



US Army Corps
of Engineers®
Los Angeles District

SPECIAL PUBLIC NOTICE

PROPOSED REGIONAL GENERAL PERMIT CALTRANS MIDDLE-MILE BROADBAND NETWORK

Public Notice/Application No.: SPL-2022-00120-GLH

Project: Regional General Permit for Caltrans Middle-Mile Broadband Network

Comment Period: February 9, 2023 through March 11, 2023

Project Manager: Gerardo Hidalgo; 805-585-2145; Gerardo.L.Hidalgo@usace.army.mil

Location

All waters of the United States, including navigable waters, within the State of California.

Summary

The U.S. Army Corps of Engineers Los Angeles, Sacramento, and San Francisco Districts (Districts) are proposing to issue Regional General Permit (RGP) 23 authorizing activities involving the discharge of dredged or fill material into waters of the United States, including wetlands, and/or work in or affecting navigable waters of the United States for Middle-Mile Broadband Network fiber optic infrastructure in the State of California.

Authority

Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States and Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States.

Submittal of Public Comments

Interested parties are hereby notified an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under Section 404 of the Clean Water Act. Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Section 10 of the Rivers and Harbors Act. Section 103 of the Marine Protection, Research and Sanctuaries Act and Section 10 of the Rivers and Harbors Act. Section 103 of the Marine Protection, Research and Sanctuaries Act, Section 10 of the Rivers and Harbors Act, and Section 404 of Clean Water Act.

Please do not mail hard copy documents, including comments to any Regulatory staff. Instead, your comments should be submitted electronically to: Gerardo.L.Hidalgo@usace.army.mil. Should you have any questions or concerns about the Corps' proposed action or our comment period, you may contact Gerardo Hidalgo directly at 805-585-2145.

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this

decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made an environmental impact statement is not required for the proposed work.

Activities Affecting Structures or Works Built by the United States- Activities covered under the proposed RGP may require review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because they may alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"). Any activity that requires section 408 permission and/or review would not be authorized by this RGP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the Corps issues a written RGP verification.

Water Quality- Water quality certification (WQC) is required by Section 401 of the Clean Water Act, for an activity which may result in a discharge from a point source into waters of the United States. The Corps will send letters to certifying agencies (i.e., the State Water Resources Control Board, authorized tribes, and EPA region) to request water quality certification for this RGP. Water quality certification for this RGP may be granted without conditions, granted with conditions, denied, or waived. If a certifying agency denies WQC, then the discharges are not authorized unless and until a project proponent obtains individual WQC for the specific discharge, or a waiver occurs.

Coastal Zone Management- Federal Consistency Certification is required by Section 307(c) of the Coastal Zone Management Act for an activity which may directly affect a State's coastal zone. Activities covered under the proposed RGP may directly affect a State's coastal zone. If applicable, a project proponent would need to certify compliance with the appropriate Coastal Zone Management program and obtain concurrence from the applicable Coastal Zone Management Authority before an activity could be verified under this RGP. For this RGP, Caltrans will act as the NEPA Lead Agency, pursuant to the NEPA Assignment memorandum of understanding (MOU) with the Federal Highway Administration (FHWA). As the federal lead agency for this project, Caltrans would initially be responsible for complying with Federal Consistency Certification requirement for such projects.

Essential Fish Habitat- Activities covered under the proposed RGP may adversely affect Essential Fish Habitat. For this RGP, Caltrans will act as the NEPA Lead Agency, pursuant to the NEPA Assignment MOU with the FHWA. As the federal lead agency for this project, Caltrans would initially be responsible for determining the presence or absence of EFH and the need to conduct consultation with the National Marine Fisheries Service, pursuant to Magnuson-Stevens Fishery Conservation and Management Act Section 305(5)(b)(2), as appropriate. Caltrans would initiate project-specific consultation with NMFS for projects that may affect EFH. If programmatic EFH consultation is applicable to a project, the programmatic consultation would be listed in the submittal to the Corps and compliance with terms and conditions would be documented.

Cultural Resources- Potentially eligible cultural resources may be affected by activities covered under the proposed RGP. For this RGP, Caltrans will act as the NEPA Lead Agency, pursuant to the NEPA Assignment MOU with the FHWA. As the federal lead agency for this undertaking, Caltrans would initially be responsible for the identification and assessment of effects on historic properties

within or near broadband activities and for consultation with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act, as appropriate.

An existing Section 106 programmatic agreement for FHWA-assisted projects in California entitled “*Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act as it Pertains to the Administration of the Federal-Aid Highway Program in California*” issued on January 1, 2004, and amended in 2014, may be applicable for some of the projects to be permitted under the RGP. The Corps is signatory to this Section 106 programmatic agreement and will send a letter to the State Historic Preservation Officer to request use of this Section 106 programmatic agreement for activities covered under the proposed RGP.

Where Caltrans does not own the right of way, the Corps or other federal landowners may be the federal lead agency for NEPA and would initiate consultation with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act for individual projects, as appropriate.

Endangered Species- Activities covered under the proposed RGP may affect Federally-listed endangered or threatened species or their critical habitat. For this RGP, Caltrans will act as the NEPA Lead Agency, pursuant to the NEPA Assignment MOU with the FHWA. As the federal lead agency for this project, Caltrans would initially be responsible for determining the presence or absence of federally-listed species and designated critical habitat and the need to conduct consultation with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS), pursuant to Section 7 of the Endangered Species Act, as appropriate.

Caltrans would initiate project-specific ESA Section 7 consultation with the USFWS and/or NMFS for projects that may affect federally-listed species and/or their designated critical habitat. If programmatic ESA consultation is applicable to a project, the programmatic consultation would be listed in the submittal to the Corps and compliance with terms and conditions would be documented.

Where Caltrans does not own the right of way, the Corps or other federal landowners may be the federal lead agency for NEPA and would initiate project-specific ESA Section 7 consultation with the USFWS and/or NMFS, as appropriate.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Regional General Permit

Refer to Enclosure 1.

Additional Project Information

Background– In accordance with Corps' regulations at 33 CFR 322.2(f), RGP's are Department of the Army authorizations that are issued on a regional basis for a category or categories of activities when:

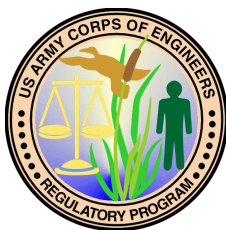
1. Those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or
2. The RGP would result in avoiding unnecessary duplication of the regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

Mitigation– This office will determine the need for appropriate and practicable compensatory mitigation necessary to ensure that adverse effects on the aquatic environment are minimal. Compensatory mitigation may be required for permanent or temporary discharges of dredged or fill material that convert waters of the U.S. to non-waters of the U.S. Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to an herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level. Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, permittees must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR Part 332.

For additional information please call Gerardo Hidalgo at (805) 585-2145 or via e-mail at Gerardo.L.Hidalgo@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.

Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
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Regional General Permit 23

U.S. ARMY CORPS OF ENGINEERS

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CALTRANS MIDDLE-MILE BROADBAND NETWORK

EFFECTIVE: [DATE]

EXPIRES: [5 years from effective]

The U.S. Army Corps of Engineers Los Angeles, Sacramento, and San Francisco Districts (Districts) hereby issue Regional General Permit (RGP) #23 to the California Department of Transportation (Caltrans) authorizing activities involving the discharges of dredged or fill material into waters of the United States, including wetlands, and/or work in or affecting navigable waters of the United States for Middle-Mile Broadband Network fiber optic infrastructure in the State of California. Note: The term "you" and its derivatives, as used in this RGP, means the permittee or any future transferee. The term "this office" refers to the appropriate District office identified in the "Contacts and Additional Information" section of this RGP.

ISSUING OFFICE: U.S. Army Corps of Engineers (Corps) Los Angeles, Sacramento, and San Francisco Districts

ACTION ID: SPL-2022-00120-GLH

AUTHORITIES: Section 404 of the Clean Water Act for the discharges of dredged and/or fill material in waters of the United States and Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States.

LOCATION: All waters of the United States, including navigable waters, within the State of California.

ACTIVITIES COVERED: Fiber optic infrastructure activities associated with the Middle-Mile Broadband Network including the installation of fiber conduit, vaults, hubs, substations, new utility poles and foundations, the construction of temporary and permanent access roads, dewatering structures, performing survey activities, and remediation of inadvertent returns of drilling fluid in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Fiber Optic /Conduit: This RGP authorizes discharges of dredged and/or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the installation or improvement of fiber or conduit lines. The activities authorized include plowing, trenching, installation or improvement of fiber or conduit lines to

existing bridges, culverts, or overhead utilities, horizontal directional drilling, and jack and boring. (Section 404 and Section 10)

Associated Infrastructure: This RGP authorizes discharges of dredged and/or fill material into waters of the United States associated with the installation or improvement of associated Middle-Mile Broadband Network facilities, including vaults, hubs, substations, poles, and foundations. (Section 404)

Permanent Access Areas: This RGP authorizes discharges of dredged and/or fill material into waters of the United States associated with the construction, maintenance, or improvement of permanent access areas, such as maintenance vehicle pullouts, and access roads. (Section 404)

Temporary Access Areas: This RGP authorizes discharges of dredged and/or fill material into waters of the United States associated with the construction or maintenance of temporary access areas, including staging, storage, parking, and laydown areas, including pads, roads, bridges, culverts, and wetland protection matting. This RGP authorizes structures or work in navigable waters associated with the installation of temporary structures, such as scaffolding, pilings, and footings for bridges, docks, and piers and operation of temporary construction equipment, as necessary to complete the activity, such as barges, tractors, and boats within navigable waters. (Section 404 and Section 10)

Dewatering Structures: This RGP authorizes discharges of dredged and/or fill material into waters of the United States and structures or work in navigable waters associated with the installation of temporary dewatering structures, including cofferdams, bladder dams, diversion tunnels/pipes, and sheet piles. (Section 404 and Section 10)

Survey Activities: This RGP authorizes discharges of dredged and/or fill material into waters of the United States and structures or work in navigable waters associated with survey activities including exploratory geotechnical-type bore holes, and exploratory trenching. (Section 404 and Section 10)

Inadvertent Returns of Drilling Fluid: This RGP authorizes, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities. These remediation activities must be done as soon as practicable, to restore the affected waterbody. (Section 404 and Section 10)

TERMS OF AUTHORIZATION:

1. Avoidance and Minimization: Activities must be designed and constructed to minimize adverse effects to waters of the United States, including navigable waters, to the maximum extent practicable.

2. Thresholds:
 - a. Each single and complete project cannot cause the loss¹ of greater than 0.5 acre of waters of the United States.
 - b. The cumulative loss of waters of the United States, within the entire state, shall not exceed 10.0 acres over the term of the RGP.
3. Temporary Construction, Access, and Dewatering: Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged and/or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if this office determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fills must be removed, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. Structures left in place after construction is completed require a separate Section 10 permit, if located in navigable waters of the United States. (See 33 CFR part 322).
4. Restoration of Temporary Fills: All temporary fills in waters of the United States, including discharges resulting from side casting material excavated from trenching, that occur because of the activity must be fully contained with appropriate erosion control or containment methods, be restored to pre-construction contours and elevations to the maximum extent practicable, and, as appropriate, revegetated with native, non-invasive vegetation. In temporarily excavated wetlands, topsoil must be segregated and replaced to original depths. After installation of fiber or conduit, trenches shall be backfilled with native soil material free of debris, roots, organic matter, and rocks larger than 1 inch in diameter. After backfilling with native soil material, the finished grade shall be readied for application of any appropriate erosion control measures. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States
5. Duration of Temporary Fills: Temporary fills in waters of the United States, including wetlands, must be avoided, and limited to the smallest area and the shortest duration required to accomplish the project purpose. Unless otherwise conditioned in a Corps RGP verification, temporary fills shall be removed within 30 days following completion of construction activities and shall remain in place for no more than 180 days following placement
6. Temporary and Permanent Access Roads: Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the United States and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at-grade corduroy roads or geotextile/gravel roads). All

¹ Loss of waters of the United States, including the loss of streambed, shall be determined using the definition in Section F of the March 15, 2021, Federal Register Notice for Reissuance and Modification of Nationwide Permits; Final Rule (86 FR 2744), which can be found at: <https://www.federalregister.gov/documents/2021/01/13/202100102/reissuance-andmodification-of-nationwide-permits>.

access roads or crossings constructed in waters of the United States must be properly bridged or culverted to adequately pass low flow and bank-full events, bedload, sediment load, and provide site-appropriate fish and wildlife passage. Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this permit. Temporary access roads must be removed upon completion of the work, in accordance with the requirements for restoration of temporary fills.

7. Where the fiber optic/conduit line is constructed, installed, or maintained in, over, and under navigable waters of the United States (i.e., Section 10 waters) within the coastal United States, California Delta, and Lake Tahoe a copy of the RGP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the telecommunication line to protect navigation.
8. For overhead telecommunication lines authorized by this RGP, a copy of the Pre-Construction Notification and RGP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

GENERAL CONDITIONS:

1. Pre-Construction Notification (PCN): Prior to commencing work in waters of the United States, the permittee shall submit a PCN for the following activities:
 - a. Any activities that would result in a loss of special aquatic sites, including wetlands.
 - b. Single and complete projects where the activity would result in the loss of greater than 0.1 acre.
 - c. Any activity that will take place in waters or wetlands of the United States that are within the San Francisco Bay diked baylands.
 - d. Any activity for which Section 408 permission is required from the Corps pursuant to 33 U.S.C. 408.
 - e. Any activity resulting in a discharge of dredged and/or fill material in waters of the United States on Tribal Lands².
2. Navigation: No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the United States 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. 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 or her 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, to remove, relocate, or alter the structural work or obstructions

² Tribal lands is defined as any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

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.

3. **Compensatory Mitigation:** This office will determine the need for appropriate and practicable compensatory mitigation necessary to ensure that adverse effects on the aquatic environment are minimal. Compensatory mitigation may be required for permanent or temporary discharges of dredged and/or fill material that convert waters of the United States to non-waters of the U.S and/or where certain functions and services of waters of the United States are permanently and adversely affected by an activity. Caltrans may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, Caltrans must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR Part 332.
4. **Compliance:** Caltrans is responsible for ensuring that whoever performs, supervises, or oversees any portion of the physical work associated with the authorized activity is familiar with all the terms and conditions of the RGP and any verification letter provided by this office. The activity must also comply with any special conditions added by the state, tribe, or United States Environmental Protection Agency (USEPA) in its Section 401 Water Quality Certification, unless specifically waived by the Corps, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of this RGP.
5. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document shall be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
6. **Site Inspection:** Caltrans shall allow representatives from the Corps to inspect the site of any authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with this RGP.
7. **Endangered Species:**
 - a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under this RGP which "may affect" a federally listed as threatened or endangered species or designated critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.
 - b. Caltrans will follow their own procedures for complying with the requirements of

the ESA (see 33 CFR 330.4(f)(1)). If a PCN is required for a proposed activity, Caltrans shall provide this office with the appropriate documentation to demonstrate compliance with those requirements.

8. Historic Properties:
 - a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
 - b. Caltrans will follow their own procedures for complying with the requirements of Section 106 of the NHPA (see 33 CFR 330.4(g)(1)). If a PCN is required for a proposed activity, Caltrans must provide this office with the appropriate documentation to demonstrate compliance with those requirements.
9. Discovery of Previously Unknown Remains and Artifacts: If any previously unknown historic, cultural, or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, you must immediately notify this office 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. This office 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.
10. Activities Affecting Structures or Works Built by the United States: If any activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a federally authorized Civil Works project (a "USACE project"), Caltrans must submit a PCN. See general condition 1.e. An activity that requires section 408 permission and/or review is not authorized by this RGP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and this office issues a written RGP verification.
11. Suitable Material. No activity may use unsuitable material such as trash, debris, car bodies, and asphalt. Material used for construction or discharged must be free from toxic pollutants in toxic amounts.
12. Best Management Practices: To minimize adverse effects from soil loss and sediment transport that may occur as a result of the authorized work, appropriate BMPs must be implemented and maintained. BMPs placed above an ordinary high water mark (OHWM) must remain in place until the affected area is stabilized with vegetation or ground cover. BMPs may also include preservation of existing vegetation, application of mulches, temporary seeding, soil stabilizers, and erosion control blankets. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. In general, topsoil that is stockpiled after trenching will be stored in a way that protects beneficial biological

activity and resident seeds. All BMPs shall be inspected and properly maintained regularly and following storm events to ensure they are operational. All exposed trenches, slopes and stream banks shall be stabilized within 24 hours after completion of all tributary crossings.

13. Pollutant or Hazardous Waste Spills: The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with all applicable state, tribal, and federal laws. In accordance with applicable state, tribal, and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or www.nrc.uscg.mil.
14. Clean Construction Equipment: All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
15. Remediation of Inadvertent Returns of Drilling Fluid: When an inadvertent return of drilling fluids is suspected or detected in a water of the U.S. the contractor shall suspend all drilling operations at the return site immediately. Work shall be undertaken immediately to contain and clean up the inadvertent drilling fluid return/release and minimize further migration of the drilling fluids/slurry in waters of the United States All inadvertent return sites located in waters of the United States shall be returned to pre-project conditions in accordance with the requirements for restoration of temporary fills. Notification of inadvertent returns in waters of the United States must also include notification to the Corps but does not require RGP verification prior to commencing remediation work.
16. Section 401 Clean Water Act Water Quality Certification:
 - a. Water quality certification (WQC) is required by Section 401 of the Clean Water Act, for an activity which may result in a discharge from a point source into waters of the United States. This office will send letters to certifying agencies (i.e., states, authorized tribes, or USEPA region, as appropriate) to request water quality certification for this RGP. Water quality certification for this RGP may be granted without conditions, granted with conditions, denied, or waived. If a certifying agency denies WQC, then the discharges are not authorized unless and until Caltrans obtains individual WQC for the specific discharge, or a waiver occurs.
 - b. Where the certifying authority (state, authorized tribe, or USEPA, as appropriate) has not previously certified compliance of the RGP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge(s) must be obtained or waived (see 33 CFR 330.4(c)). If Caltrans cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the RGP, then the permittee must obtain a water quality certification or waiver for the proposed discharge(s) in order for the activity to be authorized by the RGP.
 - c. If the RGP activity requires Pre-Construction Notification and the certifying authority has not previously certified compliance of the RGP with CWA section 401, the proposed discharge(s) is not authorized by the RGP until water quality

certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge(s), Caltrans must submit a copy of the certification to the district engineer. The discharge(s) is not authorized by the RGP until this office has notified Caltrans that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

- d. This office or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

17. Coastal Zone Management: An individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If Caltrans cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then Caltrans must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by the RGP. This office or the state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

PRE-CONSTRUCTION NOTIFICATION PROCEDURES:

1. Activities that meet the terms and conditions of this RGP and do not require submittal of a PCN (see General Condition 1), may commence work after Caltrans has carefully confirmed that the activity will be conducted in compliance with all applicable terms and conditions of the RGP. Caltrans may choose to request a pre-application meeting with the Corps and other regulatory and resource agencies to verify eligibility. To request a pre-application meeting, please contact your local Corps office listed in the "Contacts and Additional Information" section of this document.

2. In accordance with General Condition 1, Caltrans shall submit an electronic PCN to the appropriate District office consisting of a written request for verification under this RGP. Electronic submittals shall be sent to the following:

Los Angeles District: SPLPermitInquiries@usace.army.mil

Sacramento District: SPKRegulatoryMailbox@usace.army.mil

San Francisco District: CESPEN-Regulatory-Info@usace.army.mil

3. The PCN shall include a letter or a completed Department of the Army Permit Application Form (ENG 4345), requesting verification under this RGP, and shall contain the following information to be considered complete:
 - a. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third-party agents.
 - b. Location of the proposed activity (i.e., section-township-range and latitude and longitude in decimal degrees).
 - c. A description of the proposed activity as follows;

- 1) the activity's purpose;
 - 2) a description of any avoidance and minimization measures intended to reduce the adverse environmental effects caused by the proposed activity;
 - 3) any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the overall project, including activities that require Corps authorization but do not require PCN.
- d. A tabulation of all impacts to waters of the United States, including the anticipated amount of permanent and temporary fill in waters of the United States expected to result from the proposed activity. Impacts to all waters of the United States must be reported in acres, square feet linear feet, or another appropriate unit of measure. The table should also clearly identify the acreage and linear feet (as applicable) of loss of waters of the U.S. as defined in this RGP. A table or the Aquatic Resources Excel Spreadsheet "ORM2 Bulk Upload Tool" (<https://www.spk.usace.army.mil/Missions/Regulatory/Jurisdiction/Aquatic-Resources-Delineation/>) may be used to disclose this information clearly and succinctly.
- e. Sketches, maps, drawings, and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale bar included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate. The acreage and type (wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams) of each aquatic resource on the project site shall be identified. Wetland and Ordinary High Water Mark delineations must be prepared in accordance with the current method required by the Corps. Sketches, maps, drawings, and plans shall comply with the Map and Drawing Standards for the South Pacific Division Regulatory Program, (available at <https://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/Article/651327/updated-map-and-drawing-standards/>)
- f. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required.
- g. The PCN must specify the duration of proposed temporary fills or structures in waters of the United States and include a restoration plan showing how all temporary fills and structures in waters of the U.S. would be removed and the area restored to pre-project conditions to the maximum extent practicable.
- h. If any federally-listed proposed, threatened, or endangered species or proposed or designated critical habitat might be affected by the activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. Caltrans must provide this office with the appropriate documentation demonstrating compliance with the requirements of the ESA (see 33 CFR 330.4(f)(1)).
- i. If the activity might have the potential to cause effects to a historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the

potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property. Caltrans must provide this office with the appropriate documentation demonstrating compliance with the requirements of Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)).

- j. If the activity might affect Essential Fish Habitat (EFH), as designated by the Pacific Fishery Management Council, the PCN shall include an EFH assessment and analysis of effects of the proposed action on EFH, in accordance with 50 C.F.R. § 600.920 (e). Caltrans must provide this office with the appropriate documentation demonstrating compliance with the Magnuson-Stevens Fishery Conservation and Management Act.
 - k. If an activity is proposed in or that might affect 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, the PCN must identify the Wild and Scenic River or the “study river” that would be impacted.
 - l. For an activity that requires Section 408 permission from the Corps, the PCN must include a statement confirming the Caltrans has submitted a written request for Section 408 permission to the Corps office having jurisdiction over the federal project.
4. Timing of PCN: Where required by the terms of this RGP, the Caltrans must notify this office by submitting a PCN as early as possible. The Corps will 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 Caltrans within that 30-day period to request the additional information necessary to make the PCN complete. As a general rule, the Corps will request additional information necessary to make the PCN complete only once. However, if Caltrans does not provide all of the requested information, then the Corps will notify Caltrans 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 Corps.

Caltrans shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

ANNUAL REPORTING REQUIREMENTS:

Caltrans shall submit an annual report to each Corps District’s Caltrans liaison for all activities completed under the RGP. The annual report shall include the activities that both required and did not require a PCN. The reports shall be submitted by January 31 of the following year and shall include a signed compliance certification form and attachments containing the following information:

1. A complete description of each activity completed under the RGP, including the type and amount (in cubic yards) of material and the area (in acres) of dredged and/or fill material permanently and temporarily discharged into waters of the United States, at

each location;

2. The dates that work within waters of the United States was initiated and completed;
3. A description of any temporary access, construction and dewatering activities, including the methods for accomplishing any dewatering, and the methods for restoring all temporary construction areas;
4. A vicinity map and project boundary map depicting the location of each activity completed under the RGP during the review period. These maps shall be of sufficient detail to clearly identify the exact location (including the latitude and longitude coordinates), shall identify the size of the project site in acres, and the extent of each activity;
5. The cumulative loss of waters of the United States (in acres) for all activities, for the entire state, that have been conducted under the RGP during the reporting period and 5-year duration of the RGP;
6. Post-construction plan-view and cross-section view drawings for each activity completed. These drawings shall be to-scale or show the dimensions of the activity;
7. Pre-construction and post-construction photographs of any site in which greater than 25 cubic yards of fill material was discharged below the ordinary high water mark of waters of the United States, or within the boundaries of any wetlands. The photographs shall be taken from the same location and shall show both the upstream and downstream portions of the site. Each photograph point shall be clearly depicted on the plan-view drawing;
8. Information identifying how each activity complied with the terms and conditions of the RGP.

FURTHER INFORMATION:

1. Congressional authorities: The permittee has been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
2. Limits of this authorization:
 - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b. This RGP does not grant any property rights or exclusive privileges;
 - c. This RGP does not authorize any injury to the property or rights of others; and
 - d. This RGP does not authorize interference with any existing or proposed federal project.
3. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the U.S. in the public interest;
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
- d. Design or construction deficiencies associated with the permitted work; or
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on permittee's data: The determination of this office that an activity is not contrary to the public interest will be made in reliance on the information provided by the project proponent.

5. Re-evaluation of RGP decision: This office may reevaluate its decision for an individual verification under this general permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The permittee fails to comply with the terms and conditions of this permit;
- b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 4 above); or
- c. Significant new information surfaces which this office did not consider in reaching the original decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

6. Discretionary Authority: This office has the discretion to suspend, modify, or revoke authorizations under this permit. This discretionary authority may be used by us to further condition or restrict the applicability of this permit for cases in which it has concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any factor of the public interest. Should this office determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to waters of the United States or otherwise be contrary to the public interest, we will modify the authorization to reduce or eliminate those adverse effects or notify you that the proposed activity is not authorized by this permit and provide instructions on how to apply for authorization under another type of DA permit. Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from us, such as a Nationwide Permit, Regional General Permit, Letter of Permission, or Standard Permit. This office will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public

interest. This office may include additional special conditions to a verification under this permit to ensure the activity has minimal impact. This office may restore authorization under this RGP at any time it determines the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. We may also use our discretionary authority to modify, suspend, or revoke this permit at any time.

PERMIT DURATION:

This permit is valid for five years from issuance and will expire on [DATE-same as above]. The Corps may re-evaluate the terms and conditions of this permit at any time necessary to protect the public interest. This permit may be re-issued, after public notice and documentation of the decision. Activities requiring a PCN under this permit must be verified in writing by the Corps. Verifications are valid until the permit expires.

CONTACTS AND ADDITIONAL INFORMATION:

For questions, please contact the appropriate District office below.

U.S. Army Corps of Engineers
Los Angeles District, Regulatory Division
915 Wilshire Blvd., Suite 930
Los Angeles, California 90017
Office: (213) 452-3425
Email: SPLPermitInquiries@usace.army.mil
Website: <https://www.spl.usace.army.mil/Missions/Regulatory/>

U.S. Army Corps of Engineers
Sacramento District, Regulatory Division
1325 J Street, Room 1350
Sacramento, California 95814-2922
Office: (916) 557-5150
Email: SPKRegulatoryMailbox@usace.army.mil
Website: <https://www.spk.usace.army.mil/Missions/Regulatory/>

U.S. Army Corps of Engineers
San Francisco District, Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, California 94102-3404
Office: (415) 503-6795
Email: cespn-regulatory-info@usace.army.mil
Website: <https://www.spn.usace.army.mil/Missions/Regulatory/>

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

David J. Castanon
Chief, Regulatory Division

Date

Michael S. Jewell
Chief, Regulatory Division

Date

James C. Mazza
Chief, Regulatory Division

Date

MMBN Mapping

District	Total BMMN locations (miles) *
District 1	730
District 2	1246
District 3	978
District 4	917
District 5	672
District 6	1078
District 7	647
District 8	1315
District 9	695
District 10	804
District 11	692
District 12	148
Statewide	9,922

* MMBN Miles are estimated based on updated May 2022 Systemwide Map provided by CDT.

