

Appendix C

## **USACE CWA 404 Permit Strategy**

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# CWA 404 Permit Strategy Aligned with the Placer County Conservation Plan

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August 2017

## Background

The Placer County Conservation Program (PCCP) applies to western Placer County and specific conservation activity areas in neighboring Sutter County. The PCCP includes both a proposed Habitat Conservation Plan (HCP) and Natural Community Conservation Plan (NCCP), the proposed Western Placer County Aquatic Resources Program (CARP), and the proposed Placer County In-Lieu Fee (ILF) Program. The HCP/NCCP proposes to cover fourteen species of wildlife, including nine state and/or federally-listed as threatened or endangered. The CARP is proposed by the County to provide a structure for protecting aquatic resources in western Placer County while streamlining the environmental permitting process for impacts to aquatic resources. The HCP/NCCP uses a regional approach to address issues related to planned development and species habitat conservation and restoration. The proposed boundaries of the PCCP are generally Nevada and Yuba Counties to the north, the City of Auburn and California State Highway 49 on the east, Sacramento County on the South, and Sutter County to the west. The PCCP Plan Area also includes specific areas in western Placer County and a small area in adjacent Sutter County where specific covered activities may be conducted by the Plan Participants. The Plan Area excludes the Cities of Auburn, Roseville and Rocklin and the Town of Loomis, with the exception of specific activities within these cities that would be conducted by the Plan Participants. The four PCCP Plan Participants are the County of Placer, City of Lincoln, South Placer Regional Transportation Authority (SPRTA), and the Placer County Water Agency (PCWA). The Plan Participants are forming the Placer Conservation Authority (PCA), a joint exercise of powers agency, to implement the HCP/NCCP and the CARP commitments and requirements. Based on the HCP/NCCP, the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) will issue species incidental take permits to the Plan Participants and the PCA under Section 10 of the Endangered Species Act (ESA 10). Before they can issue incidental take permits, the USFWS and NMFS must internally consult under Section 7 of the ESA (ESA 7) and are required to comply with the National Environmental Policy Act (NEPA) and other related laws.

The U.S. Army Corps of Engineers (Corps) regulates discharges of dredged or fill material into waters of the United States, including wetlands and other special aquatic sites, under Section 404 of the Clean Water Act (CWA 404) through its Regulatory Program. Permits are issued to applicants only after a determination has been made that the proposed activity is the least environmentally damaging practicable alternative under the U.S. Environmental Protection Agency's (USEPA) 404(b)(1) Guidelines. A determination of the least environmentally damaging practicable alternative (LEDPA) under the 404(b)(1) Guidelines involves evaluating avoidance, minimization and compensation for proposed impacts to waters of the U.S. Further, the Corps must comply with ESA 7, NEPA, Section 401 of the Clean Water Act (CWA 401), and Section 106 of the National Historic Preservation Act (NHPA 106) before authorizing an activity under CWA 404. Types of permits the Corps issues include general permits established on a regional, nationwide, or programmatic basis for activities with minimal impacts on the aquatic environment, individually and cumulatively, and individual permits (standard permits and letters of permission) for those activities which do not fall under a general permit and/or have greater than minimal impacts. The Corps' Sacramento District (Sacramento District) administers the Regulatory Program in the Central Valley and Sierra Nevada of California, the States of Nevada and Utah, and the Western Slope of Colorado.

In 2004, recognizing that many of the listed species to be covered by the HCP/NCCP spend some or all of their lifecycles in aquatic environments regulated under the Corps' Regulatory Program, the Sacramento District was invited to work with the Plan Participants and agencies. In 2006, the USEPA, Sacramento District and other agencies advanced a proposed approach to complying with the 404(b)(1) Guidelines at a regional level.<sup>i</sup> In addition, in 2012 and 2014, the

***In 2006, the USEPA, Sacramento District and other agencies advanced a proposed approach to complying with the 404(b)(1) Guidelines at a regional level.***

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

1325 J STREET, SACRAMENTO, CA 95814

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Sacramento District identified principle needs for establishing a CWA 404 permitting strategy that could align with and complement the HCP/NCCP. A CWA permitting strategy would provide for better assurances and quicker CWA 404 permit decisions for the regulated public, while protecting aquatic resources to an equal or greater level than existing regulations, policies and processes. This expectation continues to be based on a number of tenets upon which the HCP/NCCP is founded including, but not limited to:

- protection of a broad range of species and habitats,
- low impact development strategies (LIDS),
- consistency with general plans,
- avoidance of high quality vernal pool landscapes,
- preservation of watershed functions and stream corridors, and
- development of large, contiguous preserves, with particular focus on the Reserve Acquisition Area.

Presently, the Corps reviews permit applications on an individual basis, making it challenging to evaluate the avoidance, minimization and compensation of impacts to aquatic resources on a broad scale. As a result, the Corps' review is generally focused on the merits of the individual activity and the characteristics of the proposed project site, with limited ability to comprehensively evaluate where the risks, trade-offs and interactions among several projects and aquatic resources can be considered. Over time, environmental issues and development

demands, especially in urbanizing areas, have resulted in adverse effects to the aquatic ecosystem that are not necessarily surprising, but fall short of more ecologically meaningful and sustainable outcomes that a landscape-scale permitting solution may afford. For instance, in some areas, permits issued by the Corps have led to a patchwork of wetland mitigation sites, which may have disjointed or inconsistent preserve boundaries and be functionally compromised by abutting development, causing edge effects, and other adverse impacts. Furthermore, the distance between the

permitted impact location and its mitigation site may be considerable or located in another watershed, especially in cases where the compensatory mitigation was accomplished through the purchase of credits at a mitigation bank or through an in-lieu fee program. The Sacramento District views the HCP/NCCP as a chance to improve both species and aquatic resource protection in a coordinated way on a regional scale, taking into account planned development and providing greater certainty for the regulated public. With this in mind, the Sacramento District has been coordinating with the USFWS, NMFS and Plan Participants to develop and implement a "streamlined" approach to permitting under CWA 404 that encompasses a number of different permit types and processes.

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## **Benefits of CWA 404 Alignment**

In addition to providing a regional platform to inform better and faster CWA 404 permit decisions, a USFWS- and NMFS-approved HCP/NCCP provides several other benefits to the Sacramento District and its customers. As an action significantly affecting the quality of the human environment, the HCP/NCCP requires the USFWS, as the lead Federal agency, to prepare an Environmental Impact Statement (EIS) under NEPA that will include impact analyses over a 50-year period of all HCP/NCCP covered activities within the Plan Area. As a cooperating agency, the Sacramento District intends to use the EIS in a programmatic manner to underpin its CWA 404 permit strategy. Because the EIS is expected to examine a range of reasonable alternatives affecting waters of the U.S., it can serve as a basis for the Sacramento District's evaluation of less damaging alternatives and mitigation under USEPA's 404(b)(1) Guidelines. The Sacramento District would adopt the EIS and make its own Record of Decision regarding the CWA 404 permit strategy's compliance with the 404(b)(1) Guidelines at the regional scale. Any necessary subsequent NEPA documentation prepared by the Sacramento District would tier from the HCP/NCCP EIS.

***As a cooperating agency, the Sacramento District intends to use the EIS in a programmatic manner to underpin its CWA 404 permit strategy.***

The Sacramento District would seek to further streamline the CWA 404 regulatory review process by requesting the USFWS and NMFS to consult once programmatically for all HCP/NCCP covered activities that require a CWA 404 permit, eliminating the need for individual project-by-project ESA 7 consultations. Furthermore, the Sacramento District would request programmatic water quality certification under CWA 401 from the Central Valley Regional Water Quality Control Board for all activities under the CWA 404 permit strategy. This would eliminate the need for permit applicants to apply individually for CWA 401 certification. Finally, to comply with NHPA 106, the Sacramento District would seek to develop a programmatic agreement with the State Historic Preservation Officer, following coordination with tribes and others, for the CWA 404 permit strategy. The Sacramento District would work with USFWS to avoid any potential duplication or conflicts in complying with NHPA 106 and Appendix C of the Corps' regulations at 33 CFR Part 325.

The Sacramento District recognizes the CWA 404 permit strategy is a critical element for streamlining regulatory approvals, while achieving greater protection of the highest quality aquatic resources than the existing project-by-

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project review process. For several years, the Sacramento District has worked closely with the USFWS, NMFS, USEPA, California Department of Fish and Wildlife, and the State and Regional Water Quality Control Boards to ensure processes and policies related to aquatic resource protection are understood and aligned. In June 2010, the agencies completed a permit process relationships mapping exercise which included aligning schedules, and

provided the output to the Plan Participants and other interested parties. These agencies continue to meet and resolve differences among their authorities and policies in the interest of a successful PCCP. The Sacramento District is committed to having its CWA 404 permit strategy in place, including programmatic compliance with ESA 7, CWA 401 and NHPA 106, when USFWS and NMFS issue permits based on the HCP/NCCP.

## **CWA 404 Permitting Strategy**

The Sacramento District has developed a multi-tiered approach to CWA 404 permitting that would address activities which involve discharges of dredged or fill material into waters of the U.S. covered by the USFWS- and NMFS-approved PCCP. This CWA 404 Permitting Strategy consists of the use of:

- A programmatic general permit (PGP) founded on a local aquatic resources protection program and implemented by local ordinances, and designed to reduce duplication with that program, for activities with minimal individual and cumulative effects on the aquatic environment;
- A regional general permit (RGP), if needed, for activities with minimal individual and cumulative effects on the aquatic environment that do not fall under the PGP and for certain activities conducted by PCWA, and activities to implement the HCP/NCCP conservation strategy under the ILF program;
- A procedure for issuing Letters of Permission (LOPs) for activities with more than minimal but less than significant effects on the human environment, including aquatic resources; and
- An abbreviated process for issuing standard permits (SPs) for other activities consistent with the PCCP that may have a significant impact on the human environment, and require the preparation of an EIS.

### PGP

Based on the PCCP and local aquatic resource ordinances (Placer County and City of Lincoln) that implement the CARP, the Sacramento District intends to establish a PGP for covered activities that would have minimal impacts on the aquatic environment, individually and cumulatively. The PGP is premised on the ordinances resulting in the same or better level of protection to waters of the U.S. as currently in place under CWA 404. The process for

the Corps to establish a PGP follows the standard permit process, which requires a public notice. The PGP will be addressed in the Sacramento District's ROD prepared for the PCCP EIS. The PGP, which will likely include limits and thresholds that exceed those found in the Nationwide Permits, would be effective once the local aquatic resources ordinances are approved. An activity determined to be compliant with the HCP/NCCP and ordinances, and the CARP would be authorized under the PGP, assuming all terms and conditions of the PGP are met. The PGP would not impose additional requirements or conditions on individual activities for avoiding, minimizing or compensating for the loss of aquatic resources beyond those required under the HCP/NCCP, CARP, and ordinances. A simple notification to the Sacramento District for individual activities may be necessary; however, the Corps would generally rely on the entities responsible for administering the CARP/ordinances to regularly report to the Sacramento District on use of the ordinances and coverage under the PGP. The ultimate goal of the PGP is to rely heavily on the HCP/NCCP, HCP/NCCP EIS, USFWS's and NMFS's programmatic biological opinions, CARP and the local aquatic resources ordinances, thus eliminating to the maximum extent possible the Sacramento District's review of activities with minimal impacts on waters of the U.S. The PGP would result in CWA 404 authorization in under 30 days.

***The PGP would not impose additional requirements or special conditions for avoiding, minimizing or compensating for the loss of aquatic resources.***

### RGP

For any remaining PCCP covered activities, covered activities conducted by PCWA, and/or activities associated with implementing the HCP/NCCP conservation strategy under the ILF program, with minimal impacts to aquatic resources that do not fall under the PGP, the Sacramento District would establish a RGP(s). Like the PGP, the method for establishing a RGP follows the standard permit process and would be documented in the Sacramento District's ROD. The RGP would have limits and thresholds greater than those found in the Nationwide Permit Program. The RGP would rely on the HCP/NCCP to reduce the Sacramento District's review of activities with minimal impacts on waters of the U.S., and would be designed to not impose additional requirements or special conditions for avoiding, minimizing or compensating for the loss of aquatic resources for individual activities. An activity determined to be compliant with all HCP/NCCP requirements would be authorized under the RGP after the applicant has notified the Sacramento District and the District has verified the activity meets all terms and conditions of the RGP. The RGP is expected to result in CWA 404 authorization in about 30 days.

### LOP Procedure

For covered activities found to be consistent with the PCCP requirements which would have more than minimal impacts to aquatic resources but less than significant impacts on the human environment under NEPA, the Sacramento District would institute an abbreviated procedure for issuing LOPs under CWA 404. The process for establishing the LOP procedure requires the development of a list of categories or activities proposed for authorization through coordination with Federal, state and local agencies, a public notice, and a 401 WQC issued or waived on a general or individual basis. The decision to implement the LOP procedures will be addressed in the Sacramento District's ROD. The LOP procedure would streamline the standard permit process by eliminating the need for a public notice and only require the preparation of a simplified decision document that tiers from the PCCP EIS. Further, the LOP procedure would rely on the HCP/NCCP to address avoidance, minimization and requirements for compensatory mitigation for impacts to aquatic resources. For instance, compensatory mitigation requirements should be the same as those in the HCP/NCCP. The goal is to issue LOPs in 60 days or less, assuming programmatic compliance with other laws is in place.

***The LOP procedure would rely on the HCP/NCCP to address avoidance, minimization and requirements for compensatory mitigation for impacts to aquatic resources.***

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### SP Abbreviated Process

A small number of PCCP covered activities requiring CWA 404 will not fall under the PGP, RGP, or LOP procedure and will require a SP. In many cases, these activities are those that may potentially have a significant impact on the human environment and require the preparation of an EIS under NEPA. Even for activities that require a SP, the process and amount of time it takes to reach a permit decision can be compressed significantly by relying on the avoidance, minimization and compensation and other

***Off-site alternatives analyses under the Section 404(b)(1) Guidelines would not be required because avoidance has already been addressed at the regional level and compensatory mitigation requirements would align with those of***

measures required under the HCP/NCCP. For instance, the degree of analysis in the project EIS would be lessened by tiering from the PCCP EIS, and off-site alternatives analyses under Section 404(b)(1) Guidelines would not be required because avoidance has already been addressed at the regional level and compensatory mitigation requirements would align with those of the HCP/NCCP. In addition, the on-site alternatives analysis under Section 404(b)(1) would focus on evaluating alternative means of applying on-site avoidance and minimization measures required under the HCP/NCCP. Time may further be shortened through the preparation of joint EIS/EIRs for projects. In addition, the Corps would pursue programmatic compliance with ESA, NHPA 106 and CWA 401 to provide for greater assurances and further streamline the process. With reliance on the PCCP EIS and programmatic compliance with related laws, the Corps expects to complete SP decisions for activities under the PCCP within six months.

To complete its CWA 404 Permit Strategy aligned with the HCP/NCCP, the Sacramento District must rely on several sources of information, including a baseline estimate of the location and amount of waters of the U.S. in the PCCP Plan area, the functional or conditional quality of those resources, use of a watershed approach to assess the existing and proposed future condition of the major watersheds within the PCCP Plan Area, a CWA 404 cumulative impact assessment, draft ordinances describing local aquatic resource protection plans, ESA recovery plans for aquatic species, and analysis in the PCCP EIS. For the permit types described above, the Sacramento District would need to complete a CWA 404 jurisdictional determination (JD) for most proposed activity sites, based on an aquatic resources delineation provided by the project proponent, before the applicant submits an application for a CWA 404 permit.

Activities involving a discharge of fill material into waters of the U.S. that are not covered under the PCCP would be subject to the normal Corps' regulatory permit processes.

## The Way Forward

As an EIS cooperating agency with significant interest in the success of the PCCP, the Sacramento District will continue to work with the USFWS and NMFS to ensure the PCCP Draft EIS addresses and incorporates the proposed CWA 404 Permit Strategy, including the terms, conditions, limits/thresholds and processes for each permit type described above. Following public input on the Draft EIS, coordination with the Plan Participants, resource agencies and others, and the review of any new information that becomes available, the Sacramento District's approach to streamlined CWA 404 permitting will be updated and included in the Final EIS for the PCCP. With adoption of the EIS, the Sacramento District would then complete a ROD and implement its CWA 404 Permit Strategy. At the implementation phase, the Sacramento District plans to execute a MOU with Placer County and the City of Lincoln to address coordination and permit timelines.

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<sup>i</sup> See *A Proposed Methodology for a "Regional LEDPA" Determination: Permitting under CWA Section 404 in Western Placer County* (6 April 2006) Tim Vendlinski – USEPA Wetland Regulatory Office. This proposed methodology was premised on and incorporated other references including a description of EPA's Federal Guidelines (40 CFR 230), and the Corps' implementing regulations (33 CFR 323) released by Sylvia Quast at Resources Law Group entitled: *Clean Water Act Section 404 Permit Process For Projects in Western Placer County That Cannot Be Authorized Under The County's Aquatic Resource Plan*; plus the classic treatment of "impact avoidance" published in the journal *Wetlands: Wetlands Protection Through Impact Avoidance: A Discussion of the 404(b)(1) Alternatives Analysis* (Yocom, Leidy, and Morris, 1989).



# Placer County HCP/NCCP Programmatic General Permit

U.S. ARMY CORPS OF ENGINEERS

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## MINIMAL IMPACT COVERED ACTIVITIES UNDER THE PLACER COUNTY HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN

**EFFECTIVE:**

**EXPIRES:** (5 years from effective date)

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The U.S. Army Corps of Engineers, Sacramento District (Corps), hereby issues a programmatic general permit (PGP) for certain covered activities identified in the Placer County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), under the Placer County Conservation Program (PCCP), that result in the discharge of dredged and/or fill material into waters of the United States (U.S.) resulting in no more than minimal individual and cumulative impacts.

An activity is verified under the PGP when Placer County or the City of Lincoln approve a local **(NAME OF AUTHORIZATION FROM CARP)**, in compliance with the **DATE**, County Aquatic Resources Program (CARP), implementing ordinances, and all applicable terms and conditions of the HCP/NCCP.

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Sacramento District

**ACTION ID:** SPK-2005-00485

**AUTHORITY:** Section 404 of the Clean Water Act (CWA 404)

**LOCATION:** The PCCP Plan Area encompasses approximately 270,000 acres within western Placer County and eastern Sutter County. Within western Placer County, the Plan Area is bounded on the north by Nevada and Yuba County, on the east by the City of Auburn and California Highway 49, on the south by Sacramento County, and on the west by Sutter County. With the exception of activities conducted by the Placer County Water Agency (PCWA), the Plan Area in western Placer County excludes the Cities of Auburn, Rocklin, and Roseville and Town of Loomis. Within Sutter County, the Plan Area includes 1,724 acres along the Coon Creek floodplain, and 33 miles of Auburn Ravine, Coon Creek, Cross Canal, and East Side Canal. The Plan Area Boundaries can be seen on the enclosed **2016, Figure 1-1, Plan Area, Placer County Conservation Program – EIS/EIR**, prepared by ICF.

**PURPOSE:** This PGP is intended to minimize duplication between the implementation of the CARP under Placer County and City of Lincoln implementing ordinances, and the Corps Regulatory Program, for authorization of HCP/NCCP Covered Activities subject to CWA 404 that are substantially similar in nature, and would result in minimal individual and cumulative impacts on the aquatic environment. The PGP is premised on the CARP as implemented under local ordinances, resulting in the same or better level of protection of waters of the U.S. as currently exists under CWA 404. Subject to certain exclusions and conditions, the PGP eliminates the need for project applicants to seek separate review from the Corps for many activities that result in minimal impacts to waters of the U.S., when such activities are authorized by Placer County or the City of Lincoln in compliance with the CARP and implementing ordinances. In addition to reducing duplication with the CARP, the PGP is designed to

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1325 J Street, Room 1350, Sacramento, CA 95814-2922  
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expedite review of certain covered activities through other programmatic elements, such as compliance with Section 7 of the federal Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act (NHPA). The PGP will increase certainty, reduce time, and improve efficiency for project applicants through synergies with processes implemented by local jurisdictions, such as those associated with land use entitlements, while protecting aquatic resources.

**BACKGROUND:** The PCCP is a regional approach to address issues related to planned development and species habitat conservation, consisting of the HCP/NCCP, CARP, and an In-Lieu Fee (ILF) program. The HCP/NCCP provides coverage for fourteen species of plants and wildlife, including seven that are federally-listed as threatened or endangered. The Plan Permittees consist of Placer County, the City of Lincoln, South Placer Regional Transportation Authority (SPRTA), and PCWA. The U.S. Fish and Wildlife Service's Sacramento Field Office (USFWS) and National Marine Fisheries Service (NMFS) [have approved] the HCP/NCCP through a species incidental take permit (ITP) issued to the PCCP's Plan Permittees under Section 10 of the ESA. The CARP provides a program, implemented by Placer County and the City of Lincoln through local implementing ordinances, to evaluate activities that would impact aquatic resources considered to be waters of the U.S. or waters of the State. The ILF program provides compensatory mitigation for impacts associated with the Covered Activities, through funds paid to Placer County or the City of Lincoln.

**ACTIVITIES COVERED:** This PGP applies only to HCP/NCCP Covered Activities that would result in minimal individual and cumulative impacts on the aquatic environment, and have been authorized under the CARP. HCP/NCCP Covered Activities are described briefly below and in greater detail in Chapter 2.6 of the HCP/NCCP.

1. **Valley Potential Future Growth (PFG) Area:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within the Valley PFG area in Plan Area A1, as shown on the 2016, *Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR*. Specific activities included in this PGP within the Valley PFG include those Covered Activities identified in Chapter 2.6, Section 2.6.1 of the HCP/NCCP.

2. **Valley Conservation and Rural Development Area:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within the Valley Conservation and Rural Development Area in Plan Area A2, as shown on the 2016, *Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR*. Specific activities included in this PGP within the Valley Conservation and Rural Development Area include those Covered Activities identified in Chapter 2.6, Section 2.6.2 of the HCP/NCCP.

3. **Foothills PFG Area:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within the Foothills PFG area in Plan Area A3, as shown on the 2016, *Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR*. Specific activities included in this PGP within the Foothills PFG include those Covered Activities identified in Chapter 2.6, Section 2.6.3 of the HCP/NCCP.

4. **Foothills Conservation and Rural Development:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within the Foothills Conservation and Rural Development area in Plan Area A4, as shown on the 2016, *Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR*. Specific activities included in this PGP within the

Foothills PFG include those Covered Activities identified in Chapter 2.6, Section 2.6.4 of the HCP/NCCP.

**5. Regional Public Programs:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within Plan Area A or B, as shown on the 2016, *Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR*. Specific activities included in this PGP for Regional Public Programs include those Covered Activities identified in Chapter 2, Section 2.6.5 of the HCP/NCCP.

**6. In-Stream Activities:** Activities resulting in the discharge of dredged and/or fill material into waters of the U.S. for activities within streams, reservoirs, or on-stream ponds in Plan Area A or B, as shown on the 2016, *Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR*, and as described in Chapter 2, Section 2.6.6 of the HCP/NCCP, including, but not limited to, maintenance activities in the stream channel, along the streambank, and on adjacent waters of the U.S. within the riparian corridor. These activities may include those described in 1 through 5 above.

**7. Conservation Programs:** Activities resulting in the discharge of dredged and/or fill material into waters of the U.S. associated with implementing the conservation strategy identified in Chapter 5 of the HCP/NCCP in Plan Area A or B, as shown on the 2016, *Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR*, including, but not limited to, habitat enhancement, restoration, creation, translocation, and reserve management, and other activities, as described in Chapter 2, Section 2.6.7 of the HCP/NCCP.

#### **EXCLUSIONS:**

1. This PGP may not be used to authorize discharges of dredged and/or fill material into waters of the U.S. for activities that do not require authorization from Placer County or the City of Lincoln under the CARP or implementing ordinances.
2. This PGP may not be used to authorize activities not covered by the HCP/NCCP unless such activities receive coverage pursuant to Section 8.9.6 of the HCP/NCCP.
3. After-the-fact authorizations: This PGP may not be used to authorize activities that resulted in the discharge of dredged or fill material into waters of the U.S. without Department of the Army (DA) authorization.

#### **TERMS OF AUTHORIZATION:**

1. Activity Completion: Activities authorized by the Corps under this PGP are valid until the expiration date of the PGP or the expiration date of the CARP authorization issued by Placer County or the City of Lincoln. Activities authorized under this PGP 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 expiration of the PGP.
2. Applying for PGP Authorization: Prior to commencing a proposed activity, project applicants seeking authorization under this PGP shall notify Placer County or the City of Lincoln as required in the CARP and implementing ordinances, in accordance with PGP General Condition number 5 (*Notification*).

3. Compliance with Placer County HCP/NCCP Conditions: Activities to be authorized under this PGP must be Covered Activities as identified above and Chapter 2.6 of the HCP/NCCP, and must comply with any applicable terms and conditions contained in the HCP/NCCP, CARP, and implementing ordinances. Project applicants must receive written concurrence from Placer County or the City of Lincoln that the proposed project is eligible for coverage under the HCP/NCCP. Compliance with the HCP/NCCP requires project applicants to implement the applicable and appropriate avoidance and minimization measures contained in Chapter 6 of the HCP/NCCP, and other applicable terms and conditions as contained in the HCP/NCCP.

4. Discretionary Authority: The Corps has the discretion to suspend, modify, or revoke authorizations under this PGP. This discretionary authority may be used by the Corps to further condition or restrict the applicability of the PGP 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 the Corps determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to waters of the U.S. or otherwise be contrary to the public interest, the Corps will modify the authorization to reduce or eliminate those adverse effects, or notify the project applicant that the proposed activity is not authorized by the PGP 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 the Corps, such as a Nationwide Permit, Regional General Permit, Letter of Permission, or Standard Permit. The Corps will determine on a case-by-case basis, as needed, whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may restore authorization under the PGP at any time it determines 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 PGP at any time.

5. Avoidance and Minimization: Impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. For purposes of the PGP, notwithstanding the Corps' discretionary authority described above, this term shall be considered satisfied when project applicants have designed and implemented activities to comply with all applicable avoidance and minimization measures contained in both Chapters 5 and 6 of the HCP/NCCP, the CARP, and local implementing ordinances.

6. Impact Thresholds for Losses of Waters of the U.S.: Loss of waters of the U.S. shall be determined using the definition in Section F of the January 6, 2017, Federal Register Notice for *Issuance and Reissuance of Nationwide Permits; Final Rule* (82 FR 1860), which can be found at: [http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017\\_final\\_rule\\_FR\\_06jan2017.pdf?ver=2017-01-06-092409-457](http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017_final_rule_FR_06jan2017.pdf?ver=2017-01-06-092409-457).

a. Except for as specified in 6(a)(1) through (3), 6(b), and 6(c) below, the loss of waters of the U.S. (including wetlands) resulting from authorization of a single and complete project under this PGP shall not exceed a total of 3.0 acres, and the loss of streambed shall not exceed 500 linear feet of perennial, intermittent, or ephemeral streams, and/or a total of 1,000 linear feet of irrigation or drainage ditch (provided the irrigation or drainage ditch is not a relocated or channelized stream), as verified by the Corps. The acreage of loss of streambed for streams and/or ditches shall be included in the acreage threshold for loss of waters of the U.S.

(1) The loss of vernal pool waters of the U.S., as verified in writing by the Corps, resulting from authorization of a single and complete project under this PGP shall not exceed 1.0 acre.

(2) The loss of irrigated wetlands in existing and active rice fields that are considered to be waters of the U.S., as verified in writing by the Corps, resulting from authorization of a single and complete project under this PGP shall not exceed 3.0 acres.

(3) The loss of all other waters of the U.S. not identified in 6(a)(1) and/or 6(a)(2), as verified in writing by the Corps, resulting from authorization of a single and complete project under this PGP shall not exceed 2.0 acres.

b. No loss of vernal pool waters of the U.S., as verified in writing by the Corps, as a result of a single and complete project, is authorized under this PGP within the Lower American River 8-digit hydrologic unit code (HUC) watershed (HUC 18020111), as identified by the U.S. Geological Survey.

c. The cumulative loss of waters of the U.S. authorized by this PGP shall not exceed 90 acres of waters of the U.S., including wetlands, within the Plan Area. The cumulative loss of vernal pool waters of the U.S. authorized by this PGP shall not exceed 15 acres. Additional restrictions are listed in the General Conditions, below.

7. Single and Complete: The activity must be a single and complete linear or non-linear project, as defined in Section F of the January 6, 2017, Federal Register Notice for *Issuance and Reissuance of Nationwide Permits; Final Rule* (82 FR 1860), which can be found at: [http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017\\_final\\_rule\\_FR\\_06jan2017.pdf?ver=2017-01-06-092409-457](http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017_final_rule_FR_06jan2017.pdf?ver=2017-01-06-092409-457)

8. Section 401 Water Quality Certification: In order for authorization to be valid under this PGP, an approved Section 401 Water Quality Certification (WQC) or waiver thereof is required to be obtained and evidence thereof in possession by Placer County or the City of Lincoln, prior to the commencement of activities authorized by this PGP (see General Condition 10 [*Water Quality Certification*]).

9. Reporting Requirements: Placer County and the City of Lincoln shall submit reports to the Corps documenting usage of the PGP. Reporting will include the activity name, type of HCP/NCCP covered activity, acreage and/or linear feet of permanent and temporary discharges of dredged and/or fill material into waters of the U.S. by aquatic resource type, acreage and/or linear feet of loss of waters of the U.S. by aquatic resource type, and evidence of the permittees fulfillment of CWA 404 compensatory mitigation requirements. Reporting shall be provided on a quarterly basis for Year 1, biannually for Year 2, and annually for Years 3-to-5 of this PGP. For this PGP to be applicable, a memorandum of understanding between the Corps, Placer County, and City of Lincoln will need to be executed to record processing, tracking, and reporting of HCP/NCCP Covered Activities.

#### **GENERAL CONDITIONS:**

1. Notification: The prospective project applicant shall submit an application to Placer County or the City of Lincoln in accordance with the procedures specified in the CARP and implementing ordinances. No notification is required to be made to the Corps, except as provided by General Condition 4.

2. **Compensatory Mitigation:** Compensatory mitigation for impacts to waters of the U.S. shall be accomplished at the ratios specified in the *Compensatory Mitigation Standards* specified in the CARP and implementing ordinances (which mirror requirements contained in the HCP/NCCP), and shall be accomplished by payment into a Corps-approved HCP/NCCP ILF program.
3. **Compliance Inspections:** The project applicant must allow representatives from the Corps to inspect the authorized activity 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. The Corps will notify the project applicant at least 48 hours advance of an inspection.
4. **Threatened and Endangered Species:** No activity is authorized under this PGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal ESA. Activities authorized under this PGP must comply with the mandatory terms and conditions of the USFWS and NMFS [to be sought by initiation for programmatic Section 7 ESA consultation] [programmatic Biological Opinion (BO) for this PGP] (USFWS # \_\_\_\_, dated \_\_\_\_ ) (copy [to be] attached). The BO contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" authorization under this PGP. Authorization under this PGP is conditional upon your compliance with all of the mandatory terms and conditions of the Biological Opinion. Failure to comply with the terms and conditions of the Biological Opinion would constitute non-compliance with the PGP. The USFWS and NMFS are the appropriate authorities to determine compliance with the terms and conditions of their Biological Opinion, and with the ESA. The project applicant must comply with all applicable conditions of these Biological Opinions, including those ascribed to the Corps.
5. **Historic Properties:** No activity is authorized under the PGP if the activity may affect historic properties listed, or eligible for listing, in the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act (NHPA), as amended, have been satisfied. If NHPA compliance is not addressed programmatically, (e.g., by a Programmatic Agreement (PA)), project applicants must notify the Corps if the 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 historic properties. The notification shall consist of the application identified in General Condition 5, and two hard copies and one electronic copy of a cultural resources report meeting the Corps *Guidelines for Compliance with Section 106 of the National Historic Preservation Act of 1966* ([http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL\\_2014-03-24\\_Section-106-Guidelines.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL_2014-03-24_Section-106-Guidelines.pdf)). The Corps will consult with the State Historic Preservation Officer (SHPO), as appropriate, following the policy and procedural standards of 33 CFR Part 325 Appendix C.
6. **Permit Transfer:** If the property associated with this permit is sold, the permittee shall transfer the verification to the new owner by submitting a letter to Placer County or the City of Lincoln, with a copy provided to the Corps, to validate the transfer. A copy of the CARP authorization must be attached to the letter, and the letter must contain the name and address of the transferee, as well as the following statement and signature of the transferee:

When the structures or work authorized by this programmatic general permit (PGP) are still in existence at the time the property is transferred, the terms and conditions of this PGP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this PGP

and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

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

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

7. Wetland and Stream Avoidance and Minimization: Project applicants shall establish wetland and Stream System avoidance and minimization measures as described in the HCP/NCCP, CARP and implementing ordinances. Associated terms of the local CARP and implementing ordinances concerning avoidance and minimization measures, including (but not limited to) land use, allowable uses within the Stream System, exemptions, and waivers shall apply as described in the CARP and implementing ordinances. These terms shall meet or exceed all applicable standards and terms contained within Chapter 6 of the HCP/NCCP.

8. Tribal Rights: No activity or its operation shall impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Discovery of Previously Unknown Remains and Artifacts (or - Unanticipated Cultural Resources Discoveries): If the permittee discovers any previously unknown historic, cultural or archeological remains and/or artifacts while accomplishing the activity authorized by this PGP, the permittee shall immediately notify the Corps of what has been found, and to the maximum extent practicable, shall avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. Notification to the Corps shall include a copy of the CARP authorization issued by Placer County or the City of Lincoln. The Corps 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. Water Quality Certification: Water Quality Certification (WQC), or waiver thereof, under Section 401 of the Clean Water Act is required for activities to be authorized by this PGP. The project applicant shall comply with the terms and conditions of any individual or programmatic WQC provided by the State Water Resources Control Board and/or Central Valley Regional Water Quality Control Board.

**FURTHER INFORMATION:**

1. Congressional Authorities: Section 404 of the Clean Water Act (33 U.S.C. 1344)
2. Limits of this authorization:
  - a. The Corps has authority to determine if an activity complies with the terms and conditions of the PGP.
  - b. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law.
  - c. This permit does not grant any property rights or exclusive privileges.
  - d. This permit does not authorize any injury to the property or rights of others.

e. 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. Reliance on Applicant's Data: The determination of the Corps that issuance of this PGP is not contrary to the public interest was made in reliance on the information provided by the HCP/NCCP Plan Permittees.

5. Reevaluation of Permit Decision: The Corps may reevaluate its decision on this PGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. The project applicant fails to comply with the terms and conditions of this permit.

b. The information provided by the project applicant in support of a permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which the Corps 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.

**PERMIT DURATION:** This PGP is valid for five (5) years from the date of issuance. It will expire on [Day, Month, 20XX]. At least sixty (60) calendar days prior to expiration, the Corps will issue a public notice, with an opportunity for public comment, describing the reasons for reissuing the PGP for another five years with or without modification, or not reissuing the PGP. If the Corps has not reissued the PGP by the expiration date, the PGP will no longer be valid. This PGP may also be modified, suspended, or revoked by the Corps at any time deemed necessary. In such instance, the Corps will issue a public notice concerning the proposed action. Authorizations under this PGP are valid until the permit expires. An activity authorized by this PGP that has commenced, or is under contract to commence, will have 12 months from the date of the PGP expiration to be completed.

**CONTACTS AND ADDITIONAL INFORMATION:** For additional information about this PGP, please contact the U.S. Army Corps of Engineers, Sacramento District.

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

\_\_\_\_\_  
Michael S. Jewell  
Chief, Regulatory Division  
Sacramento District

\_\_\_\_\_  
Date

DRAFT



# Regional General Permit [#]

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

## Minimal Impact Activities Conducted by Placer County Water Agency under the Placer County Habitat Conservation Plan

**EFFECTIVE:**

**EXPIRES: (5 years from effective)**

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The U.S. Army Corps of Engineers, Sacramento District (District), hereby issues Regional General Permit (RGP) [#] for the discharge of dredged and/or fill material into waters of the U.S. associated with minimal impact activities conducted by the Placer County Water Agency (PCWA) in accordance with the under the Placer County Habitat Conservation Plan (HCP), and Placer County Aquatic Resources Program (CARP) provided the activities meet all terms and conditions of the RGP.

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Sacramento District

**ACTION ID:** SPK-2005-00485

**AUTHORITIES:** Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

**LOCATION:** Activities authorized under this RGP would occur within the Placer County Conservation Program (PCCP) Plan Area boundaries. The PCCP Plan Area encompasses approximately 270,000 acres within western Placer County and eastern Sutter County. Within western Placer County, the Plan Area is bounded on the north by Nevada and Yuba County, on the east by the City of Auburn and California Highway 49, on the south by Sacramento County, and on the west by Sutter County. Activities conducted by the Placer County Water Agency (PCWA), also may include activities in the Cities of Auburn, Loomis, Rocklin, and Roseville. Within Sutter County, the Plan Area includes 1,724 acres along the Coon Creek floodplain, and 33 miles of Auburn Ravine, Coon Creek, Cross Canal, and East Side Canal. The Plan Area Boundaries can be seen on the enclosed 2016, Figure 1-1, Plan Area, Placer County Conservation Program – EIS/EIR, prepared by ICF.

**ACTIVITIES COVERED:** This RGP authorizes the discharge of dredged and/or fill material into waters of the U.S. associated with construction, maintenance, expansion, or operational activities conducted by PCWA, provided the activities comply with the HCP and CARP. This RGP authorizes only those activities that require a permit under Section 404 of the Clean Water Act (i.e. would result in a discharged of dredged and/or fill material into waters of the U.S. and/or the activity would not be exempt under Section 404(f) of the Clean Water Act). Activities authorized include:

1. Utility lines: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of utility lines.
2. Water Treatment Plants: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of water treatment plants.
3. Energy Supply: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of power plants or generators.
4. Metering Stations: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of metering stations.
5. Water Storage Tanks: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of water storage tanks.
6. Intake and Water Diversion Structures: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of intake structures and water diversion structures.
7. Outfall Structures: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of outfall structures.
8. Water Systems Facilities Center: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of water systems facilities centers. Structures associated with a facilities center include, but are not limited to warehouses, fabrication shops, crew buildings, administration buildings, vehicle/equipment wash areas, fuel stations, and associated infrastructure, including utilities, parking areas, and access roads/driveways.
9. Corporation Yards: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of corporation yards. Structures associated with a corporation yard include, but are not limited to, warehouses, lay-down areas for storage, and associated infrastructure, including utilities, parking areas, and access roads/driveways.
10. Pump Stations: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of pump stations.

11. Wells: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of water supply wells.
12. Bank Stabilization: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction or maintenance of bank stabilization within the immediate vicinity of any in-stream structures or fills associated with producing or providing water to residents and businesses of Placer County.
13. Sediment and Debris Removal: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the removal of sediment from streams, reservoirs, canals, ditches, or other waters of the U.S. within 200 feet from water supply structures or fills managed by PCWA.
14. Access and Staging: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of access and staging areas.
15. Canals and Ditches: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, lining, expansion, maintenance, or operation of water supply canals or ditches.
16. Berm Maintenance: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of reservoir and canal berms.
17. Linear Transportation Projects: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of linear transportation projects associated with water supply projects.
18. Minor Discharges: Permanent or temporary discharges of dredged and/or fill material into waters of the U.S. for the construction, expansion, maintenance, or operation of other structures, fills, or facilities not specifically listed above, associated with producing or providing water to residents and businesses of Placer County, as identified in the HCP/NCCP.

#### **EXCLUSIONS:**

1. This RGP may not be used to authorize discharges of dredged and/or fill material into waters of the U.S. for activities that are not conducted by PCWA.
2. This RGP may not be used to authorize activities not covered by the HCP/NCCP as identified in Chapter 2 of the HCP/NCCP.

3. After-the-fact authorizations: This RGP may not be used to authorize activities that resulted in the discharge of dredged or fill material into waters of the U.S. without Department of the Army (DA) authorization.

### **TERMS:**

1. Activity Completion: Activities authorized by the Corps under this RGP are valid until the expiration date of the RGP or the expiration date of the CARP authorization issued by Placer County or the City of Lincoln. Activities authorized under this 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 expiration of the RGP.

2. Applying for RGP Authorization: Prior to commencing a proposed activity, PCWA shall submit a complete pre-construction notification containing the information identified in *Procedures*.

3. Compliance with Placer County HCP Conditions: Activities to be authorized under this RGP must be Covered Activities as identified in Chapter 2 of the HCP, and must comply with any applicable terms and conditions contained in the HCP and this RGP. Project applicants must provide information to support a determination that the proposed project is eligible for coverage under the HCP to the Corps with the notification required in General Condition 14. Compliance with the HCP requires PCWA to implement the applicable and appropriate avoidance and minimization measures contained in Chapter 6 of the HCP, and other applicable terms and conditions as contained in the HCP.

4. 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 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 factor of the public interest. 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 project applicant that the proposed activity is not authorized by the RGP 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 the Corps, such as a NWP, LOP or Standard Permit. The Corps will determine on a case-by-case basis, as needed, whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may restore authorization under the 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. The Corps may also use its discretionary authority to modify, suspend, or revoke the RGP at any time.

5. Avoidance and Minimization: Impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. For purposes of the RGP, notwithstanding the Corps' discretionary authority described above, this term shall be considered satisfied when project applicants have designed and implemented activities to comply with all applicable avoidance and minimization measures contained in Chapter 6 of the HCP.

6. Impact Thresholds for Losses of Waters of the U.S.: Loss of waters of the U.S. shall be determined using the definition in Section F of the January 6, 2017, Federal Register Notice for *Issuance and Reissuance of Nationwide Permits; Final Rule* (82 FR 1860), which can be found at:

[http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017\\_final\\_rule\\_FR\\_06jan2017.pdf?ver=2017-01-06-092409-457](http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017_final_rule_FR_06jan2017.pdf?ver=2017-01-06-092409-457)

a. The loss of waters of the U.S. (including wetlands) resulting from authorization of a single and complete project under this RGP shall not exceed a total of 0.25 acres, and the loss of streambed shall not exceed 300 linear feet of perennial, intermittent, or ephemeral streams, and/or a total of 1,000 linear feet of irrigation, water supply, or drainage ditch or canal (provided the ditch or canal is not a relocated or channelized stream, as verified by the Corps), unless the district waives the linear foot requirement by making a written determination concluding the discharge will result in no more than minimal individual or cumulative effects. The acreage of loss of streambed for streams, ditches, and/or canals shall be included in the acreage threshold for loss of waters of the U.S.

b. Bank stabilization activities are limited to no more than 500 feet in length along the bank of perennial, intermittent, or ephemeral streams and no more than 1,000 feet in length along the bank of irrigation, water supply, or drainage ditches or canals (provided the ditch or canal is not a relocated or channelized stream, as verified by the Corps), unless the District waives this requirement by making a written determination concluding the discharge will result in no more than minimal individual or cumulative effects.

c. The cumulative loss of waters of the U.S. authorized under this RGP shall not exceed 3 acres of waters of the U.S., including wetlands, within the Plan Area. The cumulative loss of vernal pool waters of the U.S. authorized by this RGP shall not exceed 1 acre. Additional restrictions are listed in the General Conditions, below.

7. Single and Complete: The activity must be a single and complete linear or non-linear project, as defined in the Section F of the January 6, 2017, Federal Register Notice for *Issuance and Reissuance of Nationwide Permits; Final Rule* (82 FR 1860), which can be found at:

[http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017\\_final\\_rule\\_FR\\_06jan2017.pdf?ver=2017-01-06-092409-457](http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017_final_rule_FR_06jan2017.pdf?ver=2017-01-06-092409-457)

8. Section 401 Water Quality Certification: In order for authorization to be valid under this RGP, an approved Section 401 Water Quality Certification (WQC) or waiver thereof is

required to be obtained and provided to the Corps prior to the commencement of activities authorized by this RGP (see General Condition 10 [*Water Quality Certification*]).

9. Reporting Requirements: PCWA shall submit annual post-construction reports to the Corps documenting all activities covered under the RGP that were completed the previous year. The reports shall be submitted no later than January 30, and contain documentation related to activities completed between January 1 and December 31 of the previous year. The reports shall include: (a) the activity name; (b) DA permit number; (c) type of HCP covered activity; (d) a full description of the work in waters of the U.S. that was completing, including acreage and/or linear feet of permanent and temporary discharges of dredged and/or fill material into waters of the U.S. (by aquatic resource type) and acreage and/or linear feet of loss of waters of the U.S. (by aquatic resource type); (e) evidence of PCWA's fulfillment of any CWA 404 compensatory mitigation requirements required by the RGP verification issued by the Corps, and (f) the cumulative acreage and/or linear feet loss of waters of the U.S. and loss of stream bed that has occurred under the RGP since issuance.

10. Special conditions: The District may add special conditions to an authorization to ensure the activity complies with the terms and conditions of the RGP, and adverse impacts are individually and cumulatively minimal.

### **GENERAL CONDITIONS:**

1. Notification: PCWA shall provide written notification (i.e., a complete application and associated documentation) for a proposed activity to be authorized under the RGP prior to commencing the activity. PCWA shall submit a pre-construction notification package for all covered activities. No discharge of dredged and/or fill material into waters of the U.S. shall commence until the Corps has provided written verification the activity is authorized under this RGP.

2. Avoidance and Minimization Measures: You shall comply with all avoidance and minimization measures, terms, and other conditions as identified in Chapter 6 of the HCP. You shall ensure impacts to waters of the U.S. within and adjacent to the stream system are avoided and minimized to the maximum extent practicable.

3. Compensatory Mitigation: Compensatory mitigation for impacts to waters of the U.S. shall be accomplished at the ratios specified in the HCP, and shall be accomplished by payment into a Corps-approved PCCP in-lieu fee (ILF) program. Any compensatory mitigation requirements will be specifically identified in the RGP verification issued by the Corps for the single and complete project.

4. Bed and Bank Stabilization: All bank stabilization activities shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g. rip-rap) and native vegetation or bioengineered design techniques, unless specifically determined to be

impracticable by the Corps. For projects that would involve hard armoring or the placement of any non-vegetated or non-bioengineered technique below the ordinary high water mark of waters of the U.S., the notification required in General Condition 14 must include information on why the sole use of vegetated techniques is not practicable.

5. Equipment: Heavy equipment working in wetlands shall be placed on mats, or other measures such as low-ground pressure equipment, to minimize soil disturbance shall be taken. Information regarding methods to minimize soil disturbance shall be submitted with the pre-construction notification.

6. Fills within 100-Year Floodplains: The activity shall comply with applicable FEMA-approved state or local floodplain management requirements.

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

8. Management of Water Flows: The pre-construction course, condition, capacity, and location of open waters shall be maintained to the maximum extent practicable, unless determined impracticable by the Corps. 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). The District Engineer will determine the need for appropriate and practicable compensatory mitigation necessary to ensure that adverse effects on the aquatic environment are minimal. If compensatory mitigation is determined necessary, mitigation proposals are required to be prepared in accordance with 33 CFR Part 332.

9. Migratory Bird Breeding Areas: Activities in waters of the U.S. that serve as breeding areas for migratory birds shall be avoided to the maximum extent practicable.

10. Sediment Removal: The removal of sediment shall be limited to the minimum necessary to restore the waterway in the vicinity of a structure to the approximate dimensions that existed when the structure was built, but shall not extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the Corps.

11. Suitable Fill: No discharge of dredged or fill material shall consist of unsuitable material and material discharged shall be free from toxic pollutants in toxic amounts (section 307 of the Clean Water Act). Fill material shall 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 vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires, concrete with exposed rebar.

12. Utility Lines: All utility lines shall be constructed in accordance with the following:

a. Directional drilling, clear span, or other techniques that do not contact the waterbody shall be used if the waterbody contains perennial or intermittent flows, unless determined impracticable by the Corps.

b. PCWA shall ensure the construction of utility lines does not result in draining any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by the Corps) to seal the trench. For utility line trenches, during construction, PCWA shall remove and stockpile, separately, the top 6-12 inches of topsoil. Following installation of the utility line(s), PCWA shall replace the stockpiled topsoil on top and seed the area with native vegetation.

c. All disturbed areas immediately adjacent to and within 25 feet of waters of the U.S., including unprotected slopes and stream banks, shall be stabilized (e.g., blanketed and seeded) immediately upon completion of the utility line construction in any segment of the project. In no case shall soil stabilization be delayed until the entire utility line is completed.

d. Temporarily disturbed construction areas must be restored to pre-construction conditions, including grading to original contours and revegetating (with native vegetation or other appropriate vegetation approved by the District) within 30 days following completion of the discharge of dredged and/or fill material into waters of the U.S. authorized by this RGP. A restoration plan, which includes a contour topographic map, shall be submitted with the pre-construction notification required in General Condition 1.

13. Aquatic Life Movements: The following criteria shall apply to all linear transportation crossings (e.g. roads, trails, bridges, culverts) of perennial, intermittent, or ephemeral streams:

a. For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, including designated critical habitat for such species, PCWA shall design all new or substantially reconstructed linear transportation crossings (e.g. roads, bridges, culverts) to ensure that the passage and/or spawning of fish is not hindered. In these areas, PCWA shall employ bridge designs that span the stream or river, including pier-or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed;

b. Linear transportation crossings shall be constructed to maintain the pre-construction course, condition, capacity, and location of open waters, unless it can be demonstrated by PCWA, and the Corps' concurs, that the activity would result in a net increase in aquatic resource functions and services. For areas containing existing linear transportation crossings, the pre-construction course, condition, capacity, and location of open waters shall be determined based on the upstream and downstream portions of the open waters.

c. Unless determined to be not practicable by the Corps, all linear transportation crossings proposed to be replaced shall be designed to the approximate bankfull width and depth of upstream and downstream open waters.

d. All bank stabilization activities shall comply with General Condition 4.

14. **Work in Standing or Flowing Waters:** No construction activities shall occur within standing or flowing waters, unless determined to be not practicable or appropriate by the Corps. For intermittent or ephemeral streams, this may be accomplished through construction during the dry season. In perennial streams, this may be accomplished through dewatering of the work area. Any proposed dewatering plan must be approved, in writing, by the Corps prior to commencing construction activities; and

15. **Compliance Inspections:** PCWA must allow representatives from the Corps to inspect the authorized activity 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. The Corps will notify PCWA at least 48 hours advance of an inspection.

16. **Threatened and Endangered Species:** No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal ESA. Activities authorized under this RGP must comply with the mandatory terms and conditions of the USFWS and NMFS [*to be sought by initiation for programmatic Section 7 ESA consultation*] [programmatic Biological Opinion (BO) for this RGP] (USFWS #\_\_\_\_, dated \_\_\_\_ ) (copy [to be] attached). The BO contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" authorization under this RGP. Authorization under this RGP is conditional upon your compliance with all of the mandatory terms and conditions of the Biological Opinion. Failure to comply with the terms and conditions of the Biological Opinion would constitute non-compliance with the RGP. The USFWS and NMFS are the appropriate authorities to determine compliance with the terms and conditions of their Biological Opinion, and with the ESA. The project applicant must comply with all applicable conditions of these Biological Opinions, including those ascribed to the Corps.

17. Historic Properties: No activity is authorized under the RGP if the activity may affect historic properties listed, or eligible for listing, in the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act (NHPA), as amended, have been satisfied. If NHPA compliance is not addressed programmatically, (e.g., by a Programmatic Agreement (PA)), project applicants must notify the Corps if the 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 historic properties. The notification shall consist of the application identified in General Condition 5, and two hard copies and one electronic copy of a cultural resources report meeting the Corps *Guidelines for Compliance with Section 106 of the National Historic Preservation Act of 1966* ([http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL\\_2014-03-24\\_Section-106-Guidelines.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL_2014-03-24_Section-106-Guidelines.pdf)). The Corps will consult with the State Historic Preservation Officer (SHPO), as appropriate, following the policy and procedural standards of 33 CFR Part 325 Appendix C.

18. Permit Transfer: If the property associated with this permit is sold, PCWA shall transfer the verification to the new owner by submitting a letter to Placer County or the City of Lincoln, with a copy provided to the Corps, to validate the transfer. A copy of the CARP authorization must be attached to the letter, and the letter must contain the name and address of the transferee, as well as the following statement and signature of the transferee:

When the structures or work authorized by this programmatic general permit (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. Wetland and Stream Setbacks: Project applicants shall establish wetland and stream setback and avoidance and minimization as described in the CARP and implementing ordinances. Associated terms of the local CARP ordinances concerning setbacks, including (but not limited to) land use, allowable uses within setbacks, exemptions, and waivers shall apply as described in the CARP and implementing ordinances. These terms shall meet or exceed all applicable standards and terms contained within Chapter 6 of the HCP.

20. Tribal Rights: No activity or its operation shall impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

21. Discovery of Previously Unknown Remains and Artifacts (or - Unanticipated Cultural Resources Discoveries): If PCWA discovers any previously unknown historic, cultural or archeological remains and/or artifacts while accomplishing the activity authorized by this RGP, PCWA shall immediately notify the Corps of what has been found, and to the maximum extent practicable, shall avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. Notification to the Corps shall include a copy of the CARP authorization issued by Placer County or the City of Lincoln. The Corps will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Water Quality Certification: Water Quality Certification (WQC), or waiver thereof, under Section 401 of the Clean Water Act is required for activities to be authorized by this RGP. The project applicant shall comply with the terms and conditions of any individual or programmatic WQC provided by the State Water Resources Control Board and/or Central Valley Regional Water Quality Control Board.

### **PROCEDURES:**

1. PCWA may choose to request a pre-application meeting with the Corps and other resource agencies prior to submittal of a pre-construction notification. To request a pre-application meeting, please contact the District office listed in the "Contacts" section of this document. A request for a pre-application meeting should contain the project name, type of project, county, approximately acreage of impacts to waters of the U.S., the contact name, company name, and telephone number.

2. PCWA shall submit a pre-construction notification (PCN) consisting of a written request for verification under this RGP. The PCN shall contain the following information in order to be considered complete:

a. A letter or a completed Department of the Army Permit Application Form (ENG 4345), requesting authorization under the RGP.

b. The applicable Covered Activity as identified in the HCP.

c. A complete description of the proposed activity, including

(1) The activities purpose;

(2) Direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of each type of waters of the U.S. expected to result from the proposed activity, in acres and, if applicable, linear feet;

(3) The amount (in cubic yards) and type of fill material proposed to be discharged into each type of water of the U.S.; and

(4) The amount (in acres) and length (in linear feet) of each type of waters of the U.S. to be permanently filled and the amount and length of each type of waters of the U.S. to be temporarily filled. For waters of the U.S. to be temporarily filled, the approximate length of time the waters of the U.S. would be filled before restoration to pre-construction contours and conditions would occur;

d. The location of the activity (with latitude and longitude)

e. A brief narrative describing how the proposed activity would comply with all General Conditions of this RGP, or a statement that the General Condition does not apply or, for General Conditions 3 and 7, a description of why compliance with the General Condition is not practicable.

f. For each applicable avoidance and minimization measure identified in Chapter 6 of the HCP, a brief narrative describing how the activity would comply with each measures. Specifically, the narrative should describe how the proposed activity is in compliance with Avoidance and Minimization Measures associated with an aquatic resource as specified in the HCP.

g. A written statement explaining how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable.

h. For all dewatering activities that propose structures or fill in waters of the U.S. that require authorization from the Corps:

(1) The proposed methods for dewatering

(2) The equipment that would be used to conduct dewatering

(3) The length of time the area is proposed to be dewatered

(4) The area (in acres) and length (in linear feet) of waters of the U.S. of the dewatering structure and/or fill;

(5) The method for removal of the dewatering structure and/or fill; and

(6) The method for restoration of the waters of the U.S. affected by the structure or fill following construction

i. For all temporary discharge of dredged and/or fill material into waters of the U.S.:

(1) The reason(s) why avoidance of temporary fill in waters of the U.S. is not practicable;

(2) A description of the proposed temporary fill, including the type and amount (in cubic yards) of material to be placed;

(3) The area (in acres) of waters of the U.S. and, for drainages (e.g. natural or relocated streams, creeks, rivers), the length (in linear feet) where the temporary fill is proposed to be placed; and

(4) A proposed plan for restoration of the temporary fill area to pre-project contours and conditions, including a plan for the re-vegetation of the temporary fill area, if vegetation would be removed or destroyed by the proposed temporary fill;

j. For linear transportation crossings that propose to alter the pre-construction course, condition, capacity or location of open waters, the PCN shall include sufficient justification to determine that the proposed activity would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

k. For replacement linear transportation crossings that would result in a reduction in the pre-construction bankfull width and depth of open waters of the U.S. at the crossing, as compared to the upstream and downstream open waters:

(1) Information on why it is not practicable to approximate the pre-construction bankfull width of the upstream and downstream open waters, and;

(2) Sufficient justification to determine that the reduction in the pre-construction bankfull width would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

l. A written statement identifying the compensatory mitigation proposed for the loss of each type of water of the U.S.

m. Project Figures:

(1) A vicinity map clearly depicting the location of the proposed activity.

(2) A plan-view, and cross-section view drawing, clearly depicting the location, size, and dimensions of the proposed permanent or temporary discharge of fill material into waters of the U.S., and the location of all waters of the U.S. on-site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark should be shown (in feet) based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation.

(3) All drawings shall be prepared in accordance with the South Pacific Division February 2016, *Updated Map and Drawing Standards for the South Pacific Division Regulatory Program*, or most recent update (available on the South Pacific Division website at: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>)

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

o. A delineation of waters of the U.S., including wetlands, for the project site. Wetlands shall be delineated using the Corps 1987 Wetland Delineation Manual and 2008 Arid West Region Regional Supplement, or most recent manual in effect at the time of the proposal. The delineation report shall be conducted in accordance with the Sacramento District's Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (available at [http://www.spk.usace.army.mil/Portals/12/documents/regulatory/jd/minimum-standards/Minimum Standards for Delineation with Template-final.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/jd/minimum-standards/Minimum_Standards_for_Delineation_with_Template-final.pdf)), or updated standards adopted by the Sacramento District, unless specifically waived by the Sacramento District;

p. Two hard copies and one electronic copy of a cultural resources report meeting the Corps *Guidelines for Compliance with Section 106 of the National Historic Preservation Act of 1966* ([http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL\\_2014-03-24\\_Section-106-Guidelines.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/sec-106-tribal/FINAL_2014-03-24_Section-106-Guidelines.pdf)).

q. For any proposals to waive the linear foot limits identified in *Term 6(a)* and *6(b)*, the PCN shall contain information on why the proposed activity would result in no more than minimal individual or cumulative effects, including the following:

(1) A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a

statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;

(2) An analysis of the proposed impacts to the waterbody, in accordance with Procedure 2(a);

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

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

3. Within 15-days following receipt of the PCN, the Corps will notify PCWA via letter or email if:

a. The proposed activity may qualify for authorization under the RGP;

b. The PCN is complete; and

c. If consultation under Section 7 of the ESA, Section 305(b)(4)(b) of the Magnuson-Stevens Fisheries Conservation and Management Act and/or Section 106 of the National Historic Preservation Act is required.

If the proposed activity does not qualify for authorization under the RGP, the notification will identify specific modifications necessary for the proposed activity to qualify for authorization under the RGP, and/or instructions on how to apply for authorization under a different permit. If the PCN is not complete, the notification will specifically identify the additional information required to be submitted.

4. Within 30-days following receipt of a complete PCN, the Corps will initiate any required consultations under Section 7 of the ESA, Section 305(b)(4)(B) of the Magnuson-Stevens Fisheries Conservation and Management Act, and/or Section 106 of the National Historic Preservation Act.

5. Within 15-days following completion of required consultations identified in 4, or, if consultation is not required, within 30-days following receipt of a complete PCN, the Corps will notify PCWA via letter if the activity is authorized under this RGP, subject to the terms and conditions of the authorization.

6. No work may proceed under the authority of this RGP until PCWA has been notified, in writing, by the Corps that the activity is authorized.

**FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to: Section 404 of the Clean Water Act (33 U.S.C. 1344), and/or Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 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 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. 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 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. The referenced enforcement procedures provide for the issuance of an administrative order requiring you 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 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. The permit duration, as described above, 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.

Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from the Corps, such as a Nationwide Permit or Letter of Permission. The Corps 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. The Corps may include additional special conditions to a verification under this permit to ensure the activity has minimal impact.

**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 it deems necessary to protect the public interest. This permit may be re-issued, after public notice and documentation of the decision. Activities under this permit must be verified in writing by the Corps. Verifications are valid until the permit expires.

**CONTACTS AND ADDITIONAL INFORMATION:** For additional information about this RGP, please contact the U.S. Army Corps of Engineers, Sacramento District.

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

\_\_\_\_\_  
Michael S. Jewell  
Chief, Regulatory Division  
Sacramento District

\_\_\_\_\_  
Date



# Placer County HCP/NCCP Letter of Permission Procedure

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

## COVERED ACTIVITIES UNDER THE PLACER COUNTY HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN WITH LESS THAN SIGNIFICANT IMPACT

### DATE:

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**ACTION ID:** SPK-2005-00485

**AUTHORITY:** 33 CFR 325.2(e)(1)(ii).

**LOCATION:** The Placer County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) Plan Area encompasses approximately 270,000 acres within western Placer County and eastern Sutter County. Within western Placer County, the Plan Area is bounded on the north by Nevada and Yuba County, on the east by the City of Auburn and California Highway 49, on the south by Sacramento County, and on the west by Sutter County. With the exception of activities conducted by the Placer County Water Agency (PCWA), the Plan Area in western Placer County excludes the Cities of Auburn, Rocklin, and Roseville, and Town of Loomis. Within Sutter County, the Plan Area includes 1,724 acres along the Coon Creek floodplain, and 33 miles of Auburn Ravine, Coon Creek, Cross Canal, and East Side Canal. The Plan Area Boundaries can be seen on the enclosed **2016, Figure 1-1, Plan Area, Placer County Conservation Program – EIS/EIR**, prepared by ICF.

**PURPOSE:** The U.S. Army Corps of Engineers, Sacramento District (Corps) is establishing a Letter of Permission (LOP) procedure to efficiently authorize HCP/NCCP Covered Activities which involve discharges of dredged or fill material into waters of the United States (U.S.) under Section 404 of the Clean Water Act (CWA 404) with more than minimal but less than significant impacts on the aquatic environment. The HCP/NCCP LOP Procedure is an optional abbreviated permit process available to all applicants for Department of the Army (DA) permits for activities meeting the criteria and conditions described in this notice. If the proposed activity does not meet LOP criteria or the applicant chooses not to use this process, the activity may be authorized under a different permit type or procedure.

**BACKGROUND:** In accordance with Title 33 of the Code of Federal Regulations (CFR) Part 325, district engineers are authorized to use alternative procedures, including LOPs, to authorize activities under the Corps Regulatory Program. LOPs are a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice.

The Placer County Conservation Program (PCCP) is a regional approach to address issues related to planned development and species habitat conservation, consisting of the HCP/NCCP, County Aquatic Resources Program (CARP), and an In-Lieu Fee (ILF) program. The HCP/NCCP provides coverage for fourteen species of plants and wildlife, including seven that are federally-listed as threatened or

endangered. The Plan Permittees consist of Placer County, the City of Lincoln, South Placer Regional Transportation Authority (SPRTA), and PCWA. The U.S. Fish and Wildlife Service's Sacramento Field Office (USFWS) and National Marine Fisheries Service (NMFS) [have approved] the HCP/NCCP through a species incidental take permit (ITP) issued to the PCCP's Plan Permittees under Section 10 of the ESA. The CARP provides a program, implemented by Placer County and the City of Lincoln through local implementing ordinances, to evaluate activities that would impact aquatic resources considered to be waters of the U.S. or waters of the State. The ILF program provides compensatory mitigation for impacts associated with the Covered Activities, through funds paid to Placer County or the City of Lincoln.

**PROPOSED CATEGORIES OF ACTIVITIES:** This LOP procedure applies only to HCP/NCCP Covered Activities that (1) have been approved by Placer County or the City of Lincoln, in compliance with the HCP/NCCP and the **DATE**, CARP and implementing ordinances, or (2) are being conducted by SPRTA or PCWA in compliance with the HCP/NCCP, CARP and implementing ordinances. HCP/NCCP Covered Activities are described briefly below, and in greater detail in Chapter 2.6 of the HCP/NCCP.

Activities to be authorized under a LOP following the procedure described herein must be HCP/NCCP Covered Activities and comply with any applicable terms and conditions contained in the HCP/NCCP, CARP, and implementing ordinances. Applicants must receive a consistency determination from Placer County, the City of Lincoln, SPRTA, or PCWA that the proposed project is covered under the HCP/NCCP. Compliance with the HCP/NCCP requires applicants to implement the applicable and appropriate avoidance and minimization measures contained in Chapter 6 of the HCP/NCCP and in the CARP, as well as any other applicable terms and conditions as contained in the HCP/NCCP and CARP.

A LOP will be issued only for those activities which meet all of the procedures and criteria identified in this notice, including the general conditions, and which do not result in a potentially significant impact(s) on the human environment. The Corps reserves the use of its discretionary authority to determine that an activity may be authorized under a LOP, to add special conditions to LOP authorizations, or to determine that an activity may not be authorized by a LOP and will instead require authorization under another permit type.

For a HCP/NCCP Covered Activity to be authorized under an LOP following this procedure, impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. For purposes of the procedure, notwithstanding the Corps' discretionary authority described above, avoidance and minimization requirements shall be considered to be primarily satisfied when applicants have designed and implemented activities to comply with all applicable avoidance and minimization measures contained in both Chapter 6 of the HCP/NCCP and the CARP and implementing ordinances.

To qualify for a LOP under this procedure; activities must meet the following criteria:

1. The proposed activity does not result in a potentially significant impact(s) on the human environment that requires preparation of an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA).

2. Compensatory mitigation for impacts to waters of the U.S. shall be accomplished at the ratios specified in Chapter 5 of the HCP/NCCP and Chapter 6.2.3 of the CARP HCP/NCCP, and shall be accomplished by payment into a Corps-approved HCP/NCCP in-lieu fee (ILF) program.

**Covered Activities under the HCP/NCCP:** The following HCP/NCCP Covered Activities, described in greater detail in Chapter 2 of the HCP/NCCP, are applicable to this LOP procedure, after authorization under the CARP.

1. **Valley Potential Future Growth (PFG) Area:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within the Valley PFG area in Plan Area A1, as shown on the **2016, Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR**. Specific activities included in this PGP within the Valley PFG include those Covered Activities identified in Chapter 2.6, Section 2.6.1 of the HCP/NCCP.

2. **Valley Conservation and Rural Development Area:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within the Valley Conservation and Rural Development Area in Plan Area A2, as shown on the **2016, Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR**. Specific activities included in this PGP within the Valley Conservation and Rural Development Area include those Covered Activities identified in Chapter 2.6, Section 2.6.2 of the HCP/NCCP.

3. **Foothills PFG Area:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within the Foothills PFG area in Plan Area A3, as shown on the **2016, Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR**. Specific activities included in this PGP within the Foothills PFG include those Covered Activities identified in Chapter 2.6, Section 2.6.3 of the HCP/NCCP.

4. **Foothills Conservation and Rural Development:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within the Foothills Conservation and Rural Development area in Plan Area A4, as shown on the **2016, Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR**. Specific activities included in this PGP within the Foothills PFG include those Covered Activities identified in Chapter 2.6, Section 2.6.4 of the HCP/NCCP.

5. **Regional Public Programs:** Discharges of dredged and/or fill material into waters of the U.S. associated with rural and urban land uses within Plan Area A or B, as shown on the **2016, Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR**. Specific activities included in this PGP for Regional Public Programs include those Covered Activities identified in Chapter 2, Section 2.6.5 of the HCP/NCCP.

6. **In-Stream Activities:** Activities resulting in the discharge of dredged and/or fill material into waters of the U.S. for activities within streams, reservoirs, or on-stream ponds in Plan Area A or B, as shown on the **2016, Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR**, and as described in Chapter 2, Section 2.6.6 of the HCP/NCCP, including, but not limited to, maintenance activities in the stream channel, along the stream bank, and on adjacent waters of the U.S. within the riparian corridor. These activities may include those described in 1 through 5 above.

7. **Conservation Programs:** Activities resulting in the discharge of dredged and/or fill material into waters of the U.S. associated with implementing the conservation strategy identified in Chapter 5 of the HCP/NCCP in Plan Area A or B, as shown on the 2016, *Figure 2-1 Plan Area Components, Placer County Conservation Program – EIS/EIR*, including, but not limited to, habitat enhancement, restoration, creation, translocation, and reserve management, and other activities, as described in Chapter 2, Section 2.6.7 of the HCP/NCCP.

### **EXCLUSIONS:**

1. The LOP procedure does not apply to any activities in waters of the U.S. that are not considered Covered Activities under the HCP/NCCP.
2. The LOP procedure does not apply to any activities in waters of the U.S. that have a potential to significantly impact the human environment.

### **LOP PROCEDURE:**

#### **1. Before submitting an application:**

The applicant must attend a pre-application meeting with the Corps. Applicants are encouraged to invite the applicable Plan Permittee (i.e. Placer County, City of Lincoln, SPRTA, or PCWA) and other applicable agencies to the pre-application meeting with the Corps.

#### **2. Application submittal:**

To be considered for authorization under an LOP, the application must include all information required for a standard permit application, pursuant to 33 CFR 325.1. The application package must be submitted to the Corps in both paper and electronic form (pdf), suitable for electronic transmittal and/or posting to an FTP site, and include the following:

- a. A cover letter from the applicant requesting an LOP under the HCP/NCCP LOP procedures for the proposed activity, referencing the Corps' identification number and including contact information for the applicant and their designated agents or primary points-of-contact. This must include mailing and e-mail addresses and telephone and fax numbers.
- b. A completed and signed Department of the Army Engineering Form 4345.
- c. A copy (hardcopy, and electronic on CD or through posting to an FTP site) of the CARP application submitted to Placer County or the City of Lincoln.
- d. An aquatic resources delineation for the activity area, conducted in accordance with the Corps' minimum standards for aquatic resource delineations, or information that an aquatic resources delineation has been verified (including Corps file number) and is still valid.

e. Site location map(s), including the proposed activity, clearly outlined on USGS 7.5' quad sheet drawings, with latitudes and longitudes for the site(s), name of the quad sheet(s) and directions to the site, as well as all appropriate aerial and other imagery available.

f. A complete description of the proposed activity, including all of the information identified under 33 CFR 325.1 (d) "Content of application."

g. Plan and profile views of the proposed work, relative to potential or approved waters of the U.S. (e.g., wetlands and open waters below the Ordinary High Water Mark), showing areas, types and acreages of waters and other aquatic resources to be impacted by the proposed activity. All available drawings must be provided and must show proposed impacts on appropriately scaled figures, in accordance with the Corps' map and drawing standards. All maps and drawings shall follow the South Pacific Division February 2016, Updated Map and Drawing Standards for the South Pacific Division Regulatory Program, or most recent update (available on the South Pacific Division website at: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>), unless specifically waived by the Corps.

h. The total area (acreage), if applicable, length (linear feet), and types of aquatic resources to be directly and/or indirectly affected by the proposed activity, the volume (in cubic yards) and type of material to be discharged into each type of aquatic resources, a description of habitat types, including plant communities, within and surrounding the activity site, and a description of how the proposed activity would affect all of the above resources.

i. A description and graphical representation of how impacts to aquatic resources and associated functions (e.g., water quality and habitat) have been avoided and minimized to the maximum extent practicable on the project site. This may include a copy of the applicant's documentation provided to the HCP/NCCP Plan Permittees as required to demonstrate avoidance and minimization of impacts for compliance with the HCP/NCCP and/or CARP.

j. A description of potential indirect (secondary) and cumulative impacts to aquatic resources and the human environment in the watershed and vicinity of the proposed activity.

k. Documentation and record of all pre-application coordination with the Corps and other agencies (as applicable), including any activity-specific comments or concerns provided by agencies, as well as the applicant's response(s) to the comments or concerns.

l. Information, in report form, concerning on-site practicable alternatives and the relative environmental impacts of those alternatives as compared to the environmental impacts of the proposed activity, in accordance with 33 CFR 325.1 (e) and 323.6 (a). The information must address compliance with the Environmental Protection Agency's 404(b)(1) Guidelines at 40 CFR part 230.

m. A statement providing the proposed compensatory mitigation for offset of unavoidable losses of waters of the U.S., indicating proposed compliance with General Condition 3, *Compensatory Mitigation*.

n. Copies of state and local approvals, pending applications or approvals, and any other evidence that the proposed activity has been or is currently being reviewed by the appropriate state and

local agencies and is consistent with their land use plans and policies, particularly wetland policies, programs, ordinances and/or laws.

### **3. Review and Decision:**

a. The Corps will review the applicant's submittal for completeness within approximately fifteen (15) calendar days of receipt. If the application is incomplete, the appropriate Corps staff person will notify the applicant and request the additional information necessary to complete the application for further processing within 30 days after receipt of a complete application.

b. If the Corps determines the application is complete but the activity cannot be authorized by a LOP, the Corps will notify the applicant within 15 calendar days of that determination and proceed to an alternate permitting process (General Permit or Standard Permit).

c. If the application is determined to be complete and appears to meet LOP criteria, the Corps will notify the applicant that the proposed activity is being evaluated for LOP authorization. The Corps will notify the applicable HCP/NCCP Plan Permittee, and applicable state and federal coordination agencies via e-mail of the proposed LOP for the activity, and request any comments within fifteen (15) calendar days of such notice. The Corps will also request any additional information necessary to complete processing of the permit application, and, if sufficient information has been submitted, initiate any required consultation(s) with other agencies, to the extent necessary (e.g., in lieu of programmatic consultations).

d. The Corps will review the comments received and, if otherwise complete (e.g., Endangered Species Act (ESA), National Historic Preservation Act (NHPA) consultations and 401 Water Quality Certification (WQC) completed), make a determination within 30 calendar days after the close of the comment period as to whether LOP authorization is warranted, and whether special conditions are needed. If the Corps determines the activity (1) meets the criteria for LOP authorization, (2) would have a less than significant impact on aquatic resources and the human environment, (3) meets the requirements of the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines for Specification of Disposal Sites, (4) would not be contrary to the public interest, (4) is in compliance with other applicable laws (e.g. ESA, NHPA, Section 401 WQC), and (5) has a consistency determination from Placer County and/or the City of Lincoln that the project is covered under the HCP/NCCP, an LOP will be issued.

e. If at any time during the process the Corps determines the activity may not be authorized by a LOP, Corps staff will immediately notify the applicant, terminate the LOP process, and proceed to an alternate permitting process, as described in C(3)(b) above.

f. Evidence of Section 401 Water Quality Certification must be provided to the Corps before any final LOP decision is made. A LOP will not be issued until and unless all necessary certifications, consultations and/or authorizations (e.g., 401 Water Quality Certification, ESA and/or NHPA) have been completed and/or issued.

g. The Corps will add special and/or general conditions to LOP authorizations as necessary.



# Regional General Permit [#]

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

## Minimal Impact Activities Conducted under the Placer County Conservation Program In-Lieu Fee Program

**EFFECTIVE:**

**EXPIRES:** (5 years from effective date)

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The U.S. Army Corps of Engineers, Sacramento District (Corps), hereby issues a regional general permit (RGP) for minimal impact activities conducted under the Placer County Conservation Program (PCCP) In-Lieu Fee (ILF) Program, resulting in the discharge of dredged and/or fill material into waters of the United States (U.S.) resulting in no more than minimal individual and cumulative impacts. The activities authorized would be conducted to meet the Conservation Strategy as identified in the Placer County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP).

An activity is verified under the RGP when the Corps, as the Chair of the interagency review team (IRT) of the PCCP ILF Program, approves the ILF Site under the ILF Program.

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Sacramento District

**ACTION ID:** SPK-2005-00485

**AUTHORITY:** Section 404 of the Clean Water Act (CWA 404)

**LOCATION:** The PCCP Plan Area encompasses approximately 270,000 acres within western Placer County and eastern Sutter County. Within western Placer County, the Plan Area is bounded on the north by Nevada and Yuba County, on the east by the City of Auburn and California Highway 49, on the south by Sacramento County, and on the west by Sutter County. With the exception of activities conducted by the Placer County Water Agency (PCWA), the Plan Area in western Placer County excludes the Cities of Auburn, Loomis, Rocklin, and Roseville. Within Sutter County, the Plan Area includes 1,724 acres along the Coon Creek floodplain, and 33 miles of Auburn Ravine, Coon Creek, Cross Canal, and East Side Canal. The Plan Area Boundaries can be seen on the enclosed 2016, *Figure 1-1, Plan Area, Placer County Conservation Program – EIS/EIR*, prepared by ICF.

**PURPOSE:** This RGP is intended to expedite authorization under Section 404 of the Clean Water Act for establishment, re-establishment, enhancement, or rehabilitation activities that result in a net increase in aquatic resource functions and services and are approved by the Corps under the ILF Program. The RGP is premised on the approval of an activity by the Corps, in consultation with the IRT, under the ILF Program, conducted by the Placer Conservation Authority (PCA) in partnership with the HCP/NCCP Permittees (Placer County, City of Lincoln, South Placer Regional Transportation Authority [SPRTA], and PCWA). This RGP eliminates the need for project applicants to seek separate authorization from the Corps for those activities approved by the Corps under the ILF Program. This RGP will reduce time and paperwork, and improve efficiency for the Corps, PCA, and the HCP/NCCP Permittees for those activities approved under the ILF Program.

**BACKGROUND:** The PCCP is a regional approach to address issues related to planned development and species habitat conservation, consisting of the HCP/NCCP, County Aquatic Resources Program (CARP), and the ILF Program. The HCP/NCCP provides coverage for fourteen species of plants and wildlife, including seven that are federally-listed as threatened or endangered. The U.S. Fish and Wildlife Service's Sacramento Field Office (USFWS) and National Marine Fisheries Service (NMFS) [have approved] the HCP/NCCP through a species incidental take permit (ITP) issued to the PCCP's Plan Permittees under Section 10 of the ESA. The CARP provides a program, implemented by Placer County and the City of Lincoln through local implementing ordinances, to evaluate activities that would impact aquatic resources considered to be waters of the U.S. or waters of the State. The ILF Program provides compensatory mitigation for impacts associated with the Covered Activities, through funds paid to Placer County or the City of Lincoln.

**ACTIVITIES COVERED:** This RGP authorizes discharges of dredged and/or fill material into waters of the U.S. associated with establishment, re-establishment, enhancement, and rehabilitation activities, provided the activities result in a net increase in aquatic resource functions and services and are approved by the Corps under the ILF Program. The activities authorized under this RGP includes only those activities required to meet the conservation strategy identified in Chapter 7 of the HCP/NCCP.

**EXCLUSIONS:**

1. This RGP may not be used to authorize discharges of dredged and/or fill material into waters of the U.S. for activities that do not result in a net increase in aquatic resource functions and services.
2. This RGP may not be used to authorize discharges of dredged and/or fill material into waters of the U.S. for activities that are not approved by the Corps through the ILF Program.
3. This RGP may not be used to authorize discharges of dredged and/or fill material into waters of the U.S. for activities that do not comply with the conservation strategy identified in Chapter 7 of the HCP/NCCP, as determined by the U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and National Marine Fisheries Service.
4. After-the-fact authorizations: This RGP may not be used to authorize activities that resulted in the discharge of dredged or fill material into waters of the U.S. without Department of the Army (DA) authorization.

**TERMS OF AUTHORIZATION:**

1. Activity Completion: Activities authorized by the Corps under this RGP are valid until the expiration date of the RGP or by the date identified by the Corps in the approved ILF project documentation appended to the ILF Program instrument, whichever date is sooner. If approved by the Corps under the ILF Program, activities authorized under this 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 expiration of the RGP.
2. RGP Authorization: Concurrent with Corps approval of an ILF project resulting in discharges of dredged and/or fill material into waters of the U.S.

3. Compliance with Placer County HCP/NCCP Conditions: Activities to be authorized under this RGP must meet the conservation strategy identified in Chapter 7 of the HCP/NCCP.

4. 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 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 factor of the public interest. 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 project applicant that the proposed activity is not authorized by the RGP 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 the Corps, such as a NWP, Letter of Permission, or Standard Permit. The Corps will determine on a case-by-case basis, as needed, whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may restore authorization under the 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. The Corps may also use its discretionary authority to modify, suspend, or revoke the RGP at any time.

5. Avoidance and Minimization: Impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. For purposes of the RGP, notwithstanding the Corps' discretionary authority described above, this term shall be considered satisfied when project applicants have designed and implemented activities to comply with all applicable avoidance and minimization measures contained in Chapters 5 and 6 of the HCP/NCCP.

6. Single and Complete: The activity must be a single and complete linear or non-linear project, as defined in the Section F of the January 6, 2017, Federal Register Notice for *Issuance and Reissuance of Nationwide Permits; Final Rule* (82 FR 1860), which can be found at: [http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017\\_final\\_rule\\_FR\\_06jan2017.pdf?ver=2017-01-06-092409-457](http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/2017/nwp2017_final_rule_FR_06jan2017.pdf?ver=2017-01-06-092409-457)

7. Section 401 Water Quality Certification: In order for authorization to be valid under this RGP, an approved Section 401 Water Quality Certification (WQC) or waiver thereof is required to be obtained and evidence thereof in possession by Placer County or the City of Lincoln, prior to the commencement of activities authorized by this RGP (see General Condition 7 [*Water Quality Certification*]).

#### **GENERAL CONDITIONS:**

1. Permit Transfer: If an ILF site associated with this permit is sold, the permittee shall transfer the verification to the new owner by submitting a letter to the Corps, to validate the transfer. The letter must contain the name and address of the transferee, as well as the following statement and signature of the transferee:

When the structures or work authorized by this regional general permit (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)

2. Tribal Rights: No activity or its operation shall impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

3. Discovery of Previously Unknown Remains and Artifacts (or - Unanticipated Cultural Resources Discoveries): If the permittee discovers any previously unknown historic, cultural or archeological remains and/or artifacts while accomplishing the activity authorized by this RGP, the permittee shall immediately notify the Corps of what has been found, and to the maximum extent practicable, shall avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. Notification to the Corps shall include a copy of the CARP authorization issued by Placer County or the City of Lincoln. The Corps 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.

4. Water Quality Certification: Water Quality Certification (WQC), or waiver thereof, under Section 401 of the Clean Water Act is required for activities to be authorized by this RGP. The project applicant shall comply with the terms and conditions of any individual or programmatic WQC provided by the State Water Resources Control Board and/or Central Valley Regional Water Quality Control Board.

**FURTHER INFORMATION:**

1. Congressional Authorities: Section 404 of the Clean Water Act (33 U.S.C. 1344)
2. Limits of this authorization:
  - a. The Corps has authority to determine if an activity complies with the terms and conditions of the RGP.
  - b. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law.
  - c. This permit does not grant any property rights or exclusive privileges.
  - d. This permit does not authorize any injury to the property or rights of others.
  - e. 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. Reliance on Applicant's Data: The determination of the Corps that issuance of this RGP is not contrary to the public interest was made in reliance on the information provided by the HCP/NCCP Plan Permittees.
5. Reevaluation of Permit Decision: The Corps may reevaluate its decision on this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. The project applicant fails to comply with the terms and conditions of this permit.
  - b. The information provided by the project applicant in support of a permit application proves to have been false, incomplete, or inaccurate (see 4 above).
  - c. Significant new information surfaces which the Corps 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.

**PERMIT DURATION**: This RGP is valid for five (5) years from the date of issuance. **It will expire on [Day, Month, 20XX]**. At least sixty (60) calendar days prior to expiration, the Corps will issue a public notice, with an opportunity for public comment, describing the reasons for reissuing the RGP for another five years with or without modification, or not reissuing the RGP. If the Corps has not reissued the RGP by the expiration date, the RGP will no longer be valid. This RGP may also be modified, suspended, or revoked by the Corps at any time deemed necessary. In such instance, the Corps will issue a public notice concerning the proposed action. Authorizations under this RGP are valid until the permit expires. An activity authorized by this RGP that has commenced, or is under contract to commence, will have 12 months from the date of the RGP expiration to be completed.

**CONTACTS AND ADDITIONAL INFORMATION**: For additional information about this RGP, please contact the U.S. Army Corps of Engineers, Sacramento District.

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

*DRAFT*

*DRAFT*

\_\_\_\_\_  
[Name]  
Chief, Regulatory Division  
Sacramento District

\_\_\_\_\_  
Date

DRAFT