

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

January 24, 2018

William M. Connor
Permit Manager
Regulatory Division
U.S. Army Corps of Engineers
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

SUBJECT: Consistency Determination No. C2017.007.00 for Reissuance of Regional General Permit 3: Suisun Marsh Managed Wetlands Operations and Maintenance Projects

Dear Mr. Connor:

On December 20, 2017, the U.S. Army Corps of Engineers ("USACE") submitted a consistency determination for a proposed federal activity described as the reissuance of Regional General Permit 3 ("RGP3"): Suisun Marsh Managed Wetlands Operation and Maintenance Projects, on behalf of the USACE and the four applicants for the RGP3, the Suisun Resource Conservation District ("SRCD"), the California Department of Fish and Wildlife ("CDFW"), the California Department of Water Resources ("CDWR"), and the U.S. Bureau of Reclamation ("USBR"). The USACE requested that the San Francisco Bay Conservation and Development Commission ("Commission") concur that the proposed activity is consistent with the Commission's Coastal Zone Management Program for San Francisco Bay or provide any conditions to the proposed reissued RGP3 that would enable the Commission to so concur.

The proposed reissued RGP3 is a "general permit" as that term is used in Section 930.31(d) of the Coastal Zone Management Act ("CZMA") regulations (15 C.F.R. § 931031(d)). Accordingly, the Commission's consistency review of the proposed reissued RGP3 is governed by the provisions of that regulation.

The proposed reissued RGP3 would permit landowners of managed wetlands in the primary management area of the Suisun Marsh to maintain existing infrastructure and facilities, install certain new infrastructure, and improve capabilities of existing managed wetlands. Many, but not all, of the managed wetlands operations and maintenance activities that would be authorized under the proposed reissued RGP3 would be exempt from the requirement to obtain a marsh development permit from the Commission under the Suisun Marsh Preservation Act ("SMPA"). However, certain activities proposed for authorization under the reissued RGP3 would not be exempt from the permitting under the SMPA; landowners proposing such activities would be required to apply to the Commission for a marsh development permit.

Activities that would be authorized under the proposed reissued RGP3 that would be exempt from the need for a BCDC permit include: (1) "repair, replacement, reconstruction, or maintenance that does not result in an addition to, or enlargement or expansion of, the object of such repair, replacement, reconstruction or maintenance" (Cal. Pub. Res. Code § 29508(b)); and (2) any development specified in the component of the Suisun Marsh local protection program prepared by SRCD and certified by the Commission, which includes the certified individual management plans for managed wetlands (*Id.* § 29501.5).

As you know, by letter dated October 25, 2017, BCDC staff provided comments in response to the public notice on the proposed reissuance of RGP3; that letter identified certain activities proposed for authorization under RGP3 that are not found in SRCD's component of the Suisun Marsh local protection program for which landowners may be required to obtain a permit from the Commission. After further review of the proposed reissued RGP3, this letter provides clarification as to certain activities identified in our October 25, 2017 letter and confirms those activities that would be authorized by the proposed reissued RGP3 for which a permit from the Commission would or may be required.

A permit from Commission would be required for the following activities that would be authorized under the proposed reissued RGP3:

- Installing new drain pumps and platforms on exterior levees.
- Placing new riprap in areas that are not presently riprapped, on either interior or exterior levees.
- Installing a new pipe or dual-purpose gate in exterior levees to flood or drain managed wetlands (but no permit required to replace an existing pipe or dual-purpose gate).
- Installing new bulkheads (but no permit required to maintain existing bulkheads).
- Installing new fish screen facilities (but no permit required to maintain existing fish screens).
- Installing new salinity monitoring stations or relocating an existing salinity monitoring station.

A permit from the Commission may be required for the following activities that would be authorized under the proposed reissued RGP3, depending on site-specific circumstances:

- Installing alternative bank protection such as brush boxes, brush bundles, ballast buckets, and vegetation on exterior and interior levees.
- Installing new blinds (but no permit required to replace existing blinds).

Landowners proposing any of these activities should contact the BCDC to describe the proposed activity and request a determination whether or not a permit is required.

No permit from the Commission would be required for any of the other activities that would be authorized under the proposed reissued RGP3 including, to clarify our October 25, 2017, letter:

- Maintenance of existing roads (this activity is exempt from permitting under Public Resources Code Section 29508(b).)
- Constructing temporary cofferdams in connection with performing repair, replacement or maintenance of existing facilities (this activity is exempt from permitting under Public Resources Code Sections 29501.5 and/or 29508(b).)
- Grading pond bottoms to obtain material for levee maintenance, improve water circulation (including the creation or maintenance of swales), raise subsided areas, or expand wetland habitat (including the creation or maintenance of waterfowl loafing and nesting habitats), provided that no fill is imported to a managed wetland for any of such purposes (this activity is exempt from permitting under Public Resources Code Sections 29501.5 and/or 29508(b).)

Based on the foregoing, for activities that do not require a BCDC permit, pursuant to the permitting exemptions under Public Resources Code Section 29508(b) or Section 29501.5, we concur unconditionally with the USACE's consistency determination on proposed reissuance of its RGP3. For activities that do, or may, require a BCDC permit, as identified above, we concur with your consistency determination subject to the condition that the USACE adopt a special condition to the proposed reissued RGP3 stating that authorization under the reissued RGP3 for such activities shall not become effective until BCDC has issued a permit authorizing the activity under the SMPA or has provided a written determination that no permit from the Commission is required for the activity under the site-specific circumstances.

More specifically, we request that the following special condition be included in the proposed reissued RGP3:

If a proposed activity requires or may require a permit from the San Francisco Bay Conservation and Development Commission (BCDC), authorization under this permit will not become effective until that permit is obtained, fully-executed, and returned to BCDC or until BCDC has provided a written determination that no permit from BCDC is required for the activity. Activities that require a BCDC permit in the Suisun Marsh are those activities that constitute "development" (as defined in Cal. Pub. Res. Code § 29114(a)) and that are not exempt from the need to obtain a BCDC permit under the Suisun Marsh Preservation Act, which include: (1) "repair, replacement, reconstruction, or maintenance that does not result in an addition to, or enlargement or expansion of, the object of such repair, replacement, reconstruction or maintenance" (*Id.* § 29508(b)); and (2) any development specified in the component of the Suisun Marsh local protection program prepared by Suisun Resource Conservation District, which includes the certified individual management plans for managed wetlands (*Id.* § 29501.5).

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The following activities require a permit from BCDC:

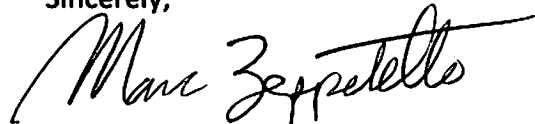
- Installing new drain pumps and platforms on exterior levees.
- Placing new riprap in areas that are not presently riprapped, on either interior or exterior levees.
- Installing a new pipe or dual-purpose gate in exterior levees to flood or drain managed wetlands.
- Installing new bulkheads.
- Installing new fish screen facilities.
- Installing new salinity monitoring stations or relocating an existing salinity monitoring station.

The following activities may require a permit from BCDC, depending on site-specific circumstances:

- Installing alternative bank protection such as brush boxes, brush bundles, ballast buckets, and vegetation on exterior and interior levees.
- Installing new blinds.

Thank you for your consideration and cooperation. Please contact me, at 415/352-3655 or marc.zepetello@bcdca.gov, if you have any questions.

Sincerely,



MARC ZEPPELLO
Chief Counsel

MZ/ra

cc: Steve Chappell, SRCD