where used, rock rip-rap or armoring shall be of sufficient size and depth to remain in place during 100-year peak flows, extend at least as high as the top of the pipe on inlets, and shall extend sufficient distance upstream as wing walls to prevent bank erosion. Where armoring is used, the channel at the culvert outlet shall be rip-rapped in a U-shaped channel and rip-rap set below grade so as to allow the natural accumulation of bedload at watercourse grade.

- 2.13 Multiple-pipe crossings shall not be constructed or reconstructed within the bankfull channel.
- 2.14 Woody debris shall not be incorporated into the crossing fill. Backfill soil material shall be layer-placed and machine compacted in one-foot lifts.
- 2.15 Culverts shall extend beyond the road fill and shall not be perched (suspended).
- 2.16 Trashracks shall not be used.

PETROLEUM, CHEMICAL AND OTHER POLLUTANTS

- 2.17 Staging and storage areas for equipment, materials, fuels, lubricants and solvents along with all maintenance and re-fueling activities for all machinery and equipment shall be located no less than one hundred and fifty (150) feet away from the edge of any river, stream, or lake.
- 2.18 No equipment or machinery shall be operated within any flowing stream.
- 2.19 Any equipment or vehicles driven and/or operated within or adjacent to the stream or lake shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian habitat.
- 2.20 Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to a stream or lake shall be positioned over drip pans.
- 2.21 All activities performed in or near a stream shall have absorbent materials designated for spill containment and clean up activities on-site for use in an accidental spill. The Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550 and immediately initiate the clean up activities. DFG shall be notified by the Permittee and consulted regarding clean-up procedures.
- 2.22 No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, asphalt, paint or other coating material, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into, or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

EROSION AND SEDIMENT CONTROL

- 2.23 The project shall at all time feature adequate erosion and sediment control devices to prevent the degradation of water quality.
- 2.24 The Permittee shall prevent the discharge of sediment, and/or muddy, turbid, or silt-laden waters, resulting from the project, into the stream channel. Where necessary to prevent such discharge, the Permittee shall properly install and maintain sediment barriers (including but not limited to filter fabric fencing, fiber mats, rice straw or fiber

wattles or rolls) capable of preventing downstream sedimentation/turbidity. Said devices shall be cleaned of all trapped sediment as necessary to maintain proper function. Recovered sediment shall be disposed of where it shall not return to the waters of the State. Said devices shall be completely removed from the channel, along with all temporary fills, upon completion of operations.

- 2.25 Soils exposed by project operations shall be mulched to prevent sediment runoff and transport. Mulches shall be applied so that not less than 90% of the disturbed areas are covered. All mulches (except hydro-mulch) shall be applied in a layer not less than two inches deep. All mulches shall be kneaded or tracked-in with track marks parallel to the contour, and tackified as necessary to prevent excessive movement. All exposed soils and fills, including the downstream face of the road prism adjacent to the outlet of culverts, shall be reseeded with a mix of native grasses common to the area, free from seeds of noxious or invasive weed species, and applied at a rate which will ensure establishment.
- 2.26 If necessary to prevent mobilization of loose soils, fiber mats shall be laid over loose soils prior to mulching and tracking.
- 2.27 Soils adjacent to the stream channel that are exposed by project operations shall be adequately stabilized when rainfall is reasonably expected during construction, and immediately upon completion of construction, to prevent the mobilization of such sediment into the stream channels or adjacent wetlands. National Weather Service forecasts shall be monitored by the Permittee to determine the chance of precipitation.
- 2.28 Upon turbidity levels exceeding the standards identified in the Lahontan Regional Water Quality Control Board's "Water Quality Control Plan for the Lahontan Region", activities associated with the turbidity shall be halted until effective control devices are installed, or abatement procedures are initiated.
- 2.29 Groundwater and subsurface flow encountered during excavation of the streambed shall be pumped to a natural or excavated settling basin on stable soil outside of the channel. The settling basin shall not be allowed to drain to or be pumped to the stream until the stored water is less turbid than the stream flow into which it is released.

EQUIPMENT ACCESS

- 2.30 Vehicles shall not be driven, or equipment operated, in water covered portions of a stream, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, except as otherwise provided for in the Agreement to complete authorized work.
- 2.31 Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.

CONTACT INFORMATION

Any communication that Permittee or DFG submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or DFG specifies by written notice to the other.

To Permittee:

California Department of Transportation
Post Office Box 496073
Redding, California
Attn: Eric Orr
Fax: (530) 225-3146
eric.orr@dot.ca.gov

To DFG:

Department of Fish and Game
Northern Region
601 Locust Street
Redding, California 96001
Attn: 1600 Program – Tobi Freeny
Notification No. 1600-2011-0175-R1
Fax: (530) 225-0324
tfreeny@dfg.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute DFG's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

DFG may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before DFG suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before DFG suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused DFG to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes DFG from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects DFG's enforcement authority or that of its enforcement personnel.

CEQA COMPLIANCE

Department issuance of this Agreement is subject CEQA.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

DFG may amend the Agreement at any time during its term if DFG determines the amendment is necessary to protect an existing fish or wildlife resource and provided the amendment is mutually agreed to in writing by DFG and the Permittee.

The Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by DFG and Permittee. To request an amendment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter DFG approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to DFG a completed DFG "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). DFG shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of DFG's signature, which shall be: 1) after Permittee's signature; 2) after DFG complies with all applicable requirements under CEQA; and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on November 16, 2016, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

Exhibit A – Culvert Extension Table.

Exhibit B – Excerpt from the Draft Natural Environmental Study, 4.3 Special-Status Wildlife species, Mitigation Measures 2 through 7.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

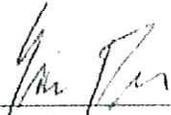
AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify DFG in accordance with FGC section 1602.

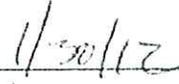
CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR CALIFORNIA DEPARTMENT OF TRANSPORTATION



Eric Orr
Project Manager

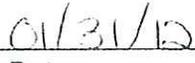


Date

FOR DEPARTMENT OF FISH AND GAME



for CURT BABCOCK
Habitat Conservation Program Manager



Date

Prepared by: Tobi Freeny
Environmental Scientist

1600-2011-0175-R1
EXHIBIT A

Culvert Extension Table
1 Page

Johnstonville PFR Culvert Extension Table

Number	Location (Station #)	Diameter	Description of Work
C-1	456 + 77	4'	No Work
C-2	479 + 36	30"	No Work
C-3	495 + 91	18"	5' CMP Extension + 2' FES (Both Ends)
C-4	506 + 19	18"	5' CMP Extension + 2' FES (North End)
C-5	517 + 58	18"	2' FES (South End)
C-6	529 + 28	18"	7' CMP Extension + 2' FES (North End) 5' CMP Extension + 2' FES (South End)
C-7	535 + 68	18"	3' CMP Extension + 2' FES (North End)
C-8	541 + 09	30"	4.5' CMP Extension + 2' FES (North End) 6.5' CMP Extension + 2' FES (South End)
C-9	542 + 90	18"	4.5' CMP Extension + 2' FES (North End) 2' FES (South End)
C-10	573 + 84	36"	5' CMP Extension + 2' FES (South End)
C-11	593 + 35	36"	No Work
C-12	N/A	24"	No Work
C-13	N/A	48"	No Work
C-14	N/A	24"	No Work
C-15	N/A	60"	No Work
C-16	N/A	36"	No Work
C-17	N/A	36"	No Work
C-18	N/A	24"	No Work

C- Culvert CMP- Corrugated Metal Pipe FES- Flared End Section

**1600-2011-0175-R1
EXHIBIT B**

**Excerpt from the Draft Natural Environmental Study
4.3 Special-Status Wildlife Species – Mitigation Measures 2 through 7
11 Pages**

Johnstonville Pavement Rehabilitation/Shoulder Widening Project



Draft Natural Environment Study

District 2-LAS-US 395-PM 58.6/76.6

02-3C0700

October 2010



4.1.3.5 Cumulative Effects

Because no other projects have been implemented or are proposed that would affect these same open waters, implementation of the proposed project would not contribute to cumulative effects on open waters in the project area.

4.1.4 Big Sage and Bitterbrush

4.1.4.1 Survey Results

Big sage and bitterbrush habitats exist in the BSA in portions of the areas surrounding project Segments 1 and 8. These segments will receive pavement rehabilitation activity entirely within the existing roadway footprint, and impacts on adjacent big sage and bitterbrush habitats will be completely avoided.

4.2 Special-Status Plant Species

4.2.1.1 Survey Results

No special-status plants were observed during floristic surveys of the BSA conducted on October 10–11, 2009 and June 23–24, 2010. These survey dates coincide with the blooming and/or identification period of all 45 special-status plants known to occur in the project region. No impacts on special-status plants are anticipated from the proposed project.

4.3 Special-Status Wildlife Species

4.3.1 Carson Wandering Skipper

The Carson wandering skipper (*Pseudocopaeodes eumus obscurus*) was listed as endangered by the USFWS on November 29, 2001 and a recovery plan was prepared by USFWS in 2007 (U.S. Fish and Wildlife Service 2007). Currently, there are four extant populations of the Carson wandering skipper. At the time of listing, only two extant populations were known: one in Washoe County, Nevada, and one in Lassen County, California. A third known population of the subspecies, from Carson City, Nevada, is considered extirpated as of 1998. In 2004, one additional population was located south of Carson City in Douglas County, Nevada, along the Carson River, and in 2005, a second population was confirmed in Washoe County, Nevada (U.S. Fish and Wildlife Service 2007).

All known populations are found in salt-desert scrub, within which two key elements are required: the larval hostplant, saltgrass (*Distichlis spicata*), and nectar sources for adults. Known nectar sources include thelypody (*Thelypodium crispum*), racemose golden-weed (*Pyrocoma racemosus*), slender cleomella (*Cleomella parviflora*), small-flowered cleomella (*Cleomella plocasperma*), and heliotrope (*Heliotropium curassavicum*) and some nonnative species such as birds-foot trefoil (*Lotus corniculatus*), Canada thistle (*Cirsium arvense*), bull thistle (*Cirsium vulgare*), and tumble mustard (*Sisymbrium altissimum*); other species are probably also suitable

(U.S. Fish and Wildlife Service 2007). The Carson wandering skipper is threatened by a variety of factors including habitat destruction, degradation, and fragmentation due to urban and residential development, wetland habitat modification, nonnative plant invasion, agricultural practices such as excessive livestock grazing and trampling, water exportation projects, and naturally occurring stochastic events (U.S. Fish and Wildlife Service 2007).

4.3.1.1 Survey Results

Saltgrass is present at several locations in the project area along the road shoulder. These sites are highly disturbed and the saltgrass is present in very small patches. Canada thistle, a known adult nectar source, is also present, but in general, nectar sources are very limited on the disturbed road shoulder and in the surrounding, predominantly agricultural area. These roadside patches of saltgrass are not considered to provide habitat for Carson wandering skipper because of the small size of the saltgrass patches, the scarce nectar sources, and the ongoing disturbance from road shoulder vegetation management, which includes mowing. In addition, the proximity of the busy road would make any butterfly along the roadside vulnerable to road kill (Brussard undated). The proposed project is not anticipated to destroy or disturb Carson wandering skipper or its habitat.

4.3.2 Swainson's Hawk

Swainson's hawk is listed as state threatened. It is a large raptor that breeds from extreme western Canada south through most of the western United States and south to Mexico, although it is an uncommon breeding resident and migrant in the Central Valley, Klamath Basin, Modoc Plateau and Lassen County (California Department of Fish and Game 2006). Typical habitat for this species is open desert, grassland, or cropland for foraging with scattered, large trees or small groves for nesting. Swainson's hawks gather in huge congregations to migrate more than 6,200 miles to wintering grounds in South America. This hawk has one of the longest migrations of any American raptor—from Canada to Argentina. This species is declining throughout much of its range due to its vulnerability to pesticide poisoning, especially on its wintering grounds. The use of pesticides in Argentina was responsible for the deaths of nearly 6,000 Swainson's hawks in 1995 and 1996 (Cornell Lab of Ornithology 2009a).

Swainson's hawk is an uncommon breeding bird in Lassen County: CNDDDB records 15 nest locations in the county (CNDDDB 2010).

4.3.2.1 Survey Results

There are only a few trees adjacent to the project area that provide suitable nesting habitat. During the June 2010 survey, a nesting pair of Swainson's hawks was observed feeding three downy chicks in a cottonwood tree near a farmhouse approximately 300 feet from Segment 7, near the Susan River overflow (Figure 3).

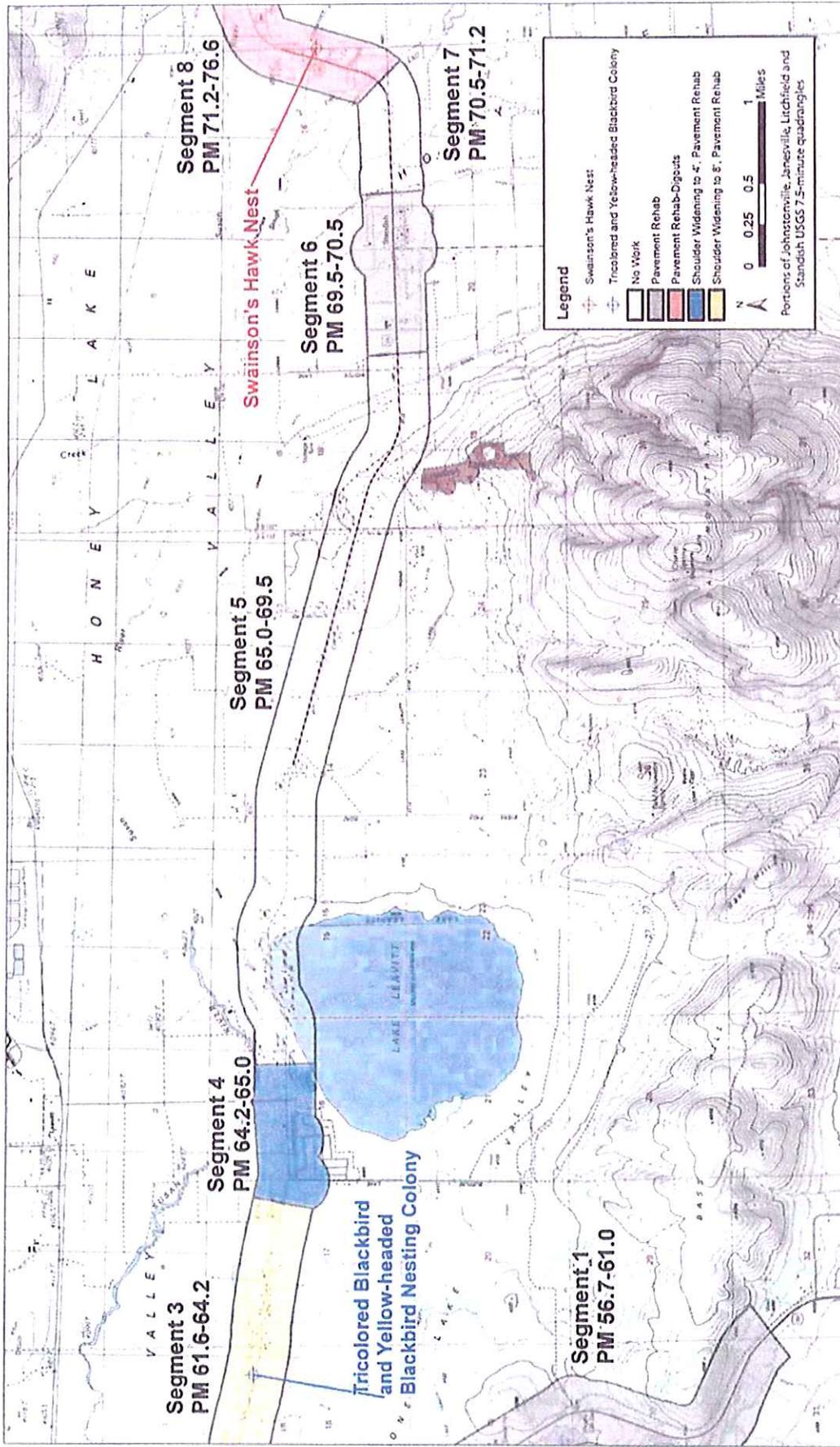


Figure 3
Locations of Swainson's Hawk Nest and Tricolored Blackbird and Yellow-headed Blackbird Nesting Colony (June 23, 2010)

4.3.2.2 Avoidance and Minimization Efforts

Minimization Measure 2: Conduct Preconstruction Nest Surveys for Swainson's Hawks

Preconstruction surveys will be conducted during the breeding season (March 1 to August 15) less than 1 week prior to the start of any construction activities in all suitable nesting habitat within 0.5 mile of construction. Surveys will be conducted following DFG's guidance: "Recommended Timing and Methodology for Swainson's Hawk nesting Surveys in California's Central Valley" (California Department of Fish and Game 2000b) or approved alternative.

If no nesting Swainson's hawks are observed, no further mitigation will be required. If nesting Swainson's hawks are observed, Caltrans will implement **Minimization Measure 3**.

Minimization Measure 3: Avoid and Minimize Construction-Related Disturbances within ½ Mile of Active Swainson's Hawk Nest Sites.

DFG generally requires that a 0.5-mile buffer be established around all active Swainson's hawk nests during the breeding season (March 1 and August 15). To the greatest extent practicable, construction activities that would occur within 0.5 mile of an active Swainson's hawk nest will be avoided during the breeding season. This will be achieved by scheduling construction activities within the 0.5-mile buffer to commence after August 15, or when the young Swainson's hawks have left the nest, whichever is later. Caltrans will provide DFG with the locations of any active nest sites identified during the preconstruction surveys and will coordinate with DFG on appropriate avoidance and minimization measures on a case-by-case basis.

4.3.2.3 Project Impacts

No direct impacts on Swainson's hawks are anticipated because there will be no tree removal as part of the proposed project; however, indirect impacts could occur from vibrational disturbance, noise, diesel exhaust from construction equipment, the presence of equipment and personnel during construction, and other indirect construction-related disturbances to nesting Swainson's hawks. If an active nest is found within 0.5 mile of the BSA during preconstruction surveys, these indirect effects could result in "take" of the threatened species under CESA, and would therefore be an illegal activity. Indirect impacts will be avoided by implementation of **Minimization Measure 3**: no construction activity will occur within 0.5 mile of an active nest from April 15 to August 15 or until the young have fledged.

4.3.2.4 Compensatory Mitigation

There would be no loss of nesting or foraging habitat; therefore no compensatory mitigation is required.

4.3.3 American Badger

The American badger, a California species of special concern, lives in open areas such as plains and prairies, farmland and the edges of woods, and is most abundant in drier, open stages of shrub, forest and herbaceous habitats where there is friable soil in which to dig burrows for cover.

4.3.3.1 Survey Results

No suitable habitat exists within the project area. No badger signs (burrows, scat, tracks, etc.) were observed within the project area. No impacts on American badger are anticipated from the proposed project.

4.3.4 Greater Sandhill Crane

Greater sandhill crane is state listed as threatened and is a fully protected species. Greater sandhill cranes are typically found in bogs, fens, cattail marshes, sedge meadows, shrub carrs, and other wetland types, as well as wetter open parklands, riparian areas, flooded meadows, and beaver ponds. In the more arid parts of its western breeding range, sandhill crane is found in shallow wetlands and along rivers. In agricultural areas, it prefers nesting sites close to cultivated fields (U.S. Geological Survey 2006). Both nesting and nonbreeding/wintering individuals are protected.

4.3.4.1 Survey Results

No nesting greater sandhill cranes have been recorded within 1 mile of the project area (CNDDDB 2010; Appendix A-4). No suitable nesting or foraging habitat for greater sandhill cranes occurs in the project area. No individuals or nests were observed within 0.5 mile of the project area during the field surveys.

4.3.4.2 Avoidance and Minimization Efforts

Minimization Measure 4: Conduct Preconstruction Nest Surveys for Greater Sandhill Crane

Preconstruction surveys will be conducted in suitable habitat in all segments for nesting greater sandhill cranes within 0.5 mile of the BSA between February 15 and September 1. Avoidance measures will be taken during construction to prevent impacts on greater sandhill cranes, their nests, or eggs if located prior to construction.

4.3.4.3 Project Impacts

Direct and indirect impacts on greater sandhill cranes and suitable nesting habitat are not anticipated to result from the proposed project.

4.3.4.4 Compensatory Mitigation

No mitigation will be required.

4.3.5 Tricolored Blackbird

Tricolored blackbirds (*Agelaius tricolor*) are a California species of special concern, and nesting colonies are protected; they also are protected under MBTA. Tricolored blackbirds are largely endemic to California, and the state is home to more than 95% of the global population (Beedy and Hamilton 1999).

Tricolored blackbirds form the largest colonies of any North American passerine bird, and these may consist of tens of thousands of breeding pairs. As many as 20,000 to 30,000 nests have been recorded in cattail (*Typha* spp.) marshes of 10 acres or less, with individual nests less than 1.6 feet from each other (Neff 1937). Nest heights range from a few inches to about 5 feet above water or ground at colony sites in freshwater marshes and up to 10 feet in the canopies of willows (*Salix* spp.) and other riparian trees; rarely are they built on the ground. The species typically selects breeding sites adjacent to open accessible water and places its nests in a protected nesting substrate, often including either flooded or thorny or spiny vegetation.

Tricolored blackbird colonies require access to water, suitable nesting substrates (including marsh vegetation or thorny or spinous vegetation to protect them from mammalian predators), and foraging habitat with significant populations of insect prey within a few miles (Beedy and Hamilton 1999). Breeding habitat includes wetlands and upland and agricultural areas, including those with dense cattails, bulrushes (*Scirpus* spp.), willows, blackberry (*Rubus* spp.), thistles (*Cirsium* and *Centaurea* spp.), and nettles (*Urtica* sp.).

In Lassen County, tricolored blackbirds arrive and begin nest building in late May; from egg-laying, it takes about 32 days for the young to fledge, and most young are likely to have fledged by mid-July (Meese pers. comm.).

4.3.5.1 Survey Results

A nesting colony of approximately 200–250 individuals was observed immediately adjacent to Segment 3 between PM 62.92 and PM 63.14 during the June 2010 surveys (Figure 3). It covered a portion approximately 100 feet by 1,000 feet of a cattail marsh. Foraging habitat is present throughout the project region.

4.3.5.2 Avoidance and Minimization Efforts

Minimization Measure 5: Conduct Preconstruction Nest Surveys for Tricolored Blackbirds and Yellow-Headed Blackbirds

Preconstruction surveys will be conducted during the breeding season (late May to late July) less than 1 week prior to the start of any construction activities within 300 feet of suitable nesting

habitats. If no nesting tricolored blackbirds are observed, no further mitigation will be required. If nesting tricolored blackbirds are observed, Caltrans will implement **Minimization Measure 6**.

Minimization Measure 6: Avoid and Minimize Construction-Related Disturbances within 300 Feet of Tricolored Blackbird Nesting Sites

Peak noise and other non-destructive disturbance levels will be established at the start of the nesting season (May 1 to June 1) in order to create the basis for nesting birds to establish their thresholds of tolerance to these disturbances. Birds that choose to nest under those conditions will not be adversely affected by these disturbances during the breeding season; therefore, no other mitigation is required. Pavement grinding is, however, likely to cause disturbance to nesting tricolored blackbirds; therefore, pavement grinding will be avoided within 300 feet of the nesting colony during the nesting period (May 15–July 30 or until birds have completed breeding activities and young have fledged).

4.3.5.3 Project Impacts

No direct impacts on the observed nesting colony area would occur from project construction; however, indirect impacts from vibrational disturbance; noise; diesel exhaust from construction equipment; the presence of equipment and personnel during construction; and other indirect, construction-related disturbances to the colony would be unavoidable. Tricolored blackbirds will tolerate heavy traffic disturbance during nesting—for example, they are known to nest successfully within 50 feet of a busy freeway, Interstate 5—and will not abandon their nests once eggs are laid unless physically disturbed; however, they are susceptible to disturbance during nest building (Meese pers. comm.). Caltrans will consult with CDFG to determine the appropriate action necessary to modify the project’s construction scheduling or work windows and/or other modifications to mitigate potential indirect impacts on nesting colonies.

Current impacts on the colony from collisions with through traffic on the adjacent highway (several dead blackbirds were observed on the road and shoulders) are probably greater than would be caused by slow-moving and/or stationary traffic and construction equipment in a construction zone.

4.3.5.4 Compensatory Mitigation

No mitigation measures will be required because no direct loss of suitable nesting marsh habitat or established nesting colony sites is anticipated as a result of the proposed project.

4.3.6 Cliff Swallow

Cliff swallows are not considered special-status species, but their occupied nests and eggs are protected by federal and state laws, including MBTA and the California Fish and Game Code, Sections 3503, 3513, and 3800 (50 CFR 10 and 21).

Although it can nest solitarily, the gregarious cliff swallow usually nests in large colonies on buildings, cliffs, and under bridges. The gourd-shaped mud nests can number up to several

hundred or thousand in a single location and in the western United States can number up to 3,700 nests in one spot (Cornell Lab of Ornithology 2009b). They breed in a variety of habitats with open foraging areas and suitable nesting areas.

4.3.6.1 Survey Results

Active cliff swallow nests were identified during the June, 2010, field survey on and underneath the bridges at the following locations:

- Standish Irrigation Canal (Segment 3, PM 62.19);
- Dill Slough (Segment 6, ~ PM 69.54);
- Susan River Overflow (Segment 8, PM 71.92); and
- Susan River (Segment 8, PM 72.29).

4.3.6.2 Avoidance and Minimization Efforts

Implementation of **Minimization Measure 7** below to prevent swallows from nesting adjacent to new bridge construction will ensure that project activities will not result in impacts on active swallow nests, eggs, or young.

Minimization Measure 7: Prevent Swallows from Nesting on Bridges in the Construction Area

To avoid impacts on nesting swallows and other bridge-nesting migratory birds protected under the MBTA and CFGC, the following measures will be implemented.

- If bridge construction will take place during the breeding season (generally between February 15 and August 31), a qualified wildlife biologist will inspect all bridges during the swallows' nonbreeding season (August 16 through February 14). If nests are found and are abandoned, they may be removed. To avoid damaging active nests adjacent to new bridge construction, nests must be removed before the breeding season begins (February 15).
- If no active nests are detected during these surveys, no additional measures are required.
- After nests are removed, the undersides of the bridges will be covered with 0.5- to 0.75-inch mesh net or poultry wire. All net installation will occur before February 15. The netting will be anchored so that swallows cannot attach their nests to the bridge through gaps in the net.
- An option to netting is to daily remove any newly constructed nests until the start of construction.
- If netting of the bridges does not occur by February 15 and swallows colonize the bridge, project activities on the bridge should not begin before August 31 of that year or until a qualified biologist has determined that the young have fledged and all nest use has been completed.

If appropriate steps are taken to prevent swallows from constructing new nests, work can proceed at any time of the year.

4.3.6.3 Project Impacts

Direct impacts could occur on established nesting swallow colonies under bridges where project activities will occur. Indirect impacts from vibrational disturbance; noise; diesel exhaust from construction equipment; the presence of equipment and personnel during construction; and other indirect, construction-related disturbances to the colony would also be unavoidable. Current impacts on colonies and individuals because of the highway's proximity and vehicles on the various bridges have not precluded the establishment and use of nesting colonies, so it can be assumed the species will continue to nest in these locations following project completion.

4.3.6.4 Compensatory Mitigation

No compensatory mitigation is required because the avoidance and minimization efforts described above will avoid the loss of any active nests and swallows are expected to return and rebuild nests the following season.

4.3.7 Yellow-Headed Blackbird

Yellow-headed blackbird is a California species of special concern, and its nesting colonies are protected; it also is protected under the MBTA

Yellow-headed blackbird has a conspicuous presence in western wetlands. It breeds in loose colonies in prairie wetlands and along other western lakes and marshes where tall reeds and rushes are present, often in the same marsh as red-winged and tricolored blackbirds. It places its nest over water, attached to cattails and reeds, and forages in the wetlands and surrounding grasslands and croplands.

4.3.7.1 Survey Results

Yellow-headed blackbirds were observed nesting at the same location as the tricolored blackbirds, between PM 62.92 and PM 63.14 (Figure 3) (see Section 4.3.5, above).

4.3.7.2 Avoidance and Minimization Efforts

Because yellow-headed blackbirds nest in the same location as the tricolored blackbirds, Implementation of **Minimization Measures 5 and 6** identified above for tricolored blackbirds would avoid and minimize impacts on yellow-headed blackbirds.

4.3.7.3 Project Impacts

No direct impacts on the observed nesting colony area would occur from project construction; however, indirect impacts from vibrational disturbance; noise; diesel exhaust from construction equipment; the presence of equipment and personnel during construction; and other indirect, construction-related disturbances to the colony would be unavoidable. Caltrans will consult with CDFG to determine the appropriate action necessary to modify the project in terms of

construction scheduling/work windows and/or other project modifications to mitigate potential indirect impacts on nesting colonies.

4.3.7.4 Compensatory Mitigation

No compensatory mitigation is required because no direct loss of suitable marsh nesting habitat or established nesting colony sites is anticipated as a result of the proposed project.

4.3.8 Roosting Bats

Two Western Bat Working Group priority bat species have potential to roost in the BSA: fringed myotis (*Myotis thysanodes*) and Yuma myotis (*Myotis yumanensis*). Both species roost in a variety of structures, including trees and bridges. The BSA provides suitable foraging habitat but limited suitable roost sites.

4.3.8.1 Survey Results

No evidence of bat presence (guano, urine staining, odor, or vocalizations) was observed on portions of the undersides of the existing bridges over creeks in the BSA during the June 2010 field surveys. The undersides of some bridge decks contained expansion joints that could provide roosting sites for day-roosting bats. No evidence of bat occupancy was found during the field survey, and bridges in the BSA are not likely to be used by bats; therefore, no impacts on bats are anticipated from the proposed project.

4.4 Special-Status Fish Species

No special-status fish species are known to occur in the project vicinity; therefore, no direct or indirect impacts on special-status fish species are anticipated from the proposed project.

4.5 Other Biological Issues

4.5.1 Invasive Plant Species

Invasive species are plant species designated as federal noxious weeds by the U.S. Department of Agriculture, species listed by California Department of Food and Agriculture (CDFA), and plants evaluated and listed as invasive by California Invasive Plant Council (Cal-IPC).

CDFA biologists, in consultation with outside experts and county agricultural commissioners, designate as *noxious weeds* plants that are “troublesome, aggressive, intrusive, detrimental, or destructive to agriculture, silviculture, or important native species, and difficult to control or eradicate.” CDFA rates each species to reflect “the statewide importance of the pest, the likelihood that eradication or control efforts would be successful, and the present distribution of the pest within the state”; the ratings reflect policy guidelines on appropriate control actions.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION**

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, California 95814

Date: January 31, 2012

From: California Department of Fish and Game
Northern Region
601 Locust Street
Redding, California 96001

Project Title: Issuance of Streambed Alteration Agreement No. 1600-2011-0175- R1
Johnstonville Pavement Focused Rehabilitation

Project Location (Specific): Along State Route 395 at the following Postmile Markers:
62.51, 62.7, 62.95, 63.14, 63.26, 63.36, 63.39, 63.98; Section 7, 16, 17 and 18, T29N,
R13 East, MDB&M.

Project Location (City and County): Johnstonville, Lassen County

Description of Project: See Attached Agreement.

Name of Public Agency Approving Project: California Department of Fish and Game.

Name of Agency Carrying Out Project: California Department of Transportation as
represented by Mr. Eric Orr.

Exempt Status (Class and Guidelines Section): **Categorical Exemption: Class 2,
Section 15302 (c)** – Replacement or reconstruction of existing structures and facilities
where the new structure will be located on the same site as the structure replaced and
will have substantially the same purpose and capacity as the structure replaced. (c)
Replacement or reconstruction of existing utility systems and/or facilities involving
negligible or no expansion of capacity.

Reasons Why Project is Exempt: The project proposes to widen Lassen State Route
395 and impact only 8 out of 18 crossings. The project will have no significant effect on
the environment.

Lead Agency Contact Person: Tobi Freeny

Phone: (530) 225-2867

Signature: Donna L. Cobb
Donna L. Cobb

Date: 01/31/12

Title: Aquatic Conservation Planning Supervisor

Signed by Lead Agency
 Signed by Applicant

Date received for filing at OPR: