



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103-1398

DEC 22 2015

RECEIVED
2015 DEC 28 AM 11:45
POINT REYES NS

Regulatory Division

Subject: File Number 2010-00116

Mr. Ben Becker
National Park Service
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, California 94956

Dear Mr. Becker:

This correspondence is in reference to your submittal of April 20, 2015, concerning Department of the Army (DA) authorization to complete the Drakes Estero Restoration, which includes the removal of offshore infrastructure and aquaculture debris, located in Drakes Estero, near 17171 Sir Francis Drake Boulevard, Inverness, California (Section 23, Township 4N, Range 9W, Latitude (NAD83) 38.0821659548589° N, Longitude (NAD83) 122.932291013775° W).

Work within U.S. Army Corps of Engineers' (Corps) jurisdiction will include removal of 95 oyster racks comprising approximately 7.07 acres of rack footprint area, removal of aquaculture debris (tubes, strings, bags, and shell) within 2.4 acres of the rack footprint area, and removal of oyster mats, anchors and lines, and uncontained manila clams from an additional 0.88 acre of sand bar. The primary removal approach will be to remove debris using mechanical means (excavator with an appropriate bucket scoop) or using divers for more precise hand removal. Approximately 8-12 vessels will be used, with most being used to support removal operations (barge with excavator) and debris transport. One to two small vessels will be used for daily crew access to the barges. A temporary floating dock will be constructed with a bulkhead and temporary anchors and will be approximately 20 feet by 150 feet. All work shall be completed in accordance with the project description titled "Drakes Estero Restoration Project, Removal of Oyster Racks and Aquacultural Debris from Subtidal Lands of Drakes Estero," dated April 2015 (Enclosure 1).

Section 404 of the Clean Water Act (CWA) generally regulates the discharge of dredged or fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters. Section 10 of the Rivers and Harbors Act generally regulates construction of structures and work, including excavation, dredging, and discharges of dredged or fill material, occurring below the plane of mean high water in tidal waters of the United States; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States. Navigable

waters of the United States generally include all waters subject to the ebb and flow of the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce. A Preliminary Jurisdictional Determination (JD) has been completed for your site. Preliminary JDs are written indications that there may be waters of the U.S. on a parcel or indications of the approximate location(s) of waters of the U.S. on a parcel. Preliminary JDs are advisory in nature and may not be appealed. While this preliminary jurisdictional determination was conducted pursuant to Regulatory Guidance Letter No. 08-02, *Jurisdictional Determinations*, it may be subject to future revision if new information or a change in field conditions becomes subsequently apparent. The basis for this preliminary jurisdictional determination is fully explained in the enclosed *Preliminary Jurisdictional Determination Form*. You are requested to sign and date this form and return it to this office within two weeks of receipt.

Based on a review of the information in your submittal, the project qualifies for authorization under Department of the Army Nationwide Permit (NWP) 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities, 77 Fed. Reg. 10,184 (Feb. 21, 2012) (enclosure 2), pursuant to Section 404 of the CWA of 1972, as amended (33 U.S.C. § 1344 *et seq.*) and Section 10 of the Rivers and Harbors Act (RHA) of 1899, as amended (33 U.S.C. § 403 *et seq.*). The project must be in compliance with the terms of the NWP, the general conditions of the Nationwide Permit Program, and the San Francisco District regional conditions cited in enclosure 3. You must also be in compliance with any special conditions specified in this letter for the NWP authorization to remain valid. Non-compliance with any term or condition could result in the revocation of the NWP authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps. This NWP authorization does not obviate the need to obtain other State or local approvals required by law.

This verification will remain valid until March 18, 2017, unless the NWP authorization is modified, suspended, or revoked. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a NWP will remain authorized provided the activity is completed within 12 months of the date of a NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 C.F.R. § 330.4(e) and 33 C.F.R. § 330.5 (c) or (d). This verification will remain valid if, during the time period between now and March 18, 2017, the activity complies with any subsequent modification of the NWP authorization. The Chief of Engineers will periodically review NWPs and their conditions and will decide to modify, reissue, or revoke the permits. If a NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. It is incumbent upon you to remain informed of any changes to the NWPs. Changes to the NWPs would be announced by Public Notice posted on our website (<http://www.spn.usace.army.mil/Missions/RegulatoryPublicNotices.aspx>). Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification

of Compliance, enclosure 4, verifying that you have complied with the terms and conditions of the permit.

This authorization will not be effective until you have obtained a Section 401 water quality certification from the San Francisco Bay Regional Water Quality Control Board (RWQCB). If the RWQCB fails to act on a valid request for certification within two months after receipt of a complete application, the Corps will presume a waiver of water quality certification has been obtained. You shall submit a copy of the certification to the Corps prior to the commencement of work.

This authorization will not be effective until you have obtained a concurrence from the California Coastal Commission that your project will comply with California's Coastal Zone Management Act. If the Commission fails to act on a valid request for concurrence with your certification within six months after receipt, the Corps will presume a concurrence has been obtained. You shall submit a copy of the concurrence to the Corps prior to the commencement of work.

General Condition 18 stipulates that project authorization under a NWP does not allow for the incidental take of any federally-listed species in the absence of a biological opinion with incidental take provisions. As the principal federal lead agency for this project, the National Park Service (NPS) initiated consultation with the National Marine Fisheries Service (NMFS) to address project related impacts to listed species, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq*). By letter of July 29, 2015, NMFS concurred with the determination that the project was not likely to adversely affect steelhead and coho salmon and designated critical habitat for these species.

In order to ensure compliance with this NWP authorization, the following special conditions shall be implemented:

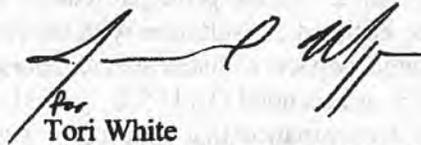
1. All standard Best Management Practices shall be implemented to prevent the movement of sediment downstream. No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products, or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into the waterways.
2. You shall complete the "Drakes Estero Eelgrass Monitoring and Mitigation Plan." Any reports generated as a result of this plan shall be submitted to the Corps. Changes to the plan shall be sent to the Corps for review and approval.
3. Any change in the project design, materials, or construction methods, must be approved by the Corps in writing.

4. A post construction report shall be submitted 45 days after the conclusion of construction activities. The report shall document construction activities and contain as-built drawings (if different from drawings submitted with application) and include before and after photos.

You may refer any questions on this matter to Bryan Matsumoto of my Regulatory staff by telephone at 415-503-6786 or by e-mail at Bryan.T.Matsumoto@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: <http://www.spn.usace.army.mil/Missions/Regulatory.aspx>

Sincerely,



For
Tori White
Acting Chief, Regulatory Division

Enclosures

Copies Furnished (w/o encls):

NMFS, Santa Rosa, CA (Attn: Rick Rogers)
CA RWQCB, Oakland, CA (Attn: Xavier Fernandez)
CA Coastal Commission, San Francisco, CA (Attn: Cassidy Teufel)
CA DFW, Belmont, CA (Attn: Becky Ota)