



**DEPARTMENT OF THE ARMY**  
**SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS**  
**450 GOLDEN GATE AVENUE**  
**SAN FRANCISCO, CALIFORNIA 94102**

**DEPARTMENT OF THE ARMY PERMIT**  
**SANTA CLARA VALLEY HABITAT PLAN REGIONAL GENERAL PERMIT 18**

**PERMITTEE:** Edmund Sullivan, Santa Clara Valley Habitat Agency

**PERMIT NO.:** SPN-2012-00302S

**ISSUING OFFICE:** San Francisco District

**NOTE:** The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

**PROJECT DESCRIPTION:** The U.S. Army Corps of Engineers, San Francisco District (District), hereby re-issues Regional General Permit 18 for implementation of covered activities in the Santa Clara Valley Habitat Plan (August 2012) with no more than minimal adverse effects on waters of the U.S.

**PROJECT LOCATION:** Santa Clara County, California. The permit area includes all of the Uvas, Llagas, and Pajaro sub-watersheds within Santa Clara County, all of the Coyote Creek sub-watershed except for the Baylands, and a large portion of the Guadalupe River sub-watershed except for the Baylands. The permit area also encompasses small areas outside these sub-watersheds. The Uvas/Llagas/Pajaro sub-watersheds are part of the greater Pajaro River watershed draining to the Monterey Bay watershed (hydrologic unit code [HUC] 18060002). The Coyote Creek and Guadalupe River sub-watersheds are part of the greater San Francisco Bay watershed (HUC 18050006). See Attachment 1 – Map of Regional General Permit Area.

**COVERED ACTIVITIES:** The following RGP covered activities may be authorized under this permit. The Project and Program Limits apply to all permanent adverse effects to potential waters of the U.S., as determined by the Corps, unless stated otherwise. The Corps will make the final determination regarding the appropriate category of covered activity for each proposed project.

**1) Linear transportation projects**

Activities required for crossings of waters of the United States associated with the construction, expansion, modification, improvement, or removal of linear transportation projects (e.g., bridges, roads, highways, pedestrian bridges, bike paths) in 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.

Program Limits: 17.5 acres over 5 years.

Project Limits: 0.5 acre, 300 linear feet.

**2) Culvert repair, replacement, removal, and installation**

Culvert repair and replacement may include removal and replacement of existing culverts, repairs to headwalls, end walls, down drains, flared end sections, rock energy dissipaters, and rock slope protection (RSP). Construction activities may include excavation and backfill with native soils or concrete around the culvert. Earth plugs may be used to contain slurry mixtures. Backfill areas may be paved after the culvert is repaired, replaced or removed; in rural settings the area may be left as compacted earth and gravel.

Program Limits: 11 acres over 5 years.  
Project Limits: 0.5 acre each, 300 linear feet.

### **3) Outfall repair, replacement, removal, and installation**

Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (section 402 of the Clean Water Act). The construction of intake structures is not authorized by this RGP unless they are directly associated with an authorized outfall structure.

Activities include the repair and replacement of existing outfalls and installation of new outfalls associated with stormwater and water supply management facilities. Water intake structure construction may include installation of concrete and/or rock riprap to stabilize banks and control erosion. Installation of new intakes would only occur in areas without anadromous fish (i.e., upstream of existing diversions).

Program Limits: 7.5 acres over 5 years.  
Project Limits: 0.25 acre, 100 linear feet.

### **4) Sediment removal**

Mechanical sediment removal required when accumulated sediment reduces a channel's flow conveyance capacity and prevents facilities or appurtenant structures from functioning as intended. Sediment removal may occur along a channel reach, or at a small site such as a stream gauge, and would be done to match pre-sedimentation flow capacity (i.e., capacity would not be expanded) and pre-sedimentation geomorphic features (e.g., channel sinuosity). Sediment removal may also be needed for pond maintenance. Sediment removal may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment. This covered activity does not result in a permanent adverse effect to waters of the U.S., so the Project and Program Limits are temporary impact limits.

Program Limits: 10 acres over 5 years.  
Project Limits: 0.25 acre, 300 linear feet.

### **5) Removal of vegetation and storm debris involving soil disturbance**

Vegetation and storm debris management activities involving hand or mechanical removal of vegetation and storm debris by scraping, discing, grading, excavating, or other methods that result in soil disturbance. Vegetation management activities may occur along creeks, near bridges, or at stream gauges.

Program Limits: No program limits but must report on quantity of removals.  
Project Limits: No limit.

### **6) Temporary construction access and dewatering**

Construction of temporary access ramps, construction of cofferdams and berms to temporarily isolate in-channel construction activities from the active stream, and pumping of wet areas to temporarily expose the channel bottom in the designated construction area. The dewatering area must be limited to the minimal amount necessary. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Following construction, all temporary fill must be entirely removed and the area restored.

Program Limits: No program limits.  
Project Limits: No limit.

### **7) Recreational facility construction, reconstruction, and maintenance**

Construction of recreational facilities, including trails, boat ramps, ponds, and other facilities. Other facilities may include portions of buildings, educational displays, and other non-water dependent structures that may encroach into jurisdictional

waters when complete avoidance is not practicable. Maintenance of existing recreational trail stream crossings and construction of new recreational trail stream crossings may be authorized under this activity category. Activities associated with boat ramp installation may include grading, paving, and armoring. Construction may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment.

Program Limits: 6.25 acres over 5 years.

Project Limits: 0.25 acre, 200 linear feet.

**8) Restoration, establishment, enhancement activities involving soil disturbance, including removal and modification of fish passage impediments.**

Activities in waters of the United States associated with the restoration, enhancement, and establishment of streams, wetlands, and open waters, provided those activities result in net increases in aquatic resource functions and services. To be authorized by this RGP, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of an intact aquatic habitat or riparian area of the same type that exists in the region. An ecological reference may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

Activities authorized under this category include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This activity category includes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. Except for the relocation of non-tidal waters, this category does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This activity category does not authorize stream channelization. Compensatory mitigation is not required as the included activities must result in net increases in aquatic resource functions and services.

Stream restoration activities include: geomorphic enhancement, including physical re-configuration of channels and installation of structures to enhance channel complexity, based on California Department of Fish and Wildlife and National Marine Fisheries Service guidelines for salmonid habitat enhancement; riparian planting; removal of invasive vegetation; creating and expanding existing floodplain habitats and side channel habitats; and gravel augmentation to enhance spawning habitat. To implement these improvements, short channel segments may require temporary dewatering or bypass to allow construction. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work.

Removal of fish passage impediments may include removal of in-stream concrete low-flow crossings, culverts, weirs, concrete aprons under bridges, and possibly other features that create shallow water depths, vertical drops, or water velocities that exceed the swimming and leaping ability of fish. Such impediments may be modified to allow passage, or completely removed. In some cases, existing small culverts that impede fish passage may be replaced with bridged weir

structures to provide access to tributary streams.

Program Limits: No program limit but must report on annual impacts.

Project Limits: No project limit but must document net increase in aquatic resource functions and services.

#### **9) Installation of fish screens when such installation involves soil disturbance**

Fish screens may be installed on existing unscreened water intakes. Fish screens may also be installed to isolate creeks from off-channel recharge ponds and lakes to prevent movement of fish in and out of these lakes and to support recreational fishing opportunities in these lakes. These project actions may occur in association with actions to maintain and replace existing water intakes. Fish screen structures typically consist of concrete structures with metal screens with appropriately sized openings to prevent entrainment of fish with diverted water. Fish screen structures may include a minimum amount of concrete and/or rock riprap as needed to stabilize banks and control erosion. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work. Although most work can usually be accomplished with equipment operated from the top of bank, some projects may require equipment and vehicles to be operated in the stream channel. Where construction activities are required in flowing streams, cofferdams or berms would be used to dewater the work site and isolate it from flowing water.

Fish screen installation activities in streams supporting federally listed anadromous fish species or their designated critical habitat are eligible for authorization under this RGP if the Corps determines the activities would have no effect on federally listed anadromous fish species or their designated critical habitat or if the Corps completes the necessary level of Endangered Species Act section 7 consultation with National Marine Fisheries Service (NMFS) for the activity.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.10 acre.

#### **10) Bank stabilization**

Bank stabilization involves repairing and stabilizing channel banks and levees that are eroding or are in need of erosion protection. There are a wide range of potential bank repair treatment options depending on site conditions and long-term maintenance issues. The primary treatment options include hard, hybrid, or soft depending on the type of materials used. Hard materials include rip-rap, gabions, rock, concrete blocks, or other hard materials. Soft materials include biotechnical treatments emphasizing vegetation and earthen banks. Hybrid materials include a mix of hard and soft materials.

During the bank stabilization assessment process, sites with destabilized banks are evaluated for their soil conditions, channel and bank scour velocities, slope stability, channel form/position, and other active geomorphic conditions. Consideration of the cause of the bank failure (overland runoff, bank slumping, undersized culvert upstream, etc.) is also critical to determination of the appropriate treatment approach. Where practicable and appropriate, bank stabilization projects would also address the cause of the bank failure. The use of hard material would be minimized where possible.

Program Limit: 2.5 acres over 5 years.

Project Limits: 0.1 acre, 300 linear feet.

#### **11) Minor maintenance of levees, canals, and ditches**

Minor maintenance activities are routine small-scale activities performed to make repairs and keep facilities operational. Maintenance activities may occur along levees, canals, and ditches and at stream gauges and would not change the footprint of existing facilities. Specific actions could include trash and debris removal that requires minor ground disturbance; replacement of concrete linings, pipes, valves, or similar structures; replacement of weirs; minor erosion repair; and other minor maintenance activities.

Program Limit: 4 acres over 5 years.

Project Limit: 0.2 acre.

### **12) Surveying activities, including installation and maintenance of scientific measurement devices**

Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. Under this category, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This category includes the construction of temporary pads, provided the discharge does not exceed 0.08 acre in waters of the U.S. Discharges and structures associated with the recovery of historic resources are not authorized under this category. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized under this category; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized under this category. Surveying activities under this category do not include installation of any permanent survey structures. Projects to be authorized under this category must include anticipated start and end dates for the surveying activities.

Devices, whose purpose is to measure and record scientific data, such as staff gages, piezometers, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. Scientific measurement device installation projects to be authorized under this category must include anticipated start and end dates for use of the installed device. For devices that would be used for long-term surveying activities, the applicant shall include a written explanation of the need for long-term surveying, and an estimated duration of the long-term survey period.

Program Limit: 0.8 acre over 5 years.

Project Limit: 0.08 acre.

### **13) Utility repair, removal, replacement, and installation**

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States. This category includes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

This category includes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Program Limit: 3 acres over 5 years.

Project Limit: 0.2 acre.

### **14) Discharges associated with development**

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing

fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision is also authorized. This category includes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, and yards.

Program Limit: 5 acres over 5 years.

Project Limit: 0.5 acre, 300 linear feet.

**PERMIT CONDITIONS:**

**GENERAL CONDITIONS:**

1. Applying for RGP authorization: Prior to commencing a proposed activity, applicants seeking authorization under this RGP shall notify the Corps in accordance with the procedures detailed in the *Santa Clara Valley Habitat Plan Regional General Permit (RGP 18) Notification and Program Management Process* (Attachment 2).
2. Mitigation for RGP authorization: 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). 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 individual and cumulative adverse environmental effects are no more than minimal. Compensatory mitigation will be required where necessary to ensure no more than minimal individual and cumulative adverse effects to waters of the U.S. Any required compensatory mitigation must be consistent with the Corps' mitigation rule (33 C.F.R. pt 332).
3. Single and complete project: The project must be a single and complete project. For example, if construction of a residential development involves phases, the sum of all impacted areas would be the basis for deciding whether or not the project is covered by this RGP.
4. After-the-fact projects: This RGP may not be used to authorize activities after they have impacted waters of the U.S.
5. Emergency situations: This RGP does not cover any activities in waters of the U.S. conducted in emergency situations.
6. Compliance with SCV Habitat Plan Conditions: Activities to be authorized under this RGP must be Habitat Plan Covered Activities and must fully comply with the Habitat Plan.
7. Special conditions: The Corps may add special conditions to an authorization to ensure the activity complies with the terms and conditions of the RGP and/or that adverse impacts on the aquatic environment or other public interest factors are individually and cumulatively minimal.
8. Activity completion: Any activity authorized by the Corps under the RGP must be completed prior to the RGP expiration date. However, activities authorized under the RGP that are under construction or under contract for construction in reliance upon this authorization will remain authorized provided the activity is completed within 12 months of the date of the RGP's expiration, modification, or revocation, unless the Corps exercises its

discretionary authority to modify, suspend, or revoke the authorization of a specific project. Authorizations under this RGP will remain valid if, during the time period between now and RGP expiration date, the activity complies with any subsequent modification of the RGP.

9. **Discretionary Authority:** The Corps has the discretion to suspend, modify, or revoke authorizations under this RGP. This discretionary authority may be used by the Corps to also further condition or restrict the applicability of the RGP for cases in which it has concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any public interest factor. Should the Corps determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to aquatic resources or otherwise be contrary to the public interest, the Corps will modify the authorization to reduce or eliminate those adverse effects, or notify the applicant that the proposed activity is not authorized by the RGP and provide instructions on how to seek authorization under an individual permit. The Corps may restore authorization under the RGP at any time if it is determined that the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. The Corps may also use its discretionary authority to modify, suspend, or revoke the RGP at any time.
10. **Expiration of RGP:** This permit shall be valid for a period of five years from the date of issuance, unless suspended or revoked by issuance of a public notice by the District Engineer. A review will be conducted to determine if continuance of the permit is in the public interest after the 5-year expiration date.
11. **Threatened and Endangered Species, U.S. Fish and Wildlife Service (USFWS):** No activity is authorized under the RGP that does not comply with the mandatory terms and conditions and the associated reasonable and prudent measures of the USFWS's "Biological and Conference Opinion, Issuance of a Section 10(s)(1)(B) Permit for the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan" (pages 256-257, Service file number 81420-2009-F-0077), dated April 2013 (<https://scv-habitatagency.org/DocumentCenter/View/343/Biological-and-Conference-Opinion-for-Issuance-of-Section-10a1B-Permit>). Project authorization under the RGP is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the RGP authorization for your project. The USFWS is, however, the authoritative federal agency for determining compliance with the incidental take statement and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.
12. **Threatened and Endangered Species and Essential Fish Habitat, National Marine Fisheries Service (NMFS):** At this time, projects that may affect the Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) DPS, South-Central California Coast (SCCC) steelhead DPS, North American green sturgeon southern DPS (*Acipenser medirostris*), or designated critical habitat for these species, and projects that may adversely affect Essential Fish Habitat, are not authorized under this RGP until the requirements of Section 7 of the Endangered Species Act and/or Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act have been satisfied.
13. **Water Quality Certification:** At this time, individual 401 Water Quality Certifications must be obtained or waived (see 40 C.F.R. §§ 121.2, 121.7(d)(2)) for each project authorized under this RGP. The district engineer may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
14. **Historic Properties:** In cases where the district engineer determines that the proposed activity may have the potential to cause effects to 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) and Appendix C of 33 C.F.R. pt 325 have been satisfied.

15. **Unanticipated Cultural Resources Discoveries:** 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 halt all construction activities that may affect the remains and artifacts until the required coordination has been completed. In the event of discovery of possible human remains, state law requires that the County Coroner be contacted. 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.
16. **Fills within 100-Year Floodplains:** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
17. **Proper Maintenance:** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the district engineer to an RGP authorization.
18. **Transfer of RGP 18 authorization:** If the permittee sells the property associated with a RGP 18 authorization, the permittee may transfer the authorization to the new owner by submitting a letter to the Corps. A copy of the RGP 18 authorization must be attached to the letter, and the letter must contain the following statement and signature:

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

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

19. **Aquatic Life Movements:** No activity may substantially disrupt the necessary life cycle movement of aquatic species indigenous to the water body, 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. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements
20. **Equipment:** Heavy equipment working in wetlands must be placed on mats, or other measures, such as low-ground pressure equipment, must be implemented to minimize soil disturbance.
21. **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.
22. **Suitable Material:** Fill material must be clean and free of contaminants and noxious plants. Fresh cement or concrete is not allowed in waters unless it is placed in sealed forms. Unsuitable fill material includes trash, debris, car bodies, asphalt, etc.
23. **Removal of Temporary Fills:** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and re-vegetated in accordance with plans authorized under this RGP.
24. **Management of Water Flows:** To the maximum extent practicable, the pre-construction course, condition,

capacity, and location of open waters must be maintained. 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 project).

25. 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. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
26. Access: The permittee must allow representatives from the Corps to inspect the authorized activity (and any avoidance or mitigation areas, if applicable) at any time deemed necessary to ensure that the activity is being, or has been, accomplished in accordance with the terms and conditions of the permit.
27. Reporting Responsibilities: The permittee must submit an annual report in accordance with the procedures in the *Santa Clara Valley Habitat Plan Regional General Permit (RGP 18) Notification and Program Management Process* (Attachment 2).
28. For Section 10: For activities authorized through this permit under Section 10 of the Rivers and Harbors Act of 1899, 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.
29. For Section 408: Any proposed modification to an existing Corps project (either federally or locally maintained) that go beyond those modifications required for normal Operations and Maintenance (O&M) require approval under 33 U.S.C. § 408. There shall be no temporary or permanent alteration, occupation, or use of these public works, including but not limited to levees, sea walls, bulkheads, jetties, and dikes for any purpose without the permission of the Secretary of the Army or his/her authorized representative for those cases where the proposed modification is determined to be minor. Under the terms of 33 U.S.C. § 408, any proposed modification requires a determination by the Secretary that such proposed alteration or permanent occupation or use of a Federal project is not injurious to the public interest and will not impair the usefulness of such work.

**FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
  - (X) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
  - ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
2. Limits of this authorization:
  - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

- b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

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



\_\_\_\_\_  
Edmund Sullivan  
Santa Clara Valley Habitat Agency

January 27, 2021

\_\_\_\_\_  
(DATE)

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



\_\_\_\_\_  
James Mazza  
Chief, Regulatory Division

January 28, 2021

\_\_\_\_\_  
(DATE)

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

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)