FOR CONTRACT No.: 10-0K6304

INFORMATION HANDOUT

PERMITS

1. United States Army Corps of Engineers - 404 Permit

2. California Regional Water Quality Control Board - 401 Certification

3. California Department of Fish and Game Agreement

Dist-Co-Rte-PM: 10-Cal-4-32.2

Nationwide Permit Application

Project Information

District: 10

Project Name: Murphy's Turnout/ Chain Control

County: Calaveras

Project EA: 10-0K630

Route: 4

Post Miles: 32.1-32.2

Project Manager: Bert Brown

Phone No: (209) 942-6064

Project Biologist: Kriti Uppal

Phone No: (209) 932-2371

7.5-Minute Quad: Murphys

Waterbody/watershed: Forrester Creek

Latitude/Longitude: 38° 07' 30"; 120° 22' 30"

Nationwide Permit requested: #14 (Linear Transportation Projects)

Project Description:
California Department of Transportation (Caltrans) proposes to widen the existing chain control turnout on State Route (SR) 4 between Post miles (PM) 32.1 and 32.2 Kilometer Post (KP) 51.7/ 52.0 in Calaveras County, east of the town of Murphy's. The following work is proposed for the project: combine two existing turnouts into one with a total length of 931.8 feet (ft) and a width of 15 ft in the eastbound direction of (SR) 4. The road will be widened to the south by filling and cutting. New drainage system will be installed as part of this project. Anticipated disturbances associated with project include trenching and grading, stream relocation along with pavement widening to meet current Caltrans standards. This Project would entail the destruction of two post World War II (WWll) homes, the removal of riparian habitat, the realignment of the Forrester Creek Channel, the deposit and shoring of fill material to build up the embankment, and pavement widening with Asphalt Concrete (AC). Construction of this proposed project will require acquisition of new right of way (ROW).

Project Purpose and Need:
The Project proposes to widen the existing chain control turnout on State Route (SR) 4 in Calaveras County, east of the town of Murphy's. The Project will improve the operations of the turnout and will reduce accidents and driver confusion.

Lead Federal Agency: Caltrans (under NEPA Delegation)

Federal Endangered Species Act (FESA): The above activities will have no effect to any federally listed threatened or endangered species. No critical habitat will be affected.

Permit Being Requested (Check one)

____ Reporting Nationwide Permit _X__ Non-Reporting NWP

Corps Authority Information

Section 404: A Section 404 permit is required from the ACOE when a project requires fill or other modification of waters of the U.S. Wetlands and Other Waters of the U.S. are regulated under Section 404 of the Federal Clean Water Act. The proposed project crosses Forrester Creek, which falls under the jurisdiction of the USACE as "Waters of the United States (U.S.).
The proposed project qualifies for a Nationwide Permit #14 (Linear Transportation Projects).

Minimal Impact Criteria

The project will result in minimal impacts to the aquatic environment. The contractor must take steps to eliminate potential impacts as directed in Caltrans' Standard Specifications. The contractor is also required to implement a Storm Water Pollution Prevention Plan and a Water Pollution Control Plan.
Approximately 0.04 acre of Waters of the U.S. (i.e., the realigned portion of Forrester Creek) will be directly impacted. Approximately 0.1 acre of riparian habitat along the banks of Forrester Creek will be directly impacted as a result of construction of the proposed project.

To address any potential impacts that may be associated with the construction of the proposed project, Best Management Practices (BMPs) must be implemented as described in the Storm Water Project Planning and Design Guide. The contractor must take steps to eliminate all pollutant storm water discharges and all non-storm water discharges.
1-No work will be conducted outside of the project limits.
2-Construction activities will be scheduled during low flow conditions for Forrester Creek in order to minimize temporal turbidity and unnecessary ground disturbance.
3-Prior to any tree removal, Caltrans biology will construct pre-construction surveys to ensure that the trees slated for removal are free of nesting birds as required in the Federal Migratory Bird Treaty Act during the time frame of February 15 through September 1.
4- If staging areas for equipment storage are needed, Caltrans biology must approve these staging areas prior to use, or the contractor must supply environmental clearance (if the staging area/areas are located outside of the identified Caltrans right of way.)
5- The contractor shall at all times adhere to Caltrans' Standard BMP's to ensure minimal to no impact to water quality.
If adequate measures and precautions were used, the proposed project would not adversely affect the water quality in the project area.

Permit Compliance Information
Compliance with Nationwide General Conditions:

1. Navigation: There are no navigable waterways within the project study area that will be affected by construction activities. There will be no effects on navigation.
2. Aquatic Life Movement: No disruption of aquatic life movement will take place as a result of this project. Near normal downstream flows will be maintained to the greatest extent possible. All work associated with construction activities will take place during low-flow conditions and/or dry season.
3. Spawning Areas: There are no spawning areas within the project area.
4. Migratory Bird Breeding Areas: There are not designated waterfowl breeding areas within or adjacent to the project study area.
5. Shellfish Beds: There are no areas of concentrated shellfish production within the project study area.
6. Suitable Material: Fill will meet suitable material standards and will be free from toxic pollutants. Fill will be limited to the minimal amount necessary to accomplish the project.
7. Water Supply Intakes: There will be no discharge of dredged or fill material in the proximity of a public water supply intake.
8. Adverse Effects From Impoundments: Impoundments will not be included in construction activities. Adverse effects will not result from impoundments.

9. Management of Water Flows: The project is designed to maintain pre-construction downstream flow conditions. The project will not permanently restrict or impede the passage of normal or expected high water flows.
10. Fills within 100-Year Floodplains: As defined in 23 CFR Section 650.105(q), the project does not constitute a significant floodplain encroachment.
11. Equipment: Minimization measures will be taken to avoid soil disturbance in the irrigation ditches.
12. Soil Erosion and Sedimentation Controls: Caltrans' standard erosion controls will be utilized to prevent soil erosion and prevent sedimentation.
13. Removal of Temporary Fills: The temporary fill used in this project will be removed and the fill area will be returned to pre-existing elevations and contours.
14. Proper Maintenance: The maintenance of the roadway will be the responsibility of Caltrans.
15. Wild and Scenic Rivers: There are no wild and scenic rivers within the project area
16. Tribal Rights: There are no tribal rights issues within the project area.
17. Endangered Species: No threatened or endangered species will be impacted as a result of this project..
18. Historic Properties: There are no historic properties listed, or eligible for listing, in the National Register of Historic Places within the project area.
19. Designated Critical Waters: There are no designated critical resource waters within the project area.
20. Mitigation: This project has been designed to avoid and minimize adverse effects to Waters of the U.S. to the maximum extent possible.
21. Water Quality: A 401-certification package has been completed and will be submitted to the State Regional Water Quality Control Board.
22. Coastal Zone Management: Does not apply to this project.
23. Regional and Case-by-Case Conditions: Any regional or case specific conditions added by the ACOE or the RWQCB in its 401 Certification will be complied with. The proposed project does not occur within the vicinity or manner of any Regional Conditions outlined by the ACOE.
24. Use of Multiple Nationwide Permits: Caltrans is only applying for a NWP # 14 for this project.
25. Transfer of Nationwide Permit Verification: If property is sold, the permit may be transferred to the new owner and the Corps office will be notified.
26. Compliance Certification: Caltrans will submit a signed certification regarding the completed work and the required mitigation to ACOE.
27. Pre-construction Notification: A Preconstruction Notification (PCN) is not required for NWP #14 as the loss of waters of the United States does not exceed 1/10 of an acre and there is no discharge in aquatic site including wetlands.

Nationwide Permit Requested

Nationwide Permit #14 (Linear Transportation Projects)

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States.

Project Impact Information (area affected in acres)

Wetlands (permanent): 0.0
Wetlands (temporary): 0.0
Waters of the U.S. (permanent): 0.04
Waters of the U.S. (temporary: 0.0

Project Mitigation Information
Caltrans proposes to compensate for the loss of 0.04 acre of Waters of the U.S. by recreating a portion of the Forrester Creek channel in the amount of 0.06 acre. Furthermore, Caltrans proposes to mitigate for the loss of riparian habitat through the implantation of a standard Re-vegetation Plan created by Caltrans Landscape Architecture. Plant species to be included in the re-vegetation plan consist of those species common to the proposed project's geographic region.

Avoidance and Minimization Measures include:

This project has been designed to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practicable at the project site.
The following avoidance and minimization measures would be followed to protect the natural resources:
1-No work will be conducted outside of the project limits.
2-Construction activities will be scheduled during low flow conditions for Forrester Creek in order to minimize temporal turbidity and unnecessary ground disturbance.
3-Prior to any tree removal, Caltrans biology will construct pre-construction surveys to ensure that the trees slated for removal are free of nesting birds as required in the Federal Migratory Bird Treaty Act during the time frame of February 15 through September 1.
4- If staging areas for equipment storage are needed, Caltrans biology must approve these staging areas prior to use, or the contractor must supply environmental clearance (if the staging area/areas are located outside of the identified Caltrans right of way.)
5- The contractor shall at all times adhere to Caltrans' Standard BMP's to ensure minimal to no impact to water quality.
Based on the information provided above, I hereby certify that this project qualifies for a nationwide permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), Section 10 of the U.S. Rivers and Harbors Act (33 U.S.C. 406), and the District of the Engineer of the U.S. Army Corps of Engineers.

Prepared By:

Kriti Uppal
Environmental Planner, Natural Science
NSJVEM Branch

Date: 12/29/08

Approved By:

~~Bert Brown~~ Dan Clark
Project Manager

Date: 12/29/08

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

A. **Regional Conditions**

1. **Regional Conditions for California, excluding the Tahoe Basin**

http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-CA.pdf

2. **Regional Conditions for Nevada, including the Tahoe Basin**

hsttp://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-NV.pdf

3. **Regional Conditions for Utah**

http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-UT.pdf

4. **Regional Conditions for Colorado**.

http://www.spk.usace.army.mil/organizations/cespk-co/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,

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 NWPs 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 NWPs 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 NWPs 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) <u>Contents of Pre-Construction Notification</u>: 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.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs 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.

I**ntermittent 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 NWPs, 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 course 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.

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.

California Regional Water Quality Control Board
Central Valley Region
Karl E. Longley, ScD, P.E., Chair

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Secretary for Environmental Protection

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Arnold Schwarzenegg
Governor

24 February 2009

Kriti Uppal
California Department of Transportation
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CLEAN WATER ACT *§401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL MATERIALS FOR THE MURPHY'S TURNOUT/ CHAIN CONTROL PROJECT, (WDID#5B05CR00040) CALAVERAS COUNTY*

WATER QUALITY CERTIFICATION STANDARD CONDITIONS:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and §3867 of Title 23 of the California Code of Regulations (23 CCR).

2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 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 shall be conditioned upon total payment of the full fee required under 23 CCR §3833, unless otherwise stated in writing by the certifying agency.

4. Certification is valid for the duration of the described project. Discharger shall notify the Regional Board in writing within 7 days of project completion.

ADDITIONAL TECHNICALLY CONDITIONED CERTIFICATION CONDITIONS:

In addition to the four standard conditions, the applicant shall satisfy the following:

1. California Department of Transportation shall notify the Board in writing of the start of any in-water activities.

2. Except for activities permitted by the U.S. Army Corps under §404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.

3. The discharge of petroleum products or other excavated materials to surface water is prohibited.

4. Activities shall not cause turbidity increases in surface water to exceed:

   (a) where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases shall not exceed 1 NTU;
   (b) where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
   (c) where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs;
   (d) where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

   Except that these limits will be eased during in-water working periods to allow a turbidity increase of 15 NTU over background turbidity as measured in surface waters 300 feet downstream from the working area. In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected.

5. Activities shall not cause settleable matter to exceed 0.1ml/l in surface waters as measured in surface waters 300 feet downstream from the project.

6. Activities shall not cause visible oil, grease, or foam in the work area or downstream.

7. All areas disturbed by project activities shall be protected from washout or erosion.

8. In the event that project activities result in the deposition of soil materials or creation of a visible plume in surface waters, the following monitoring shall be conducted immediately upstream and 300 feet downstream of the work site and the results reported to this office within two weeks:

Parameter	Unit	Type of Sample	Frequency of Sample
Turbidity	NTU	Grab	Every 4 hours during in water work
Settleable Material	ml/l	Grab	Same as above.

9. California Department of Transportation shall notify the Board immediately if the above criteria for turbidity, settleable matter, oil/grease, or foam are exceeded.

10. California Department of Transportation shall notify the Board immediately of any spill of petroleum products or other organic or earthen materials.

11. California Department of Transportation shall comply with all Department of Fish and Game 1600 requirements for the project.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Patrick G. Gillum, Environmental Scientist
11020 Sun Center Drive #200
Rancho Cordova, California 95670-6114
(916) 464-4709
pgillum@waterboards.ca.gov

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that any discharge from California Department of Transportation, Murphy's Turnout/ Chain Control Project (WDID#5B05CR00040) will comply with the applicable provisions of §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") of the Clean Water Act. This discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)".

Except insofar as may be modified by any preceding conditions, all 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 attached Project Information Sheet, and (b) compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).

for PAMELA C. CREEDON
Executive Officer

Enclosure: Project Information

cc: U.S. Army Corps of Engineers, Sacramento
Dave Smith, Wetlands Section Chief (WTR-8), U.S. Environmental Protection Agency, Region 9, San Francisco
U.S. Fish & Wildlife Service, Sacramento
Bill Orme, 401 Certification and Wetlands Unit Chief, State Water Resources Control Board Sacramento
Jeff Drongesen, Department of Fish and Game, Sacramento
Richard McHenry, CA Sportfishing Protection Alliance, Stockton

PROJECT INFORMATION

Application Date: 6 February 2009

Applicant: Kriti Uppal
California Department of Transportation
1976 East Dr. Martin Luther King Jr. Blvd.
Stockton, CA 95205

Project Name: Murphy's Turnout/ Chain Control Project

Application Number: WDID# 5B05CR00040

U.S. Army Corps File Number: Nationwide Permit #14

Type of Project: Widening of the existing chain control turnout on State Route (SR) 4 just east of Murphy's.

Project Location: Section 27, 28, Township 4 North, Range 14 East, MDB&M. Latitude: 38°07'30"and Longitude: 120°22'30".

County: Calaveras County

Receiving Water(s) (hydrologic unit): Forrester Creek, San Joaquin Hydrologic Basin, Upper Calaveras Hydrologic Unit #533.30, South Fork Calaveras HA

Water Body Type: Riparian, Streambed

Designated Beneficial Uses: The Basin Plan for the Central Valley Regional Board has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Industrial Supply (IND), Hydropower Generation (POW); Groundwater Recharge, Water Contact Recreation (REC-1); Non-contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); and Wildlife Habitat (WILD).

Project Description (purpose/goal): The Murphy's Turnout/ Chain Control project proposes to widen the existing chain control turnout on SR 4 between PM 32.1 and 32.2 KM post as well as 51.7/ 52.0 in Calaveras County. The project will combine two existing turnouts into one with a total length of 931.8 ft and a width of 15 ft in the eastbound direction on SR 4.

Preliminary Water Quality Concerns: The construction activities may impact surface waters with increased turbidity and settleable matter.

Proposed Mitigation to Address Concerns: California Department of Transportation will implement Best Management Practices (BMPs) to control sedimentation and erosion. All temporary affected areas will be restored to pre-construction contours and conditions upon completion of construction activities. California Department of Transportation will conduct turbidity and settleable matter testing during in water work, stopping work if Basin Plan criteria are exceeded or are observed.

Fill/Excavation Area: 11,772 cubic yards of clean soil will be placed into 0.1 acres of riparian and 0.04 acres of un-vegetated streambed (for a total of 0.14 acres of fill).

Dredge Volume: None

U.S. Army Corps of Engineers Permit Number: Nationwide Permit #14

Department of Fish and Game Streambed Alteration Agreement: California Department of Transportation applied for a Streambed Alteration Agreement on 29 December 2008.

Possible Listed Species: None

Status of CEQA Compliance: The California Department of Transportation approved the Notice of Determination for this project on 9 January 2007.

Compensatory Mitigation: None

Application Fee Provided: Total fees of $750.00 have been submitted as required by 23 CCR §3833b(3)(A) and by 23 CCR §2200(e).

DISTRIBUTION LIST

U.S. Army Corp of Engineers
Sacramento District Office
Regulatory Section, Room 1480
1325 J Street
Sacramento, CA 95814-2922

Dave Smith
Wetlands Section Chief (W-3)
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

United States Fish & Wildlife Service
Sacramento Fish & Wildlife Office
2800 Cottage Way
Sacramento, CA 95825

Jeff Drongesen
Department of Fish and Game
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670

Bill Orme
State Water Resources Control Board
401 Certification and Wetlands Unit Chief
P.O. Box 100
Sacramento, CA 95814

Richard McHenry
CA Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204

State of California - The Resources Agency
DEPARTMENT OF FISH AND GAME
Sacramento Valley - Central Sierra Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
(916) 358-2900

ARNOLD SCHWARZENEGGER, Governor

2005 APR 1 AM 10 8

"NOTICE OF DETERMINATION"

The Department will file a Notice of Determination for your project. The Notice will be filed with the Office of Planning and Research, as required by CEQA. The Department's compliance with CEQA may be legally challenged for 35 days following the filing of the Notice of Determination.

This completes the Department's agreement process. You may proceed with your project according to the terms and provisions of your Streambed Alterations Agreement if you have obtained all other permits required from local, other State, and Federal Agencies.

(12/02/03)

AGREEMENT REGARDING PROPOSED STREAM ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and California Department of Transportation of Stockton, State of California, hereafter called Caltrans, is as follows:

WHEREAS, pursuant to California Fish and Game Code, Section 1602, Caltrans, on January 21, 2009, notified the Department that it intends to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed of, the following water: Forrester Creek, in the County of Calaveras, State of California, Section 27 & 28, Township 4N, Range 14E, USGS Map Murphys MDB&M.

WHEREAS, the Department, represented by Gary Hobgood, has determined that such operations may substantially adversely affect existing fish and wildlife resources including: various life stages of fish, other forms of vertebrate and invertebrate aquatic life, amphibians, reptiles and nesting birds and riparian plant species.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife during Caltrans's work. Caltrans hereby agrees to accept the following recommendations as part of his work:

Project Description: California Department of Transportation proposes to widen the existing chain control turnout on State Route 4 between Post miles 32.1 and 32 in Calaveras County, east of Murphy's. The following work is proposed: combine two existing turnouts into one with a total length of 931.8 feet and a width of 15 feet in the eastbound direction of State Route 4. The road will be widened to the south by filling and cutting. New drainage system will installed as part the project. Anticipated disturbances associated with the project include trenching and grading, stream relocation along with pavement widening to meet current Caltrans standards. This Project includes the removal of trees and understory, the realignment of the Forrester Creek channel, the deposit of shoring of fill material to build up the embankment, and pavement widening with AC. Construction of this proposed project will require acquisition of new right of way. Approximately 0.04 acre of Waters of the United States (approximately 164 linear feet) will be directly impacted. Approximately 0.1 acre of riparian habitat along the banks of Forrester Creek will be directly impacted as a result of construction of the proposed project. Approximately 11,772 cubic yards of native soil will be used. Caltrans proposes to compensate for the loss of 0.04 acres of Waters of the U.S. by recreating a portion of the Forrester Creek channel in the amount of 0.06 acres. Caltrans proposes to mitigate for the loss of riparian habitat through the planting locally native plant species.

Stream Zone Defined: The stream zone is that portion of the stream channel that restricts lateral movement of water. The stream zone is delineated at the top of the bank or the outer edge of any riparian vegetation, whichever is more landward.

1. The notification, together with all supporting documents submitted with the notification, is hereby incorporated into this agreement to describe the location and features of the proposed project. Caltrans agrees that all work shall be done as described in the notification and supporting documents, incorporating all project modifications, wildlife resource protection features, mitigation measures, and provisions as described in this agreement. Where apparent conflicts exist between the notification and the provisions listed in this agreement, Caltrans shall comply with the provisions listed in this agreement. Caltrans further agrees to notify the Department of any modifications made to the project plans submitted to the Department. At the discretion of the Department, this agreement will be amended to

accommodate modifications to the project plans submitted to the Department and/or new project activities. Please see the current fee schedule to determine the appropriate amendment fee.

2. Documents, plans, surveys, notifications, and requests pertaining to this project or required by this agreement may be sent via email to Gary Hobgood at ghobgood@dfg.ca.gov or delivered to the Department of Fish and Game at 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670. Refer to Notification Number 1600-2009-0012-R2 when submitting documents to the Department.

3. The time period for completing the work within the stream zone of Forrester Creek shall be restricted to periods of low stream flow and dry weather and shall be confined to the period of June 1 to October 15. Construction activities shall be timed with awareness of precipitation forecasts and likely increases in stream flow. Construction activities within the stream zone shall cease until all reasonable erosion control measures, inside and outside of the stream zone, have been implemented prior to all storm events. No work will occur during wet weather. Wet Weather is defined as when there has been ¼ inch of rain in a 24-hour period. In addition, no work will occur during a dry out period of 24 hours after the above referenced wet weather. Revegetation, restoration and erosion control work is not confined to this time period.

4. If Caltrans finds more time is needed to complete the authorized activity, Caltrans shall submit a written request for a work period time extension to the Department. The work period extension request shall provide the following information: 1) Describe the extent of work already completed; 2) Provide specific detail of the activities that remain to be completed within the stream zone; and 3) Detail the actual time required to complete each of the remaining activities within the stream zone. The work period extension request should consider the effects of increased stream conditions, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Photographs of the work completed and the proposed work areas are helpful in assisting the Department in its evaluation. Time extensions are issued at the discretion of the Department. The Department will review the written request to work beyond the established work period. The Department will have ten calendar days to approve the proposed work period extension. The Department reserves the right to require additional measures designed to protect natural resources.

5. Caltrans is responsible for obtaining all required permits and authorizations from local, state and federal agencies. Caltrans shall notify the Department where conflicts exist between the provisions of this agreement and those imposed by other regulatory agencies. Unless otherwise notified, Caltrans shall comply with the provision that offers the greatest protection to water quality, species of special concern and/or critical habitat.

6. If a private contractor is used for this project, the contractor shall sign Caltrans's copy of this agreement prior to working within the stream zone. A copy of this agreement and a copy of the original notification, including the project description, as submitted to the Department, must be available upon request at the work site. The contractor or a designated crew supervisor shall be on site the entire time a work crew is working near the stream zone. The supervisor shall be completely familiar with the terms and conditions of this agreement and shall ensure compliance with all terms and conditions. The Department reserves the right to inspect the

project site to ensure that there is compliance with the terms/conditions of this Agreement.

7. Caltrans shall notify the Department within two working days of beginning work within the stream zone of Forrester Creek. Upon completion of the project activities described in this agreement, the work area within the stream zone shall be digitally photographed. Photographs shall be submitted to the Department within two days of completion. Photographs and project commencement notification shall be submitted as instructed in condition number 2 above.

8. To mitigate for impacts to riparian woodland and perennial stream habitat along Forrester Creek, Caltrans shall prepare a revegetation plan and plant riparian trees, shrubs and grasses along the newly realigned portion of Forrester Creek. The revegetation plan must include: a description and map of the site, including the soil type and existing vegetation; the species to be planted and/or seeded; a description of the extent and method of irrigation; specifications for site preparation and installation of plant materials; specifications and schedule for installation, including amount and application method of fertilizers; and specifications for long-term plant care and monitoring. Work within the stream zone shall not begin until the revegetation plan has been reviewed and approved by the Department. The trees and shrubs planted pursuant to this provision shall be monitoring and maintained until successfully established. Monitoring of the planting plan shall be conducted annually for 5 years with a goal of 80% survival. If fewer than 80% of the replacement trees have survived at the end of the 5-year monitoring period, replanting and additional 5 years of monitoring shall be conducted. Monitoring reports shall be sent to the Department instructed in condition number 2 above.

9. It is anticipated that work within the Forrester Creek steam zone will occur when the stream is dry. If work in a flowing stream is unavoidable, the entire stream flow shall be diverted around or through the work area during the excavation and/or construction operations. Stream flow shall be diverted using gravity flow through temporary culverts/pipe's or pumped around the work site with the use of hoses. When any dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain aquatic life below the dam pursuant to Fish and Game Code section 5937. Any temporary dam or other artificial obstruction constructed shall only be built from clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel which will cause little or no siltation. No other diversion method shall be used without prior authorization by the Department. If another diversion method is preferred, Caltrans must submit a plan detailing the desired diversion method. Authorization of any other diversion method shall be at the discretion of the Department.

10. It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird except as otherwise provided by the Fish and Game Code. No trees that contain active nests of birds shall be disturbed until all eggs have hatched and young birds have fledged without prior consultation and approval of a Department representative.

11. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Except for the trees specifically identified for removal in the notification, no native trees with a trunk diameter at breast height (DBH) in excess of four (4) inches shall be removed or damaged without prior consultation and approval of a Department representative. Using hand tools (clippers, chain saw, etc.), trees may be trimmed to the extent necessary to

gain access to the work sites. All cleared material/vegetation shall be removed out of the riparian/stream zone.

12. Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require the placement of silt fencing, coir logs, coir rolls, straw bale dikes, or other siltation barriers so that silt and/or other deleterious materials are not allowed to pass to downstream reaches. Passage of sediment beyond the sediment barrier(s) is prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. Caltrans is responsible for the removal of non-biodegradable silt barriers (such as plastic silt fencing) after the disturbed areas have been stabilized with erosion control vegetation (usually after the first growing season). Upon Department determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective Department approved control devices are installed or abatement procedures are initiated.

13. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. Any of these materials, placed within or where they may enter a stream or lake by Caltrans or any party working under contract or with the permission of Caltrans, shall be removed immediately. The Department shall be notified immediately by Caltrans of any spills and shall be consulted regarding clean-up procedures.

14. During construction, the contractor shall not dump any litter or construction debris within the stream zone. All construction debris and associated materials shall be removed from the work site upon completion of this project.

15. All exposed/disturbed areas and access points within the stream zone left barren of vegetation as a result of the construction activities shall be restored using locally native grass seeds, locally native grass plugs and/or a mix of quick growing sterile non-native grass with locally native grass seeds. Seeded areas shall be covered with broadcast straw and/or jut netted (monofilament erosion blankets are not authorized).

16. This agreement is not valid and work may not begin until the agreement is signed by a representative of the Department of Fish & Game. Stream alteration work authorized by this agreement expires on December 31, 2013. This agreement shall remain in effect for that time necessary to satisfy all required mitigation and monitoring measures.

17. Requests for Extensions (agreement renewal), Minor Amendments, and Major Amendments must be submitted in writing prior to expiration of the agreement or commencement of work on modified project plans. Extensions and Amendments are issued at the discretion of the Department. Please see the current fee schedule to determine the appropriate fee.

18. The Department may take enforcement action and reserves the right to suspend and/or revoke this agreement if the Department determines that the circumstances warrant. The

circumstances that could require these Department actions include, but are not limited to, the following: A) Failure to comply with the terms/conditions of this agreement. B) The information provided by Caltrans in support of the agreement/notification is determined by the Department to be incomplete, or inaccurate. C) When new information becomes available to the Department representative(s) that was not known when preparing the original terms/conditions of this agreement. D) The project as described in the notification, agreement, or amendment has changed, or conditions affecting fish and wildlife resources change.

19. If, in the opinion of the Department, conditions arise or change in such a manner as to be considered deleterious to aquatic life, operations shall cease until corrective measures are taken.

20. It is understood that the Department enters into this agreement for purposes of establishing protective features for fish and wildlife, in the event that a project is implemented. The decision to proceed with the project is the sole responsibility of Caltrans, and is not required by this agreement. It is agreed that all liability and/or incurred costs related to or arising out of Caltrans's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of Caltrans. Caltrans agrees to hold harmless and defend the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or other damage.

SIGNATURE PAGE

Caltrans, as designated by the signature on this agreement, shall be responsible for the execution of all elements of this agreement. A copy of this agreement must be provided to contractor and subcontractors and must be in their possession at the work site.

Failure to comply with the provisions of this agreement and with other pertinent Code Sections, including but not limited to Fish and Game Code Sections 5650, 5652 and 5948, may result in prosecution.

Nothing in this agreement authorizes Caltrans to trespass on any land or property, nor does it relieve Caltrans of responsibility for compliance with applicable federal, state, or local laws or ordinances.

This agreement is not valid and work may not begin until the agreement is signed by a representative of the Department of Fish & Game.

Caltrans Representative: Dan Clark, Project Manager
Please print and sign name

Date 3/20/09

Contractor: _____ Date _____

Title: _____

Company: _____

Department Representative: Sandra Morey, Regional Manager

Date 3/27/09