



Making San Francisco Bay Better

# Permittee's Copy

PERMIT NO. M08-5

May 14, 2008

California Department of Transportation, District 4  
111 Grand Avenue  
Oakland, California 94623-0660

**ATTENTION:** Jeffrey S. Jensen, Office Chief,  
Biological Sciences and Permit

Ladies and Gentlemen:

## I. Authorization

A. Subject to the conditions stated below, the permittee, the California Department of Transportation (Caltrans), is hereby authorized to do the following:

**Location:** In the primary and secondary management areas of the Suisun Marsh, along 5.7 miles of State Route 12 between from 0.68 miles east of Walters Road (post mile [PM] 7.9) to the Lambie/Shiloh intersection (PM 13.6), in unincorporated Solano County, near the City of Fairfield.

- Description:**
1. **In the Primary Management Area:**
    - a. Replace, repair and maintain the existing metal beam guardrail at the Union Creek and Denverton Creek Bridges; and
    - b. Rehabilitate, use and maintain the existing roadbed surface.
  2. **In the Secondary Management Area:**
    - a. Widen, use and maintain the northeast and northwest shoulders at the Branscombe Road intersection by eight to 21 feet and relocate/reconstruct roadside drainage ditches to areas immediately outside the widened area;
    - b. Widen, use and maintain the northwest, southwest, and southeast shoulders of the Denverton Road intersection by eight to 12 feet, replace the headwall at the northwest corner, and reconstruct the roadside drainage ditch at the northwest corner;

- c. Widen, use and maintain the shoulders on SR21 west of the Lambie-Shiloh intersection by eight feet and construct eight-foot-wide bioswales four feet beyond the widened shoulders, such that the finished footprint would be 20 feet wider on each side, and use this widened area as a temporary staging area during construction;
- d. Widen, use and maintain the shoulders at the Lambie-Shiloh intersection by 8 to 75 feet;
- e. Revegetate all disturbed construction areas by hydro-seeding with native grassland species;
- f. Rehabilitate and repair existing roadbed surface; and
- g. Conduct on-going, in-kind repair and maintenance of the improvements authorized above.

B. This authority is generally pursuant to and limited by your application dated February 20, 2008 and received on February 21, 2008, including its accompanying and subsequently submitted exhibits and correspondence and all conditions of this permit.

C. Work authorized herein must commence prior to May 1, 2009, or this permit will lapse and become null and void. Such work, including all revegetation and mitigation, must also be diligently pursued to completion and must be completed by May 1, 2011, unless an extension of time is granted by amendment of the permit.

## II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

### A. Specific Plans and Plan Review

1. **Plan Review.** No work whatsoever shall be commenced pursuant to this authorization until final precise site, engineering, grading, landscaping, and revegetation plans, and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. Such plans shall clearly label any tidal, managed, or seasonal wetlands or vernal pool within 200 feet of the project, the location of temporary fencing, retaining wall structures, culvert(s) and drainage extensions, and the extent of grassland areas that shall be disturbed and thereafter revegetated. BCDC staff will determine the specific drawings and information required. Plan review shall be completed by or on behalf of the Commission within 45 days after receipt of the plans to be reviewed. No changes to the design of the project shall be made without the prior written approval of the BCDC staff.
2. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans without first obtaining written approval of the change(s) by or on behalf of the Commission.

3. **Discrepancies between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization or legal instruments approved pursuant to this authorization, the Special Condition or the legal instrument shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization and any legal instruments submitted pursuant to this authorization.
4. **Appeals of Plan Review Decisions.** Any plan approval, conditional plan approval or plan denial may be appealed by the permittee or any other interested party to the Design Review Board or, if necessary, subsequently to the Commission. Such appeals must be submitted to the Executive Director within 30 days of the plan review action and must include the specific reasons for appeal. The Design Review Board shall hold a public hearing and act on the appeal within 60 days of the receipt of the appeal. If subsequently appealed to the Commission, the Commission shall hold a public hearing and act on the appeal within 90 days of the receipt of the subsequent appeal.

**B. Best Management Practices to Protect Suisun Marsh and Grassland Habitat.**

1. **Marsh Protection During Construction.** The work authorized by this permit shall be performed in a manner that will prevent, avoid, or minimize any significant adverse impact on any tidal marsh, managed wetland, seasonal wetland, vernal pool, or other sensitive wetland resources, and remnant native grassland vegetation. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized herein, the permittee shall restore the area to its previous condition, including returning the disturbed area to its original elevation, soil composition, plant composition, and, if the area does not fully recover to its former condition within one year, the permittee shall re-establish all disturbed areas with appropriate vegetation consistent with restoration and monitoring plans approved by or on behalf of the Commission pursuant to Plan Review Condition II-A.
2. **Water Quality and Erosion Control.** The permittee shall design and construct the project in a manner that minimizes the adverse impacts that would result from storm water runoff and other non-point source pollution entering the Suisun Marsh. All necessary best management practices, including hydroseeding, covering stockpiled materials, installing concrete washout facilities, temporary silt fences, fiber rolls, and other necessary measures, shall be employed to assure that soil, sediments, or other materials will not be washed, blown, or fall beyond the project site during construction or thereafter. Prior to the commencement of work, the permittee shall submit documentation that the storm water management plan is in compliance with requirements of the Regional Water Quality Control Board, San Francisco Bay Region, pursuant to the federal Porter-Cologne Act, the Clean Water Act, and the Coastal Zone Management Act.
3. **Diked Wetlands Protection.** No work authorized herein on any structure or facility shall significantly alter water management, circulation or drainage patterns or otherwise adversely affect any salt pond, managed wetland, or other sensitive diked wetland resources.
4. **Construction Timing.** All construction and removal activities outside of the existing roadway footprint shall be confined to the dry months between May 15 and October 15 to minimize disturbance to migratory waterfowl and nesting resident birds.

5. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.
6. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling into all sloughs, creeks, and wetlands in the Suisun Marsh. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.

C. **Mitigation of Temporary and Permanent Impacts to Grasslands and Seasonal Pools Within the Suisun Marsh.**

1. **On-site Revegetation Plan.** To maximize the habitat function of areas in the primary and secondary management area of the Suisun Marsh affected by grading and construction during project construction, the permittee shall submit a revegetation plan for review and approval by the Commission, pursuant to Special Condition II-A, prior to the commencement of construction. The plan shall include the following:
  - a. **Invasive Weed Control.** In order to enhance the quality of the grasslands and uplands affected by the project, the plan shall include abatement treatment of identified populations of the worst invasive weed species, at the beginning of construction, during construction, and at the completion of construction with a goal of eliminating or controlling these species to the maximum extent feasible. Weeds to be eliminated or controlled shall include pepperweed (*Lepidium latifolium*), artichoke thistle (*Cynara cardunculus*), *Arundo donax*, pampas grass, fennel, yellow star thistle, and various broom species. The plan shall include treatment of all areas affected by the project within the permittee's right-of-way where the above weeds are present.
  - b. **Planting and Seeding.** The revegetation plan shall describe plant species and their percent representations in the hydro-seed mixes to be used for erosion control/native enhancement. The seed mix for grasses shall include all native grass and forb species appropriate to the local lowland grasslands. The plan shall also identify existing trees within the right-of-way that shall be limbed-up or removed to improve views and the general appearance of the roadside landscape.
  - c. **Schedule.** The plan shall include the sequence and schedule of all excavation and grading, weed control treatments, planting, and grass seed applications. Soil pretreatment and hydroseeding shall occur at the time determined to be most optimum for successful establishment, and shall occur by project completion or no later than nine months after substantial completion of the roadway improvements or by November 1, 2011, whichever is earlier.
  - d. **Monitoring Plan.** The revegetated and enhanced areas will be monitored to evaluate the establishment techniques, perform any needed adaptive management, to control weeds that are becoming increasingly dominant, and to assist in the development of criteria for future projects with similar goals and

objectives. To insure that vegetation of disturbed areas and plant establishment in the identified enhancement areas are successful, the plan shall include the following:

- (1) **Monitoring.** Monitoring shall consist of establishing monitoring stations at randomly selected sites, and qualitative survey of the overall project corridor. Monitoring sites shall include an array of three photo points established at each station, and a 10-meter transect will be installed through the planted area. Each transect will be measured with a series of five quadrats. The corridor survey shall evaluate the success of the invasive weed control program and re-establishment of plant cover.
  - (2) **Reporting.** In years 1, 3, and 5, starting July 1 of the year following project completion, or by June 1, 2010, whichever is earlier, the permittee shall submit a report on the success of restoration efforts in creating natural, native grasslands in the highway corridor disturbed by construction. The report shall evaluate and describe the efforts to control non-native and weedy vegetation, the success and percent cover of restored vegetation along the project right-of-way, and the success of reintroduced native grasses and general enhancement of the grassland. Should adverse conditions be identified in the report, or by BCDC staff during a site inspection, the permittee shall take corrective action as specified by or on behalf of the Commission.
2. **Funds for Off-site Mitigation.** Within 210 days of executing this permit, Caltrans shall transfer \$200,000 to the California Coastal Conservancy to plan and restore approximately 1.9 acres of grassland and 0.2 acres of seasonal pools off-site within the primary or secondary management area of the Suisun Marsh. Suitable mitigation sites include Solano Land Trust's Rush Ranch or the California Department of Fish and Game's Hill Slough Wildlife Area, although other suitable sites may be approved by or on behalf of the Commission. Plans for restoring the 2.1 acres shall first be submitted for written approval by or on behalf of the Commission and shall include a topographic map at one-foot contour intervals depicting any proposed modifications, soil information, a planting and seeding plan, project schedule, a three-year maintenance program and a five-year monitoring program. If no suitable habitat enhancement opportunities become available at Rush Ranch or Hill Slough within one year from the substantial completion of the roadway project authorized herein, or by October 1, 2010, whichever is earlier, the funding may be applied to an alternative mitigation project within the Suisun Marsh or its vicinity, as approved by or on behalf of the Commission.

If, prior to the transfer of funds to the California Coastal Conservancy, the permittee provides evidence that less funds are necessary to enhance the equivalent of 2.1 acres of grassland and seasonal wetland habitat, then the permittee may request that the Executive Director reduce the mitigation funding amount, based on bona fide cost estimates provided by Caltrans and/or the Solano Land Trust. Any estimate must include the costs of any necessary grading, planting, seeding, fencing, habitat monitoring, maintenance and cost contingency.

D. **Notice to Contractor.** The permittee shall provide a copy of this permit to any contractor or person working in concert with the permittee to carry out the activities authorized herein and shall point out the special conditions contained herein.

E. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.

F. **Hold Harmless Agreement.** The permittee agrees to indemnify, defend and save harmless the State of California, its agencies, departments, officers, agents and employees from any and all claims, demands, losses or judgments accruing or resulting to any person, firm, corporation or entity who may be injured or damaged by work performed in accordance with the terms and conditions of this permit.

### III. Findings and Declarations

On behalf of the Commission, I find and declare that:

A. **Minor Repair or Improvement.** The project authorized by this permit involves widening the shoulders of an existing state highway for improved traffic safety. The project, therefore, is a similar activity with no greater adverse impacts than other "minor repairs or improvements," as defined in Regulation Section 10601(e)(3), specifically the routine repairs and reconstruction in the Suisun Marsh that do not involve a substantial enlargement or change in use as defined by Regulation Section 10601(d)(1), the removal of vegetation as defined by Regulation Section 10601(d)(3), and the grading of materials as defined by Regulation Section 10601(d)(5), and thus is a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).

B. **Consistency with Marsh Act.** The project authorized by this marsh development permit is partially within the primary management area and partially within the secondary management area of the Suisun Marsh Preservation Act of 1977 ("Marsh Act"), as defined in Sections 29102 and 29103 of Chapter 2, Division 19 of the Public Resources Code. The Commission has issued this authorization for the portion of the work located within the primary management area consistent with the findings and declarations of the Suisun Marsh Protection Plan ("SMPP") pursuant to 29004 of the Marsh Act. The Commission has issued this authorization for the portion of the work located within the secondary management area consistent with the Solano County Local Protection Program ("SCLPP"), pursuant to Section 29505 of the Marsh Act. The project is consistent with the McAteer-Petris Act, the Suisun Marsh Preservation Act, the San Francisco Bay Plan, and the SMPP, and the SCLPP, in that it will not adversely affect the Bay or Suisun Marsh, or public access to and scenic views of, or enjoyment of the Bay and the Marsh. The project is consistent with the Solano County Local Protection Program policies on Utilities, Facilities, and Transportation that state, in part, "when future traffic loads warrant the widening of Highway 12, such expansion must be designed so as to minimize adverse environmental impacts on the Marsh." The footprint of the project has been designed such that safety benefits to the public are provided while minimizing impacts to grasslands, drainage ditches, and seasonal pools adjacent to the highway. Special Conditions II-B, II-D, II-E, II-F and II-G are necessary to ensure that the work will occur in a manner that will minimize potential protect-related impacts on water quality, wetland and grassland habitat, and fish and wildlife that inhabit the area near the SR 12 corridor.

C. **Mitigation.** This permit includes two special conditions requiring mitigation - one for mitigating the temporary impacts to grasslands in the Highway 12 corridor disturbed during construction, and one to offset the permanent loss of 0.62 acres of grasslands and associated

seasonal pools. To offset the temporary impacts to grasslands disturbed during the construction, this authorization requires that the disturbed areas be reseeded and planted with the types of native vegetation that are likely to succeed in these soils, slopes, and hydrologic conditions. The special condition also requires reasonable efforts to control weedy and nonnative vegetation with treatment at strategic times during project construction, planting, and maintenance phases, and that the permittee monitor and report on the success of these efforts. This condition is necessary to assure that the project complies with the policies of the Suisun Marsh Protection Plan and Solano County's Local Protection Program for the Secondary Management Area of the Suisun Marsh. The policies of the Suisun Marsh Protection Plan require that:

1. The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource.
2. The "seasonal marshes, and lowland grasslands are critical habitats for marsh-related wildlife and are essential to the integrity of the Suisun Marsh...
3. Existing uses should continue in the upland grasslands and cultivated areas surrounding the critical habitats of the Suisun Marsh in order to protect the marsh and preserve valuable marsh-related wildlife habitats. Where feasible, the value of the upland grasslands and cultivated lands as habitat for marsh-related wildlife should be enhanced."

In addition to the policies above, Solano County's Local Protection Plan includes policies stating that future expansion of Highway 12 "...must be designed so as to minimize adverse environmental impacts to the Marsh".

The second mitigation requirement of this authorization is that the permittee shall fund the planning, restoration, and monitoring of 2.1 acres of grassland including 0.2 acres of seasonal wetlands within the primary or secondary management areas of the Suisun Marsh. This condition is necessary because the project will result in the unavoidable, permanent loss of approximately 0.62 acres of grassland and 0.01 acre of seasonal pools. Because the boundaries of the Suisun Marsh are fixed, this loss represents a permanent loss of habitat within the marsh boundaries. In order to comply with the policies cited above, this authorization requires the permittee to offset this loss by enhancing 1.9 acres of upland grasslands and creating 0.2 acres of seasonal pools on public lands within the primary and secondary management areas of the Suisun Marsh. While the permanent loss of such habitats means that the total area available for such habitat is reduced, by increasing the value of the upland grasslands that remain, the impact of this unavoidable loss will be offset. For these reasons, the Commission finds that the project is consistent with the policies of the Suisun Marsh Protection Plan and Solano County's Plan of Protection.

**D Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

**E. Environmental Review.** On October 29, 2004, the California Department of Transportation adopted a negative declaration for the shoulder widening, roadbed repair, and safety project authorized by this permit.

F. **Public Trust.** The Commission finds that the fill authorized herein is consistent with public trust needs for the area because the project involves the minor improvement to the shoulder area of an existing state highway, which is necessary for public safety, and which will not impact views or the public's ability to use and enjoy the shoreline and marsh areas in the vicinity.

G. **Listing.** Pursuant to Regulation Section 10620, this project was listed with the Commission on May 1, 2008.

#### IV. Standard Conditions

A. This permit shall not take effect unless the permittee executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.

B. The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.

C. The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers any interest in any property either on which the authorized activity will occur or which is necessary to the full compliance of one or more conditions to this permit, the permittee/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director (*call for a copy of the form or download it from our website*). An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the permit and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.

D. Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

E. Unless otherwise provided in this permit, any work authorized herein shall be completed within the time limits specified in this permit, or, if no time limits are specified in the permit, within three years. If the work is not completed by the date specified in the permit, or, if no date is specified, within three years from the date of the permit, the permit shall become null and void. If a permit becomes null and void for a failure to comply with these time limitations, any fill placed in reliance on this permit shall be removed by the permittee or its assignee upon receiving written notification by or on behalf of the Commission to remove the fill.

F. All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.

G. Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.

H. Work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, the permittee will be subject to the regulations of the Regional Water Quality Control Board in that region.

I. Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.

J. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit.

K. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.

L. This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.

M. Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or its assignee if the permit has been assigned.

N. Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee or its assignee if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

O. The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

WILL TRAVIS  
Executive Director  
San Francisco Bay Conservation and  
Development Commission

By:   
CAITLIN SWEENEY  
Chief Deputy Director

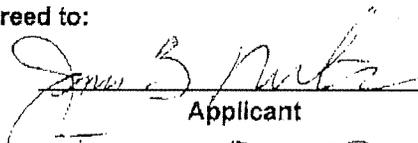
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cc: U. S. Army Corps of Engineers, Attn.: Regulatory Functions Branch  
San Francisco Bay Regional Water Quality Control Board,  
Attn.: Certification Section  
Environmental Protection Agency, Attn: Mike Monroe, WTR-8  
Solano County Planning Department  
Solano County Building Department

\* \* \* \* \*

**Receipt acknowledged, contents understood and agreed to:**

Executed at \_\_\_\_\_

  
Applicant

On \_\_\_\_\_

By: JAMES B. RICHARDS  
DDD, ENVIRONMENTAL  
Title PLANNING &  
ENGINEERING