



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

May 2, 2022

Regulatory Division (SPK-2021-00778)

Port of Stockton  
Attn: Mr. Jason Cashman  
2201 W Washington Street  
Stockton, California 95203  
[jcashman@stocktonport.com](mailto:jcashman@stocktonport.com)

Dear Mr. Cashman:

This letter of permission (LOP) authorizes your proposed activities in approximately 2,423 square feet of waters of the United States for the Rapid Response Dock project. The approximately 2,423 square foot project site is located in the northwestern end of Berth 9 in the Port of Stockton - East Complex, Latitude 37.95137°, Longitude -121.32801°, Stockton, San Joaquin County, California.

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. **Work in waters of the United States must be in accordance with the following conditions of authorization and the General LOP Conditions listed in Attachment A, “General LOP Conditions”:**

General Conditions:

1. The time limit for completing the work authorized by this permit ends on May 2, 2027. If you find that you need more time to complete the authorized activity, submit a request for time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of these requirements if you abandon the permitted activity. This permit may be transferred upon request provided the work complies with the terms and conditions of this authorization. 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. Should you wish to cease to maintain the authorized activity or abandon it without a good faith transfer, you must obtain a permit modification from this office.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register.

4. You shall comply with all terms and conditions of the Section 401 Water Quality Certification for this project.

5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

6. You must sign the enclosed Compliance Certification and return it to this office within 45 days after completion of the authorized 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. 403).

( ) Section 404 of the Clean Water Act (33 U.S.C. 1344).

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 projects.

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. 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. 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 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 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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

This letter contains an initially proffered permit for your proposed project. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this decision, submit a completed RFA form to the South Pacific Division Office at the following address: Tom Cavanaugh, Administrative Appeal Officer, Army Engineer District-South Pacific (CESPD-PDS-O), 1455 Market Street, San Francisco CA 94103-1399, Phone: (415) 503-6574, FAX: (415) 503-6646.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the NAP fact sheet. It is not necessary to submit an RFA for the Division Office if you do not object to the decision in this letter.

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

Please refer to identification number SPK-2021-00778 in any correspondence concerning this project. If you have any questions, please contact Erin Campbell by email at [Erin.M.Campbell@usace.army.mil](mailto:Erin.M.Campbell@usace.army.mil), or telephone at (916) 557-5263. For more information regarding our program, please visit our website at [www.spk.usace.army.mil/Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx).

For and on the behalf of Colonel James J. Handura, Commander and District Engineer.

Sincerely,

Erin Campbell  
Senior Project Manager  
Sacramento Delta Section

Enclosures

cc:

Ms. Katie Chamberlin, Anchor QEA, [kchamberlin@anchorqea.com](mailto:kchamberlin@anchorqea.com)

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: Port of Stockton, Attn: Mr. Jason Cashman	File No.: SPK-2021-00778	Date: May 2, 2022
Attached is:		See Section below
INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
PROFFERED PERMIT (Standard Permit or Letter of permission)		B
PERMIT DENIAL		C
APPROVED JURISDICTIONAL DETERMINATION		D
PRELIMINARY JURISDICTIONAL DETERMINATION		E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/cecw/pages/reg\\_materials.aspx](http://www.usace.army.mil/cecw/pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

U.S. Army Corps of Engineers

**Phone: (916) 557-5263, FAX 916-557-7803**

Email: Erin.M.Campbell@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Thomas J. Cavanaugh  
Administrative Appeal Review Officer  
U.S. Army Corps of Engineers  
South Pacific Division  
1455 Market Street, 2052B  
San Francisco, California 94103-1399  
Phone: (415) 503-6574, FAX: (415) 503-6646  
Email: Thomas.J.Cavanaugh@usace.army.mil

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:

# COMPLIANCE CERTIFICATION

**Permit File Name:** Rapid Response Dock

**Permit File Number:** SPK-2021-00778

**Permittee:** Jason Cashman  
Port of Stockton  
2201 West Washington Street  
Stockton, California 95203

**County:** San Joaquin County

**Date of Permit (Proffered):** May 2, 2022

Within 45 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Sacramento District

[DLL-CESPK-RD-Compliance@usace.army.mil](mailto:DLL-CESPK-RD-Compliance@usace.army.mil)

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

\* \* \* \* \*

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

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

## ATTACHMENT A: General LOP Conditions

1. **Navigation.**
  - (a) No activity may cause more than a minimal adverse effect on navigation.
  - (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
  - (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by the LOP or other Corps permit.
6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter



the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration activities).

10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
13. **Temporary Fills.** Temporary fills must use only clean material and removed in their entirety and the affected areas returned to pre-construction elevations, contours and conditions within 45 days of activity completion. The affected areas must be revegetated with appropriate native plants.
14. **Utility lines.**
  - (a) Installation of a utility line must not be designed or constructed (e.g., backfilling technique) in such a manner as to drain waters of the U.S.
  - (b) Any trench constructed must be backfilled and returned to pre-activity contours and conditions. During construction, the top 6 –12 inches of topsoil must be removed and stockpiled separately. Following installation, the stockpiled topsoil will be replaced on top, and seeded with appropriate native vegetation.
  - (c) Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for no more than three months, provided the material is not placed in such a manner that it may be dispersed by currents or other forces.
15. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.
16. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
18. **Endangered Species.**
  - (a) No activity is authorized under LOP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or

- which will destroy or adversely modify the critical habitat of such species. No activity is authorized under LOP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
- (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.
  - (c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.
  - (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the LOP.
  - (e) Authorization of an activity by LOP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

19. **Historic Properties.**

- (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.
- (c) Non-federal permittees must notify the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the notification must state which historic properties may be affected by the proposed work and include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from

the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

- (d) The district engineer will notify the prospective permittee whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the applicant shall not begin work until notified by the Corps that Section 106 consultation is completed.
- (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

- (a) Discharges of dredged or fill material into waters of the United States are not authorized by LOP for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters, unless the district engineer, in coordination with appropriate resource agencies, determines that the impacts to the critical resource waters will be no more than minimal.

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

- (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the activity site (i.e., on site).
- (b) Mitigation, in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) is required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
- (c) Compensatory mitigation at a minimum 2:1 ratio for permittee responsible or in-lieu fee, or a minimum of 1:1 at a Corps-approved compensatory mitigation bank is required for all losses of waters of the U.S., including wetlands. Because the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
- (d) For development activities, unless specifically authorized by the Corps (e.g. discrete crossing, wetland fills, bank stabilization, stream and/or riparian habitat enhancement) as part of the activity, all intermittent and perennial streams, open waters, wetlands and other special aquatic sites within the site must be avoided and preserved with the following elements:
  - i. A buffer, extending a minimum of 50-feet from either side of the ordinary high water mark of the stream, or to the limits of the FEMA-mapped 100-year floodplain, whichever is greater, or to the property boundary, is established and maintained. At the discretion of the District Engineer, this may not apply to linear activities with a narrow right-of-way perpendicular to the stream.
  - ii. Any trails, utilities, roads and other infrastructure, except specifically designated crossings and/or water quality/storm water management facilities, must be located outside of the prescribed buffer.
  - iii. All above ground crossing of stream must ensure fish passage, especially for anadromous fisheries. Permittees must employ bridge designs that span the stream or river, utilize pier or pile supported structures, or involve large bottomless culverts with a natural streambed, where the substrate and streamflow conditions approximate existing channel conditions. Approach fills in waters of the United States OHWM are not authorized except where avoidance has specifically been determined to be impracticable by the District.
  - iv. All detention or water quality basins must be constructed and sited outside of the stream and riparian area and the activity may not adversely affect pre-construction flows within the stream.
  - v. Channelization, piping, realignment or relocation of intermittent or perennial drainage(s) is not authorized except when, as determined by the District, it would result in no net loss of functions of the aquatic ecosystem within the watershed.
  - vi. Fencing and appropriate signage must be installed around the entire perimeter of the preserve and avoided wetlands. All fencing surrounding mitigation, preservation, avoidance, and buffer areas must allow unrestricted visibility of these areas to discourage vandalism or disposing of trash or other debris in these areas. Signage must contain the District's identification number, contact information for the preserve manager, if applicable, and a statement that the site is a preserve.
  - vii. To ensure proper management of the preserve(s), a specific and detailed preserve management plan for the preserve should be developed and submitted to the Corps. This plan must describe in detail any activities that are proposed within the preserve area(s) and the long term funding and maintenance of each of the preserve area(s).

- viii. The permittee shall place wetlands, other aquatic areas, and any vegetative buffers preserved as part of mitigation for impacts into a separate “preserve” parcel prior to discharging dredged or fill material into waters of the United States, except where specifically determined to be impracticable by the District. Permanent legal protection shall be established for all preserve parcels, following District approval of the legal instrument.
- (e) Compensatory mitigation will not be used to increase the acreage impact or losses allowed by the LOP. However, compensatory mitigation will be used, as necessary, to ensure that an activity already meeting the established acreage limit also has minimal impacts.
- (f) Compensatory mitigation plans for activities in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of vegetated riparian areas next to open waters. In some cases, vegetated riparian areas may be the only compensatory mitigation required. Vegetated riparian areas should consist of native species. The width of the required vegetated riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area must be a minimum of 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
- (g) The permittee may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.
- (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the activity to the minimal level.
- (i) The permittee shall complete compensatory mitigation required by special conditions of the LOP verification before or concurrent with construction of the authorized activity, except when specifically determined to be impracticable by the District. When compensatory mitigation involves use of a mitigation bank or in-lieu fee program, payment shall be made before commencing construction.
- (j) The permittee shall record the LOP with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property against areas (1) designated to be preserved as part of mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where structures such as boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed in or adjacent to navigable waters (Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act). The recordation shall also include a map showing the surveyed location of the authorized structure and any associated areas preserved to minimize or compensate for adverse impacts.

22. **Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified LOP's to be issued in this process, individual 401 Water Quality Certification must be obtained or waived. The district engineer or State or Tribe may

require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. The activity must comply with any special case-specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification.

23. **Transfer of LOP's.** If the permittee sells the property associated with a LOP, the permittee may transfer the LOP to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the LOP and the name and all available contact information, including company name, addresses, telephone numbers and e-mail, must be attached to the letter, and the letter must contain the following statement and signature:

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

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

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

24. **Compliance Certification.** Each permittee who received an LOP from the Corps must submit a signed certification regarding the completed work and any required mitigation within 45 days after completing construction activities. The certification form must be forwarded by the Corps with the LOP and will include:
- (a) A statement that the authorized work was done in accordance with the LOP authorization, including any general or specific conditions;
  - (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
  - (c) The signature of the permittee certifying the completion of the work and mitigation.
25. **Single and Complete Activity.** The activity to be covered under an LOP must be a single and complete activity. Only one LOP may be used for the same single and complete activity.
26. **Inspection.** The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the LOP. The permittee will be notified in advance of an inspection.
27. **Bank Stabilization.** Any bank stabilization shall include the use of vegetation or other biotechnical design to the maximum extent practicable must be reviewed by the Corps on a case-by-case basis and may not qualify for LOP authorization, unless the Corps determines the impact would be minimal.
28. **Federal Agencies.** For activities undertaken by other federal agencies, the application shall include a copy of the National Environmental Policy Act, including signed Categorical Exclusion, document(s) and final agency determinations regarding compliance with Section 7 of the Endangered Species Act, Essential Fish Habitat under the Magnussen-Stevens Act, and Section 106 of the National Historic Preservation Act.

29. **Histosols and Fens.** LOP authorization is revoked for activities in histosols, fens, and in wetlands contiguous with fens. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions.
30. **Springs.** Activities proposed within 100 feet of the point of groundwater discharge of a natural spring must be reviewed by the Corps on a case-by-case basis and may not qualify for LOP authorization, unless the Corps determines the impact would be minimal. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this condition, springs do not include seeps or other discharges which lack a defined channel.
31. **Lake Tahoe.** In the Lake Tahoe basin, proposed activities must be reviewed by the Corps on a case-by-case basis and may not qualify for LOP authorization. Activities in this area may also be authorized under Regional General Permit 16 or through a standard permit.