

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**REVISED TENTATIVE ORDER No. R2-2024-00XX**

**WASTE DISCHARGE REQUIREMENTS and WATER QUALITY CERTIFICATION for:  
EAST BAY REGIONAL PARK DISTRICT  
REGIONAL MAINTENANCE ACTIVITIES  
ALAMEDA AND CONTRA COSTA COUNTIES**

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter the Water Board, finds that:

1. The East Bay Regional Park District (hereinafter Discharger or District) proposes to conduct routine maintenance activities on land owned and/or managed by the Discharger within Alameda and Contra Costa counties. Land owned and/or managed by the Discharger currently is located on 74 regional parks, covering a total area of more than 122,890 acres. The Discharger conducts routine maintenance activities in streams, creeks, channels, catchment basins, seeps, springs, ponds, lakes, and beaches. Maintenance activities may involve culvert repair, replacement, and upgrade; removal of sediment and debris from culverts; installation of new headwalls, tailwalls, and energy dissipators; installation and maintenance of ford-stream crossings; maintenance and installation of bridges; streambank, shoreline, and levee stabilization; maintenance and replacement of spring boxes; maintenance dredging; maintenance and replacement of recreational-shoreline facilities; removal of hazardous structures and vessels; nutrient control to prevent algal blooms; beach replenishment, and lentic, lotic, and tidal restoration and enhancement. The purpose of the maintenance activities is to protect water quality and quantity, to reduce erosion, to maintain and enhance natural resources, and to provide safe access for the public and emergency vehicles. Obtaining timely regulatory agency approval for identified maintenance needs is critical, especially in heavy rainfall years.
2. Routine maintenance activities may occur in several watersheds within Alameda and Contra Costa counties, including Agua Caliente Creek, Alameda Creek, Arroyo de la Laguna, Arroyo Las Positas, Arroyo Mocho, Arroyo Valle, Corte Madera Creek, Mount Diablo Creek, San Lorenzo Creek, San Pablo Creek, and Walnut Creek, that drain to San Francisco Bay, San Pablo Bay, and Suisun Bay. Routine Maintenance activities may also occur within San Francisco Bay, San Pablo Bay, and Suisun Bay. Maps of the 102 creeks, lakes, reservoirs, and major ponds where routine maintenance activities could occur are contained in Appendix C of Attachment A. This Order applies to the portions of these watersheds that are located within the Water Board's jurisdiction.
3. The Discharger developed the document referred to as *The East Bay Regional Park District Routine Maintenance and Restoration Activities in Various Waterbodies in Alameda and Contra Costa Counties, California in the San Francisco Bay Region* (Attachment A). This document describes maintenance activities, impact avoidance measures, Best Management Practices (BMPs), Avoidance and Minimization Measures (AMMs) to protect special status species, and habitat restoration measures.

4. The need for maintenance activities covered by this Order is normally the result of stormwater-related erosion, channel down-cutting, and sedimentation problems resulting from high stream flow events. Generally, between 30 and 60 maintenance projects covered by this Order are anticipated to be completed annually. Routine maintenance activities are summarized in Attachment A and consist of the following main categories:
- Vegetation management for stream flow measuring stations, for water control facilities, and for public health, safety, and benefit.
  - Planting of riparian vegetation.
  - Sediment and debris removal from siltation basins, managed ponds, lakes/reservoirs, and marinas.
  - Management of large woody debris, herbaceous vegetation, fallen trees, rubbish, garbage, sediment, and debris, as needed to maintain bank stability and minimize flood threats, while maintaining habitat for fish, amphibians, and other species that rely on aquatic habitat.
  - Restoration activities, including removal of non-native, invasive vegetation, and restoration and enhancement of marsh, lentic, and lotic water bodies.
  - Repair or replacement of small areas of damaged or failed rock riprap, gabions<sup>1</sup>, geocells, sacked concrete, concrete walls, or cribwall bank revetments in order to maintain bank stability.
  - Streambank, shoreline and levee stabilization, including the installation of log crib walls; replacing degraded areas of existing rip-rap; extending existing rip-rap sections into adjacent, unarmored areas; the installation of new riprap on unarmored creek banks or shorelines; upland and riparian vegetation planting and other bio-engineering techniques.
  - Routine maintenance, replacement, or upgrade of culverts in stream channels associated with park trails and access roads, including the installation of energy dissipaters, headwalls, and tailwalls on existing or replacement culverts.<sup>2</sup>
  - Maintenance of swim beaches using sand recapture or replenishment.
  - Maintenance of existing bridges and installation of clear span bridges.
  - Maintenance, repair, and replacement of existing piers and docks.
  - Maintenance of existing stream fords and installation of new articulated concrete block or natural rock ford-stream crossings.
  - Maintenance and replacement of spring boxes.
  - Removal of hazardous structures and vessels.
  - Nutrient control to prevent algal blooms.
5. The issuance of Waste Discharge Requirements (WDRs) and Water Quality Certification (WQC) serves to govern the Discharger's various maintenance activities for the purpose of alleviating local flood damage problems, protecting fish and wildlife, and addressing public safety concerns in an environmentally responsible manner. In 2004, the Water Board issued WDRs and WQC (Order No. R2-2004-0057) to the Discharger for regional maintenance activities. In 2011, the Water Board updated the

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<sup>1</sup> Gabions may not be replaced in kind, but are to be replaced with biotechnical bank stabilization methods.

<sup>2</sup> The replacement of other forms of stream crossings with culverts or the installation of new culverts is not authorized by this Order.

2004 WDRs and WQC in Order No. R2-2011-0050. In 2018, the Water Board updated the 2011 WDRs and WQC in Order No. R2-2018-0036. This Order updates the 2018 WDRs and WQC for consistency with the current Water Quality Control Plan for the San Francisco Bay Basin, consistency with current Water Board reporting requirements, and consistency with other WDRs and WQC that have been issued by the Water Board for multi-year maintenance programs.

6. The majority of the Discharger's routine maintenance activities consist of improving existing conditions and enhancing habitat for aquatic species with such activities as cattail removal from choked out water bodies, removing and replacing dysfunctional culverts, and removing stream obstructions and barriers. Overall, the majority of the maintenance activities authorized under this Order will improve existing conditions or result in a net environmental benefit. However, some maintenance activities will have temporary and/or permanent impacts to waters of the State. To mitigate for these impacts, the list of proposed maintenance projects that the Discharger prepares in advance (see provisions E.15 and E.31) for each year of covered activities shall be accompanied by proposed mitigation projects that are sufficient to provide compensation for the predicted temporary and permanent impacts associated with covered maintenance projects (see the discussion of Proposed Restoration Activities in *The East Bay Regional Park District Routine Maintenance and Restoration Activities in Various Waterbodies in Alameda and Contra Costa Counties, California in the San Francisco Bay Region* in Attachment A). Land owned or managed by the Discharger includes tidal wetlands, lentic water bodies, and stream habitat. Many of these waterbodies are within the current distributional range of the California red-legged frog, California tiger salamander, California Ridgway's rail, salt marsh harvest mouse, Western pond turtle, and/or other state and/or federally listed species and can be enhanced to provide additional permanent habitat for these special status species, as well as a variety of other aquatic species.<sup>3</sup> Each year's proposed list of maintenance activities shall be accompanied by proposals to restore and/or create sufficient aquatic habitat to compensate for the small-scale temporary and/or permanent, cumulative impacts associated with the various routine maintenance projects. Impacts and mitigation projects associated with individual projects shall be tracked in units of acreage and/or linear feet, as appropriate for the impacted waterbody and proposed mitigation project(s), as well as the type of water of the State to be impacted. Mitigation projects shall be implemented on property owned or managed by the Discharger. Attachment C presents typical mitigation requirements for common projects to be implemented under this Order.
7. If excess mitigation credits are accrued, the Discharger, subject to the Water Board's Executive Officer's approval, may make credits available to itself and other public entities to be used as compensatory mitigation for loss of functions and values of waters of the State associated with other projects located within watersheds in Alameda or Contra Costa counties and within the jurisdictional boundary of the Water Board. Subject to the Executive Officer's approval, the Discharger may accept payment from other parties to provide compensatory mitigation credit to those parties, based on excess mitigation credits that are documented from previous years.

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<sup>3</sup> A complete list of state and/or federally listed species potentially occurring on District parklands is included as Appendix D of Attachment A.

8. On August 3, 2023, the Discharger received a Final Master Lake and Streambed Alteration Agreement (Notification No 1600-2022-005-R3 from the California Department of Fish and Wildlife (CDFW) for routine maintenance activities subject to State Fish and Game Code section 1601.
9. Between December 16, 2022, and January 16, 2023, the U.S. Army Corps of Engineers (Corps) provided public notice of its intent to issue a Regional General Permit (RGP) (File No. 28902S) to the Discharger authorizing various routine maintenance activities.
10. The Corps (File No. 28902S) has determined that the proposed activities associated with the Discharger's routine maintenance activities appear to be covered under the *U.S. Army Corps of Engineers Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California* (NLAA) consultation with the National Marine Fisheries Service (NMFS) (September 10, 2018). Federally listed species that occur on land managed by the Discharger are listed in Order Attachment A, Appendix D. Any proposed projects that do not fit the NLAA will require a separate NMFS authorization before work may be performed on those sites.
11. The Corps (File No. 28902S) has determined that the proposed activities associated with the Discharger's routine maintenance activities will not adversely impact any Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act. Any proposed projects that may adversely impact EFH will require a separate section 7 authorization in consultation with NMFS before work may be performed on those sites.
12. The Corps (File No. 28902S) has determined that proposed activities associated with the Discharger's routine maintenance activities may affect federally listed species and their designated critical habitat. Therefore, on June 28, 2017, the Corps initiated formal section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) pursuant to the federal Endangered Species Act. On February 22, 2018, USFWS issued the *Formal Consultation on the East Bay Regional Park District's Routine Maintenance Activities, Contra Costa and Alameda Counties (Corps File Number 2005-28902SS)* (Biological Opinion) (Reference No. 08ESMF00-2013-F-0416). With the successful implementation of the Conservation Measures, the Reasonable and Prudent Measures, the Terms and Conditions, and the Conservation Recommendations in the Biological Opinion, USFWS concluded that the proposed activities will not jeopardize the continued existence of species listed under the Endangered Species Act. The Corps has reinitiated consultation with USFWS for reissuance of the Corps' RGP in 2024. This consultation, which has not been concluded, will result in the issuance of a new Biological Opinion for the Project. When the new Biological Opinion is issued, the Order requires the Discharger to implement the Project in compliance with all of the mandatory terms and conditions in the new Biological Opinion.
13. On February 12, 2024, the Discharger requested a pre-application meeting and, on March 14, 2024, the Discharger applied to the Water Board for a WQC under Clean Water Act (CWA) section 401.

14. Issuance of a multi-year authorization to the Discharger allows for streamlining regulatory approvals, implementing watershed-scale mitigation to address cumulative impacts, and increasing the efficient use of staff resources for the Water Board and the Discharger while allowing for review of all planned maintenance projects. In addition, a multi-year permit allows the Discharger to plan and budget for routine maintenance on a fixed annual cycle.

### ***Impacts and Mitigation Measures***

15. Routine maintenance activities covered under this Order are small in scale. The footprint of individual projects shall not exceed 2,000 square feet (0.05 acres) or 150 linear feet for any one project, except: 1) localized sediment removal in limited areas that does not exceed 500 linear feet; 2) repair and stabilization of existing armoring on shorelines and levees that does not exceed 500 linear feet total per year at each District shoreline unit; 3) repair and stabilization of existing unarmored shorelines and levees that does not exceed 160 linear feet total per year at each Park District shoreline unit; 4) dredging of existing silt basins, ponds, lakes, and other waterbodies; 5) use of chemicals to control nutrient levels in lakes and ponds to prevent algal blooms; and 6) projects meeting the requirements of a Small Habitat Restoration Project, including a project size that does not exceed 5 acres or a cumulative total of 500 linear feet and whose primary purpose is habitat restoration. Activities not requiring notification include:
  - 1) clearing of inboard ditches when necessary to prevent or reduce road and trail erosion, when the work does not result in discharge of sediment into a stream;
  - 2) hand planting of riparian vegetation to reduce erosion; and
  - 3) installation of fencing permeable to most wildlife species (e.g., 5-strand barbed wire) to keep people and livestock away from stream channels.Except for the project types listed above, projects over 150 feet in length or with footprints greater than 0.05 acres, shall require separate permit application to the Water Board.
16. Routine maintenance activities covered under this Order will not be performed in perennial, intermittent, and ephemeral streams that are known to contain anadromous fish. Routine maintenance activities in streams that are either tributary to existing anadromous fish habitat or that provide potential habitat for anadromous fish shall be performed in conformance with Order provisions E.6, E.7, and E.8.
17. For most bank stabilization and sediment removal projects, excavators shall be used from the top-of-bank. For projects where the use of excavators from the top-of-bank is not possible, or would cause major vegetation impacts, equipment may be used within the channel when it is dry naturally or flows are bypassed. With the exception of material used to construct cofferdams for temporary channel dewatering, no temporary fills may be placed in natural stream channels without specific authorization from the Water Board.
18. If repair activities affect the active channel, the work area shall be isolated from flowing stream segments using cofferdams and restored to pre-project conditions after maintenance is complete. Cofferdams shall be constructed of materials that will not introduce sediment to the stream channel and can be completely removed following completion of the maintenance activity (see the discussion of *Project Specific Best*

*Management Practices (BMPs) and Thresholds in The East Bay Regional Park District Routine Maintenance and Restoration Activities in Various Waterbodies in Alameda and Contra Costa Counties, California in the San Francisco Bay Region in Attachment A to this Order).*

19. Vegetation management techniques include removal using small hand tools and hand-held equipment, mechanical removal using heavy equipment like a flail mower attached to an excavator, and spot chemical control on tree stumps and along access roads.
20. Where possible, staging will occur on adjacent access roads or previously disturbed areas. Soil and rip-rap will be staged in areas that have been previously disturbed (e.g., service roads, turn-outs).
21. *The East Bay Regional Park District Routine Maintenance and Restoration Activities in Various Waterbodies in Alameda and Contra Costa Counties in the San Francisco Bay Region (Attachment A)* includes planning guidelines or principles to determine how, where, and when routine maintenance activities should occur. These principles should be used in the development of each year's maintenance work plan, prior to any work. These principles consider the natural function of the system, provide an understanding of local physical constraints, identify sensitive habitats, consider watershed processes, determine when action is needed, identify maintenance activities needed, and strive to recognize and implement solutions to minimize the on-going need for maintenance activities.
22. Most routine maintenance activities under this Order will be conducted in a manner that results in no net loss of waters of the State, including streams and wetlands. However, some waters of the State, including wetlands, creeks, tidal marshes, basins, lakes, and stock ponds, will be temporarily and/or permanently impacted, and will require appropriate mitigation, consistent with the State's "no net loss" policy. All mitigation activities shall occur within the Discharger's jurisdiction, as described in Finding 2. Impacts and mitigations associated with individual projects shall be accounted for by acreage, linear feet, and type of water of the State impacted and shall be reported annually to the Water Board.

### **California Wetlands Portal**

23. It has been determined through regional, State, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition, to effectively carry out the State's "no net loss" wetland policy, the State needs to closely track both wetland losses and mitigation/restoration project success. Therefore, this Order requires that the Discharger use the digital interactive mapping tool called EcoAtlas.<sup>4</sup> To provide project information related to impacts and mitigation/restoration measures (see Order provisions E.31 and E.32). EcoAtlas is a web-based tool that

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<sup>4</sup> Source: California Wetlands Monitoring Workgroup (CWMW), 2019. *EcoAtlas*. Accessed May 14, 2019. <https://www.ecoatlas.org>. The California Wetland Monitoring Workgroup (CWMW) provides technical oversight on the development of content and functionality of EcoAtlas. As a member of CWMW, San Francisco Estuary Institute provides day-to-day support and management of EcoAtlas, and can be contacted by email to [ptrackadmin@sfei.org](mailto:ptrackadmin@sfei.org).

integrates maps, project plans, site conditions, restoration efforts, and other elements on a project-by-project basis based on data inputs. Accordingly, we require the Discharger to upload their Project information to EcoAtlas with the Project Tracker tool at <https://ptrack.ecoatlas.org>. The California Wetlands Monitoring Workgroup developed EcoAtlas and maintains detailed instructions for Project Tracker on its website at <https://ptrack.ecoatlas.org/instructions>.

### **Regulatory Framework**

24. The *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan) is the Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes implementation plans to achieve water quality objectives. The Basin Plan was duly adopted by the Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and U.S. EPA, where required.
25. The Basin Plan lists the following existing and potential beneficial uses for surface waters in Alameda and Contra Costa counties within the jurisdiction of the Water Board. The Discharger conducts maintenance activities on an estimated 102 creeks, lakes, reservoirs, and major ponds in the following watersheds: Agua Caliente Creek, Alameda Creek, Arroyo de la Laguna, Arroyo Las Positas, Arroyo Mocho, Arroyo Valle, Corte Madera Creek, Mount Diablo Creek, San Lorenzo Creek, San Pablo Creek, and Walnut Creek, that drain to San Francisco Bay, San Pablo Bay, and Suisun Bay. Routine Maintenance activities may also occur within San Francisco Bay, San Pablo Bay, and Suisun Bay (See Appendix C to Order Attachment A), with the following designated beneficial uses:
  - a. Agricultural Supply (AGR)
  - b. Cold Freshwater Habitat (COLD)
  - c. Freshwater Replenishment (FRSH)
  - d. Groundwater Recharge (GWR)
  - e. Fish Migration (MIGR)
  - f. Municipal and Domestic Supply (MUN)
  - g. Navigation (NAV)
  - h. Preservation of Rare and Endangered Species (RARE)
  - i. Water Contact Recreation (REC-1)
  - j. Non-contact Water Recreation (REC-2)
  - k. Fish Spawning (SPWN)
  - l. Warm Freshwater Habitat (WARM)
  - m. Wildlife Habitat (WILD)

Sediment management, vegetation management, culvert repair or replacement, and bank stabilization activities could temporarily impact beneficial uses of waters of the State for:

- a. Warm Freshwater Habitat (WARM)
- b. Cold Freshwater Habitat (COLD)
- c. Wildlife Habitat (WILD)
- d. Preservation of Rare and Endangered Species (RARE)
- e. Fish Migration (MIGR)
- f. Fish Spawning (SPWN)

26. The Basin Plan lists the following existing and potential beneficial uses for portions of the shoreline of San Francisco Bay in Alameda and Contra Costa counties within the jurisdiction of the Water Board. The Discharger may conduct maintenance activities at the following shoreline parks, Bay Point Wetlands, Brooks Island, Carquinez Strait Shoreline, Coyote Hills, Crown Beach, Eastshore State Park, Hayward Shoreline, Lone Tree Point, Martin Luther King Jr. Shoreline, Martinez Shoreline, Miller/Knox, Oyster Bay, Point Isabel, Point Pinole, and, San Pablo Bay Shoreline, with the following designated beneficial uses:
- a. Commercial and Sport Fishing (COMM)
  - b. Estuarine habitat (EST)
  - c. Marine habitat (MAR)
  - d. Industrial Service Supply (IND)
  - e. Fish Migration (MIGR)
  - f. Navigation (NAV)
  - g. Preservation of Rare and Endangered Species (RARE)
  - h. Water Contact Recreation (REC-1)
  - i. Non-contact Water Recreation (REC-2)
  - j. Fish Spawning (SPWN)
  - k. Shellfish harvesting (SHELL)<sup>5</sup>
  - l. Wildlife Habitat (WILD)

Sediment management, vegetation management, and bank stabilization activities could temporarily impact beneficial uses of waters of the State for:

- a. Commercial and Sport Fishing (COMM)
  - b. Estuarine habitat (EST)
  - c. Marine habitat. (MAR)
  - d. Fish Migration (MIGR)
  - e. Navigation (NAV)
  - f. Rare, Threatened, or Endangered Species (RARE)
  - g. Water Contact Recreation (REC-1)
  - h. Non-contact Water Recreation (REC-2)
  - i. Fish Spawning (SPWN)
  - j. Wildlife Habitat (WILD)
  - k. Shellfish harvesting (SHELL)
27. The following groundwater basins, which underlie, at least in part, land under the control of the Discharger, support the existing and potential beneficial uses listed below: Castro Valley Groundwater Basin, Niles Cone Sub-Basin, Santa Clara Valley Groundwater Basin, East Bay Plain Sub-Basin, Livermore Valley Groundwater Basin, Sunol Valley Groundwater Basin, Pittsburg Plain Groundwater Basin, Clayton Valley Groundwater Basin, Ygnacio Valley Groundwater Basin, San Ramon Valley Groundwater Basin, and Arroyo del Hambre Valley Groundwater Basin.
- a. Agricultural Supply (AGR)
  - b. Industrial Service Supply (IND)

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<sup>5</sup> Shellfish collection observations have occurred and could potentially occur on a limited basis at all San Francisco Bay shoreline parks (Hayward Shoreline, Oyster Bay, Martin Luther King, Jr. Shoreline, Crown Beach, Eastshore State Park, Pt. Isabel, Miller/Knox, Point Pinole, Carquinez Strait Shoreline, Brooks Island, and Martinez Shoreline).



- c. Industrial Process Supply (PROC)
- d. Municipal and Domestic Supply (MUN)

28. The following water bodies that could be affected by routine maintenance activities covered by this Order are identified as impaired on the CWA section 303(d) list for the pollutants listed:

<b>Impaired Water Body</b>	<b>Pollutant</b>
<b>Creeks</b>	
Alameda Creek	Diazinon
Arroyo De La Laguna	Diazinon
Arroyo Del Valle	Diazinon
Arroyo Las Positas	Diazinon and Nutrient/Eutrophication
Arroyo Mocho	Diazinon and Temperature (water)
Baxter Creek	Trash
Cerrito Creek	Trash
Codornices Creek	Temperature (water) and Trash
Damon Slough	Trash
Grayson Creek	Trash
Kirker Creek	Pyrethroids, Toxicity, and Trash
Mount Diablo Creek	Diazinon and Toxicity
Pine Creek	Diazinon
Pinole Creek	Diazinon
Rodeo Creek	Diazinon
San Leandro Creek (Lower)	Diazinon and Trash
San Lorenzo Creek	Diazinon
San Pablo Creek	Diazinon and Trash
Sausal Creek	Trash
Strawberry Creek	Trash
Walnut Creek	Diazinon
Wildcat Creek	Diazinon
<b>Beaches</b>	
Crown Beach	Indicator Bacteria
Keller Beach	Indicator Bacteria

<b>Impaired Water Body</b>	<b>Pollutant</b>
<b><i>Lakes and Reservoirs</i></b>	
Del Valle Reservoir	Mercury and PCBs
Lafayette Reservoir	Mercury and PCBs
Lake Chabot	Chlordane, DDT, Dieldrin, Mercury, PCBs
San Pablo Reservoir	Chlordane, Dieldrin, Heptachlor Epoxide, Mercury, PCBs, and Toxaphene

29. Central San Francisco Bay, which is a receiving water body for some of the creeks listed above, is identified as impaired on the CWA section 303(d) list and is listed as impaired for Chlordane, DDT, Dieldrin, Dioxin Compounds, Furan Compounds, Invasive Species, Mercury, PCBs, Selenium, and Trash.
30. Lower San Francisco Bay, which is a receiving water body for some of the creeks listed above, is identified as impaired on the CWA section 303(d) list and is listed as impaired for Chlordane, DDT, Diazinon, Dieldrin, Dioxin Compounds, Invasive Species, Furan Compounds, Mercury, PCBs, and Trash.
31. San Leandro Bay, which is a receiving water body for some of the creeks listed above, is identified as impaired on the CWA section 303(d) list and is listed as impaired for Chlordane, DDT, Dieldrin, Dioxin Compounds, Furan Compounds, Invasive Species, Lead (sediment), Mercury, PAHs, Pesticides, and Zinc.
32. San Pablo Bay, which is a receiving water body for some of the creeks listed above, is identified as impaired on the CWA section 303(d) list and is listed as impaired for Chlordane, DDT, Dieldrin, Dioxin Compounds, Furan Compounds, Invasive Species, Mercury, PCBs, and Selenium.
33. Carquinez Strait, which is a receiving water body for some of the creeks listed above, is identified as impaired on the CWA section 303(d) list and is listed as impaired for Chlordane, DDT, Dieldrin, Dioxin Compounds, Furan Compounds, Invasive Species, Mercury, PCBs, and Selenium.
34. Suisun Bay, which is a receiving water body for some of the creeks listed above, is identified as impaired on the CWA section 303(d) list and is listed as impaired for Chlordane, DDT, Dieldrin, Dioxin Compounds, Furan Compounds, Invasive Species, Mercury, PCBs, and Selenium.
35. The Discharger complied with the California Environmental Quality Act (CEQA) through the *Routine Maintenance and Restoration Program (RMRP) Initial Study/Mitigated Negative Declaration (IS/MND)*, which was certified by the District’s Board of Directors on August 23, 2022. The Notice of Determination was filed with the Alameda County Clerk and Contra Costa County Clerk on August 24, 2022 (State Clearing House Number 202206073). An Addendum to the certified *RMRP Initial Study/Mitigated Negative Declaration*, which adds nutrient remediation to control algal blooms to the Program, was certified by the District’s Board of Directors on March 19, 2024. The Water Board, acting as a responsible agency under CEQA, reviewed and considered the IS/MND and Addendum. The Water Board finds that the IS/MND and

the Addendum address the environmental impacts of the routine maintenance activities authorized by this Order.

36. The goals of the California Wetlands Conservation Policy (Governor's Executive Order W-59-93, signed August 23, 1993) include ensuring no "overall loss", and achieving a "long-term net gain in the quantity, quality, and permanence of wetlands acreage and values...."
37. Senate Concurrent Resolution No. 28 states that, "It is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and multiple resources which depend on them for the benefit of the people of the State."
38. Section 13142.5 of the California Water Code (CWC) requires that "Highest priority shall be given to improving or eliminating discharges that adversely affect ... Wetlands, estuaries, and other biologically sensitive areas."
39. State Water Resources Control Board Resolution 68-16, Statement of Policy with Respect to Maintaining High Quality Waters in California (Antidegradation Policy), prohibits the Water Board from authorizing degradation of "high quality waters" unless it is shown that such degradation: (1) will be consistent with the maximum benefit to the people of California; (2) will not unreasonably affect beneficial uses, or otherwise result in water quality less than as prescribed in applicable policies; and (3) is minimized through the discharger's best practicable treatment or control. This Order complies with the Antidegradation Policy because it does not authorize degradation of high quality waters.
40. Pursuant to CWC section 13260, the Discharger shall timely pay all fees associated with this Order. The fee amount for this Order shall be in accordance with the current fee schedule, per California Code of Regulations (CCR), Division 3, Chapter 9, Article 1, section 2200(a)(3). The fee payment shall indicate the Order number, the CIWQS Place ID No. 894015, the Regulatory Measure ID no. 456241, and the applicable year.

The District anticipates permanently impacting up to 0.5 acres of waters of the State and temporarily impacting up to 2.5 acres of waters of the State. The application and project fee for these impacts is \$79,824. The Discharger shall pay any applicable fees for additional impacts due to activities authorized by this Order.

An annual fee shall also be paid to the Water Board after the initial year for each year in which impacts to waters of the State that are authorized by this Order are implemented (note: the annual fee may be changed by the State Water Board; at the time that this Order was adopted, it was \$2,509 per year). The annual fee shall continue to be paid to the Water Board until the monitoring reports required pursuant to provision E.59 have all been submitted to the Water Board, unless a new Order has been adopted. After the initial year, the annual fee shall be billed annually to the Discharger until all mitigation sites and mitigation projects required as mitigation for impacts to waters of the State have met their success criteria and the attainment of success criteria has been documented in a final monitoring report. Fee payments shall indicate the Order number, WDID number, and the Regulatory Measure ID number.

41. The Water Board has notified the Discharger and interested parties of its intent to issue WDRs and WQC for the Discharger's routine maintenance activities.
42. The Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED that Order No. R2-2018-0036 is hereby rescinded, except for purposes of enforcement, and the East Bay Regional Park District (Discharger), in order to meet the provisions contained in CWC Division 7 and regulations adopted thereunder, shall comply with the following:

**A. Discharge Prohibitions**

1. The direct or indirect discharge of wastes, as defined in CWC section 13050(d), within or outside of the active project site, to surface waters or surface water drainage courses is prohibited, except as authorized in this Order.
2. The discharge shall not cause degradation of water quality and beneficial uses.
3. Excavated sediment shall remain within designated disposal areas at all times. The designated disposal areas are: (a) any offsite, authorized temporary or permanent location maintained in compliance with federal and State regulations, (b) any onsite, authorized temporary or permanent location, provided material will be isolated and contained to prevent impacts to waters of the State and their beneficial uses, or (c) a permitted landfill. Sediment may be re-used by the Discharger or offered to other parties for re-use if such re-use is consistent with the screening levels contained in the Water Board's May 2000 staff report, *Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines*.
4. The discharge of sediment and runoff/decant water that exceeds effluent limits, from excavated materials disposed of at any temporary or permanent disposal site, to waters of the State is prohibited.
5. Any maintenance or dredge and disposal activity subject to these requirements shall not cause a condition of pollution or nuisance as defined in CWC section 13050 (l) and (m).
6. Groundwater beneficial uses shall not be degraded as a result of routine maintenance activities.
7. No debris, soil, silt, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or 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 waters of the State. When operations are completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed into waters of the State.
8. Project-related discharges shall not cause a violation of any water quality standard for receiving waters adopted by the Water Board or State Water Board as required by the CWA and regulations adopted thereunder. If more stringent water quality standards

are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Water Board may revise or modify this Order in accordance with the more stringent standards. Pond dewatering discharges, accumulated groundwater or stormwater removed during dewatering of excavations, and diverted pond and stormwater flows shall not be discharged to waters of the U.S. without meeting the receiving water objectives in the Basin Plan.

## **B. Discharge Specifications**

1. Appropriate soil erosion control measures shall be undertaken and maintained to prevent discharge of sediment to surface waters or surface water drainage courses.
2. In accordance with CWC section 13260, the Discharger shall file with the Water Board a report of any material change in the character, location, or quantity of this waste discharge. Any proposed material change in the discharge requires approval by the Water Board after a hearing under CWC section 13263.
3. A responsible representative of the Discharger shall immediately, and in no case no more than 24 hours, notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. An adverse condition includes, but is not limited to, a violation or threatened violation of the requirements of this Order, significant spill of petroleum products or toxic chemicals, or damage to control facilities that could affect compliance. Pursuant to CWC section 13267(b), a written notification of the adverse condition shall be submitted to the Water Board within five days of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Water Board, for the remedial actions.

## **C. Effluent Limitations**

Excavated material effluent (decant water) discharged from any permanent or temporary disposal site located on the project site or off the site shall not exceed the following numeric and narrative limits at any time:

1. Numeric Limits:
  - a. pH: 6.5 – 8.5
  - b. Settleable Matter: < 1.0 ml/l-hour
2. Narrative Limits:
  - a. Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses; and,
  - b. All water shall be free from dissolved sulfide concentrations above natural background levels.

**D. Receiving Water Limitations**

- 1. Work in and around the stream channel or Bay shoreline shall not cause the following conditions to exist in waters of the State at any place:
  - a. Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses;
  - b. Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses;
  - c. Waters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth cause nuisance or adversely affect beneficial uses;
  - d. Waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life;
  - e. There shall be no alteration of temperature, turbidity, or apparent color beyond present natural background levels;
  - f. Dissolved oxygen, with the beneficial use designations listed in D.1.g.a. below, shall not be reduced below the listed minimums in the receiving water from the point of discharge;
  - g. Routine maintenance activities shall not cause the following limits to be exceeded in waters of the State at any point:

- a. Dissolved Oxygen: 5.0 (WARM) or 7.0 (COLD) mg/l minimum. When natural factors cause lesser concentrations, then this discharge shall not cause further reduction in the concentration of dissolved oxygen.
- b. Dissolved Sulfide: All water shall be free from dissolved sulfide concentrations above natural background levels. Concentrations of only a few hundredths of a milligram per liter can cause a noticeable odor or be toxic to aquatic life. Violation of the sulfide objective will reflect violation of dissolved oxygen objectives as sulfides cannot exist to a significant degree in an oxygenated environment.
- c. pH: A variation of natural ambient pH by more than 0.5 pH units.
- d. Toxicity: All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- e. Un-ionized Ammonia: 0.025 mg/L as N, annual median; and 0.16 mg/L as N, maximum.

- f. Salinity: The project shall not increase total dissolved solids or salinity to adversely affect beneficial uses.
- g. Turbidity Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU, or greater than 5 NTU where natural turbidity is less than 50 NTU.

2. The discharge shall not cause a violation of any particular water quality standard for receiving waters adopted by the Water Board or the State Water Board as required by the CWA and regulations adopted thereunder. If more stringent applicable water quality standards are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Water Board will revise and modify this Order in accordance with such more stringent standards.
3. Groundwater shall not be degraded as a result of maintenance activities or sediment disposal.

## **E. Provisions**

### ***General Water Quality***

1. The Discharger shall comply with all the Prohibitions, Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided below. Requirements prescribed by this Order supersede the requirements prescribed by Order No. R2-2018-0036.
2. The Discharger shall be restricted to maintenance activities summarized in Attachment A that would be eligible for coverage under the following Corps Nationwide Permits (NWP) for the purpose of this Order:
  - NWP 3, Maintenance
  - NWP 13, Bank Stabilization
  - NWP 14, Linear Transportation Projects
  - NWP 18, Minor Discharges
  - NWP 19, Minor Dredging
  - NWP 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities
  - NWP 28, Modification of Existing Marinas
  - NWP 31, Maintenance of Existing Flood Control Facilities
  - NWP 37, Emergency Watershed Protection and Rehabilitation
  - NWP 40, Agricultural Activities
  - NWP 42, Recreational
  - NWP 45, Repair of Upland Damaged by Discrete Events

3. The Discharger shall submit separate WQC applications for projects that do not meet the criteria for the routine maintenance activities summarized in Attachment A or would not qualify for the Corps NWP's listed in provision E.2, with the exception of nutrient control to prevent algal blooms. At a minimum, the Discharger shall submit separate WQC applications for any single project with fill impacts to a water body or wetland of greater than 2,000 square feet (0.05 acre) or for any single channel project that would impact more than 150 linear feet, with the following exceptions: 1) clearing of inboard ditches when necessary to prevent or reduce diversion potential to road and trail systems; 2) planting riparian vegetation to reduce erosion; 3) fencing to keep people and livestock away from stream channels; 4) localized sediment removal in limited areas that does not exceed 500 linear feet; 5) repair and stabilization of existing armored shoreline banks and levees that does not exceed 500 linear feet total or 12,500 sq. ft. (0.287 acres) per year at each District shoreline unit; 6) repair and stabilization of existing unarmored shoreline banks and levees that does not exceed 160 linear feet total or 4,000 sq. ft. (0.092 acres) per year at each District shoreline unit; 7) dredging of existing silt basins, ponds, lakes, and other waterbodies; 8) projects meeting the requirements of a Small Habitat Restoration Project, including a project size that does not exceed 5 acres or a cumulative total of 500 linear feet and whose primary purpose is habitat restoration. Except for the project types listed in the preceding sentence, projects over 150 feet in length or with footprints greater than 0.05 acres shall require separate WQC applications to the Water Board.
4. The Discharger shall submit by June 1<sup>st</sup> of each year an Annual Notification of Proposed Projects, specifying planned routine maintenance activities that will occur in the following year. The Annual Notification of Proposed Projects shall indicate project location, scope, purpose and need; the amount of fill of waters of the State, including wetlands; and any associated mitigation.
5. For compensatory mitigation for Project impacts to waters of the State, including onsite restoration and offsite mitigation, the Annual Notification of Proposed Projects shall include a description of all proposed mitigation projects, along with the rationale for the proposed amount of acres and/or linear feet of mitigation to compensate for the predicted temporary and permanent impacts resulting from the proposed maintenance projects. The description of proposed mitigation projects shall include mitigation project designs, monitoring and maintenance protocols, and interim and final performance criteria for assessing the successful implementation of mitigation projects. Monitoring and maintenance protocols shall be implemented for a minimum of five years for wetland, tidal, and open water mitigation projects and a minimum of 10 years for riparian mitigation projects. Onsite performance criteria will be used to establish that habitats at impacted sites have recovered to near pre-impact levels (e.g., percent cover of disturbed surfaces with vegetation, percent survival of replanted riparian vegetation). Offsite performance criteria shall be used to establish that the mitigation projects successfully created or enhanced habitat (e.g., geomorphic stability of channels and/or berms, percent survival of planted riparian vegetation, percent cover of planted vegetation, sufficient ponding to support breeding of listed amphibians).



6. For routine maintenance activities impacting watercourses that are known to support or have the potential to support threatened and/or endangered species, a qualified biologist shall conduct a pre-construction survey. If any threatened and/or endangered species are located during the pre-construction survey at the project site, the Discharger shall conduct the maintenance project in a manner that is consistent with the requirements of the *U.S. Army Corps of Engineers Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California* (NLAA) consultation with NMFS (September 10, 2018).
7. Under this Order, routine maintenance activities conducted in perennial or intermittent streams known to contain anadromous fish need to comply with the NLAA. Federally-listed species that occur on land managed by the Discharger are listed in Appendix D to Attachment A to this Order. Any proposed projects that do not fit the NLAA will require a separate NMFS authorization before work may be performed on those sites.
8. The Corps (File No. 28902S) has determined the proposed activities associated with the Discharger's routine maintenance activities may affect federally-listed species and their designated critical habitat. Therefore, on June 28, 2017, the Corps initiated formal section 7 consultation with USFWS pursuant to the federal Endangered Species Act. On February 22, 2018, USFWS issued the *Formal Consultation on the East Bay Regional Park District's Routine Maintenance Activities, Contra Costa and Alameda Counties (Corps File Number 2005-28902SS)* (Biological Opinion) (Reference No. 08ESMF00-2013-F-0416). The Discharger shall fully implement the Conservation Measures, the Reasonable and Prudent Measures, the Terms and Conditions, and the Conservation Recommendations in the Biological Opinion to ensure that the proposed activities do not jeopardize the continued existence of species listed under the Endangered Species Act. In 2024, USFWS plans to issue an updated Biological Opinion. After the updated Biological Opinion is issued, the Discharger shall fully implement the Conservation Measures, the Reasonable and Prudent Measures, the Terms and Conditions, and the Conservation Recommendations in the updated Biological Opinion.
9. The Discharger shall follow the procedures and protocols in the Fishnet 4C Manual<sup>6</sup> when removing large woody debris from stream channels for maintenance purposes. Large woody debris shall not be removed or be managed in a channel if it potentially functions as habitat for salmonids or other threatened and endangered species. If the large woody debris poses a credible risk of blocking a culvert, bridge, or otherwise obstructing flow or causing structural damage, it may be relocated, repositioned, and or cabled to a stream bank in a manner to protect existing habitat. For channels that do not provide potential salmonid, or threatened and endangered species habitat that relies on large woody debris, large woody debris can be immediately removed or relocated to a more suitable location if the large woody debris is posing a significant and imminent threat of structural damage.

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<sup>6</sup> Fishnet 4C, MFG, Inc., Prunuske Chatham, Inc., Pacific Watershed Associates (2004) *Guidelines For Protecting Aquatic Habitat and Salmon Fisheries for County Road Maintenance*, prepared for Fishnet 4C Counties, California Department of Fish and Wildlife, National Marine Fisheries Service, and the California Resources Agency

10. The Discharger shall immediately report all dead or stressed fish or amphibians that are found within 1,000 feet of work activity or discharge authorized by this Order. The Discharger shall immediately assign a qualified biologist to investigate the cause of the problem, to define an acceptable corrective action plan, and to determine if the cause is related to maintenance activities. Work shall be halted if the investigation determines that the problem was caused by work activity or discharge authorized by this Order. A copy of the qualified biologist's investigation report shall be submitted to the Water Board within 30 days of the discovery of dead or stressed fish or amphibians within 1,000 feet of work activity or discharge authorized by this Order.
11. The Discharger shall implement bioengineering methods as the preferred methodology for bank stabilization projects. Repairs that require alternative structural reinforcement, such as placement of rock rip-rap, shall be filled with native soil and local plant materials and mulch, unless these materials would contribute to further erosion and sedimentation. A rationale for each instance of using an alternate, more hardened bank stabilization method must be stated and discussed in the Annual Notification of Proposed Projects (see provision E.33), and more hardened bank stabilization methods shall not be implemented without the approval of the Executive Officer.
12. Routine maintenance activities shall not result in direct or cumulative significant impacts to water quality or beneficial uses of waters of the State.
13. The Discharger shall implement all applicable BMPs and AMMs described in Attachment A. Changes to bank repair methods shall be proposed in the Annual Notification of Proposed Projects package, or equivalent document, and approved in writing by the Executive Officer before implementation.
14. The Discharger shall comply with all applicable items of the Self-Monitoring Program (SMP) (Attachment B).

### ***Wetland/Waters of the State Mitigation***

15. Most routine maintenance activities under this Order will be conducted in a manner that results in no net loss of wetlands/waters of the State, but some maintenance activities may have impacts that require mitigation consistent with the State's "no net loss" policy. The Discharger shall maintain records of all wetland/waters of the State losses and gains associated with each individual routine maintenance activity project. The total acreage, linear feet, and type of wetland/waters of the State impacted and the total acres, linear feet, and type of wetland/water of the State created, and total credits available from prior years and the current year shall be reported in the Annual Post-Maintenance Reports (see provision E.34). In addition, the number, location, and nature of restoration sites, including pre-construction and post-construction photographs of restored sites, shall be submitted as part of the Annual Post-Maintenance Reports.
16. Land owned or managed by the Discharger includes tidal wetlands, lentic water bodies, and stream habitat. Many of these waterbodies are within the current distributional range of the California red-legged frog, California tiger salamander,

foothill yellow-legged frog, California Ridgway's rail, salt marsh harvest mouse, Western pond turtle, and other state or federally listed species identified in Appendix D of Attachment A and can be enhanced to provide additional permanent habitat for these special status species, as well as a variety of other aquatic species. Restoring and/or creating permanent aquatic habitat will be implemented by the Discharger to provide compensatory mitigation for the temporary and permanent cumulative impacts associated with the various routine maintenance projects (see the discussion of Proposed Restoration Activities in *The East Bay Regional Park District Routine Maintenance and Restoration Activities in Various Waterbodies in Alameda and Contra Costa Counties, California in the San Francisco Bay Region* in Attachment A). At a minimum, the Discharger shall implement sufficient compensatory mitigation in each year to compensate for the temporary and permanent impacts associated with each year's proposed maintenance projects.

17. The Discharger shall evaluate the anticipated impacts for which mitigation is required at each of the proposed project sites that are included in the Annual Notification of Proposed Projects (see provision E.33). For each project included in the Annual Notification of Proposed Projects, the Discharger shall describe onsite mitigation (e.g., stabilization of disturbed surfaces, re-vegetation of disturbed surfaces, planting of riparian vegetation) and the amount of any offsite mitigation that is proposed for the individual project (since many mitigation sites will be consolidated mitigation sites compensating for the impacts of multiple small projects, the appropriateness of each year's proposed mitigation shall be evaluated with respect to net impacts and net mitigation). The amount of proposed mitigation for each project type shall be based on the mitigation requirements in Attachment C. Where ranges of mitigation requirements are presented in Attachment C, the factors that may be used in selecting project-appropriate mitigation requirements from that range include the following: anticipated temporal loss of habitat associated with the interval between impacts at the project site and functioning of restored habitat at the mitigation site (longer recovery times, such as tree re-growth versus grass re-growth, require more mitigation); the distance between the impact site and the mitigation site (greater distances require more mitigation); differences in habitat type between the impacted site and mitigation site (greater differences require more mitigation); any uncertainties associated with the mitigation site (greater uncertainty requires more mitigation); and the permanence of the impact (permanent impacts require more mitigation than temporary impacts). Although most of the projects authorized by this Order are anticipated to have only temporary impacts, some projects may also have small areas of permanent impacts. The proposed mitigation in the Annual Notification of Proposed Projects is subject to review and approval by the Executive Officer.
18. Water Board staff shall review the Annual Notification of Proposed Projects and Annual Post-Maintenance Reports to assess the adequacy of the mitigation provided in each year for the impacts that occurred in that year. If staff determines that the Discharger has not completed sufficient mitigation, the Discharger shall be informed of the deficit and shall address it in the following year's Annual Notification of Proposed Projects. If the Executive Officer determines that the Discharger has provided excess mitigation, the Discharger will be allowed to accrue excess mitigation credit for use as described in the following provision.

19. If excess mitigation credits are accrued, the Discharger, subject to Executive Officer approval, may accept payment from other parties to provide compensatory mitigation credit to those parties as compensatory mitigation for loss of functions and values of waters of the State associated with other projects located within watersheds in Alameda or Contra Costa counties and within the jurisdictional boundary of the Water Board. The availability of excess mitigation credits must be documented from previous years.

### ***Sediment Management***

20. The Discharger may temporarily stockpile excavated sediment prior to disposal or reuse, provided that appropriate State and federal regulations are met and BMPs are implemented to protect water quality and beneficial uses. The excavated sediment may be stockpiled onsite so that it can be loaded into trucks for offsite disposal within three working days. The excavated sediment may also be temporarily stockpiled at an offsite location so that runoff, sediment, or decant water from the excavated materials will not contact waters of the State.
21. The Discharger shall ultimately dispose of dewatered material at an appropriate upland sediment disposal site or at an approved reuse site in accordance with applicable State and federal regulations, including applicable provisions of this Order.
22. Sediment may be re-used by the Discharger or offered to other parties for re-use, if such re-use is consistent with the screening levels contained in the Water Board's May 2000 staff report, *Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines*, including proper characterization of chemical constituents in the sediment through laboratory analytical testing.
23. Where possible, staging shall occur on adjacent access roads or previously disturbed areas. Soil and rip-rap shall be staged in areas that have been previously disturbed (i.e., service road, turn-outs).
24. If repair activities affect the active channel, the work area shall be isolated from flowing stream segments using cofferdams and restored to pre-project conditions as soon as maintenance is complete. Instream diversion techniques and instream isolation techniques are specified in Attachment A. All stream diversions shall be carefully maintained and monitored. Upon completion of work in diverted channels, the stream diversion shall be removed and flow shall be returned to the original stream channel or through any replacement culvert installed as part of the maintenance project.
25. The Discharger shall divert any flow around the active maintenance site in a non-erosive manner, in accordance with *Project Specific Best Management Practices (BMPs) and Thresholds in The East Bay Regional Park District Routine Maintenance and Restoration Activities in Various Waterbodies in Alameda and Contra Costa Counties, California in the San Francisco Bay Region* (Attachment A).
26. Only dewatering equipment shall operate in standing or flowing water. Work may be performed in the stream channel if no water is flowing or if flow has been diverted in accordance with provisions E.24 and E.25.

27. Non-ground-disturbing work may be conducted in the channel zone, but outside the low-flow channel, at any time. This includes pruning and removing select non-native invasive plant species, maintaining channel access roads for drainage and accessibility, conducting minor repairs of culverts, and repairing fences (along either side of access roads, including the upper portion of streambanks where access is from the service road). These maintenance activities may be conducted at any time, provided there is no discharge of waste that may cause an adverse impact to water quality or beneficial uses. Planting of riparian vegetation may be done at any time provided there is no erosion and sedimentation that may cause an adverse impact to water quality or beneficial uses.
28. Temporary road crossings that are primarily for emergency use, such as for the passage of heavy equipment for fire suppression, shall be graded carefully to preclude the discharge of sediment, soil, or rock into flowing or standing water. Any rock and gravel being graded shall not be removed from the streambed.

### ***Waste Management***

29. The Discharge of any hazardous, designated or non-hazardous waste as defined in California Code of Regulations (CCR), Title 27, Division 2, Subdivision 1, Chapter 2 shall be conducted in accordance with applicable State and federal regulations.
30. The Discharger shall remove and relocate any wastes that are discharged in violation of this Order. Waste shall be disposed of at a location in compliance with federal and State regulations and in such a way as to prevent impacts to waters of the State and their beneficial uses.

### ***Monitoring and Reporting***

31. To support annual program implementation, the Discharger will submit the following documents and reports annually to the Water Board:
  - a) Annual Notification of Proposed Projects,
  - b) Annual Post-Maintenance Reports, and
  - c) Any other self-monitoring reports required or deemed necessary by the Executive Officer.
32. The Discharger is required to upload their Project information to EcoAtlas with the Project Tracker tool at <https://ptrack.ecoatlas.org>. to report net habitat losses and net gains as part of the Annual Post-Maintenance Report, as specified in provision E.34. Habitat losses and gains shall be reported for each completed individual maintenance project, and the location of each project shall be reported in the Annual Post-Maintenance Report. Tracking of individual maintenance projects will be used to identify areas of ongoing instability.
33. The Annual Notification of Proposed Projects, prepared in conformance with the SMP in Attachment B to this Order, for the following year's proposed projects shall be submitted by June 1 of each year. Annual Notification of Proposed Projects shall be submitted via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead) and reference

**ANPP\_456241\_EBRPD\_Maintenance** in the subject line when sent electronically or in the cover letter for hard copy submissions.

34. The Discharger shall file Annual Post-Maintenance Reports, prepared in conformance with the SMP in Order Attachment B, with the Water Board by February 15 of each year. The Annual Post-Maintenance Reports shall include descriptions of work performed, any unanticipated field conditions, and changes to planned projects or performance of mitigation measures, as well as before and after photographs of each project site. Compensatory mitigation (restoration) activities shall be reported in the Annual Post-Maintenance Reports, which shall include the number, location, and nature of mitigation sites, as well as pre-construction and post-construction photographs of mitigation sites. The Discharger shall maintain records of all wetland/waters of the State losses and gains associated with each individual routine maintenance activity project. The total acreage, linear feet, and type of wetland/waters of the State impacted and the total acres, linear feet, and type of wetland/water of the State enhanced and created, and total credits available from prior years and the current year shall be reported in the Annual Post-Maintenance Reports. Annual Post-Maintenance Reports shall also include a ledger of the acres of temporary and permanent impacts authorized by the Order, the acres of temporary and permanent impacts that were implemented in the prior year, the total acres of temporary and permanent impacts implemented since the Order's adoption, and the remaining acres of temporary and permanent impacts authorized by the Order. In addition, photographs of mitigation sites that have not yet attained their performance criteria must be submitted as part of the Annual Post-Maintenance Reports. Each restoration site shall be monitored in subsequent annual reports until the restoration site meets its performance criteria (see Attachment A). Annual Post-Maintenance Reports shall be submitted via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead) and reference **AMR\_456241\_EBRPD\_Maintenance** in the subject line when sent electronically or in the cover letter for hard copy submissions.
35. The following activities are exempt from annual notification requirements and may occur any time at the discretion of the Discharger: maintenance of existing access roads located along the top-of-bank where there will be no impact on waters of the State; maintenance of cross-slope drains across roads, on inboard ditches that run parallel to roads where all work is above the level of top-of-bank of the adjacent stream, and there is no impact to waters of the State; and removal of debris (e.g., trash, shopping carts) accumulations using hand labor and not involving the removal of vegetation or large woody debris.
36. After five years of routine maintenance activities, and regularly at least every five years thereafter, the Discharger and Water Board will conduct a review of the Discharger's performance and the *East Bay Regional Park District Routine Maintenance and Restoration Activities in Various Waterbodies in Alameda and Contra Costa Counties, California in the San Francisco Bay Region* (Order Attachment A) to evaluate its overall effectiveness. The review will include an assessment of routine maintenance activities conducted to date, BMPs, AMMs and overall program coordination and communication between the Discharger and regulatory agencies. The Discharger shall revise the *East Bay Regional Park District Routine Maintenance and Restoration*

*Activities in Various Waterbodies in Alameda and Contra Costa Counties, California in the San Francisco Bay Region* as appropriate based on this review.

### **Records Provisions**

37. The Discharger shall maintain records of all routine maintenance activities, natural resources in the program area, permitting requirements, and mitigation efforts.
38. The Executive Officer may request that data be provided to the Water Board at times outside of the reporting requirements specified in this Order.
39. The Discharger shall retain records of all reports required by this Order, and records of all information used to complete the application for this Order, for a period of at least ten years. This period may be extended by request of the Executive Officer at any time.

### **General Provisions**

40. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, State or local laws, regulations or rules of other programs and agencies nor does this Order authorize the discharge of waste without appropriate permits from other agencies or organizations.
41. Capital improvement projects and emergency maintenance activities and procedures are not covered in this Order.
42. The Discharger shall comply with all necessary approvals and/or permits for routine maintenance activities from applicable government agencies, including, but not limited to: CDFW, Corps, USFWS, NMFS, and local agencies. The Discharger shall submit copies of such approvals and/or permits to the Executive Officer prior to routine maintenance implementation.
43. The Discharger shall implement the routine maintenance activities in accordance with BMPs and AMMs described in Attachment A and the findings herein and shall comply with all applicable water quality standards.
44. Any change to routine maintenance activities that would have a significant or material effect on the findings, conclusions, or conditions of this Order shall be submitted to the Executive Officer for review and written approval.
45. Routine maintenance activities shall occur only when there is no surface flow or the channel has been dewatered during the construction period of April 15 to October 31 of any year. Routine maintenance activities shall occur beginning June 15 for streams that are tributary to streams that support anadromy. However, routine maintenance activities conducted in tidal emergent wetlands shall be performed between September 1 and January 31 to avoid potential impacts to nesting California Ridgway's rails. Routine maintenance activities along creeks or in seasonal wetlands planned to start after October 15 shall only be started if no rain is forecast with greater than 20 percent chance of precipitation and the project can be completed before the next forecast rain event.

46. These WDRs and WQC are subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC section 13330 and 23 CCR section 3867.
47. This WQC is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR section 3855, Subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
48. The Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standard and implementation plans adopted or approved pursuant to the CWC or CWA section 303 and/or any new or revised TMDL requirements.
49. The Discharger shall maintain a copy of this Order and all relevant plans and BMPs and AMMs at routine maintenance work sites so as to be available at all times to site operating personnel.
50. The Discharger shall correct any and all problems that arise from routine maintenance activities, including a failure to meet the conditions of this Order that results in an unauthorized release of pollutants, including sediment.
51. The Discharger shall permit the Water Board staff or its authorized representative, upon presentation of credentials:
  - a. Entry on to the premises on which maintenance activities are planned or underway, wastes are located, or in which records are kept;
  - b. Access to copy any records required to be kept under the terms and conditions of this Order;
  - c. Access to inspect any treatment equipment, monitoring equipment or monitoring method required by this Order; and
  - d. Access to sample any discharge or surface water covered by this Order.
52. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. For the purposes of CWA section 401(d), the applicability of any State law authorizing remedies, penalties, process or sanctions constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this Order, the Water Board may require the Discharger to furnish, under penalty of perjury, any technical or monitoring reports the Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Order, the Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.
53. This Order is not transferable.



54. The Discharger shall pay the appropriate fees in accordance with California Code of Regulations (CCR), Division 3, Chapter 9, Article 1, section 2200(a)(3) as discussed in finding 40. If the Discharger expects to exceed the estimated impacts described in Finding 40, the Discharger shall submit an updated estimate of impacts to waters of the state attributable to routine maintenance authorized by this Order not later than 180 days in advance of the anticipated date on which the Discharger's covered activities would equal the acreage in Finding 40. Pursuant to CWC section 13260, the Discharger shall timely pay all fees associated with any increase in impact acreage for activities covered by this Order.

I, Eileen White, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on June 12, 2024.

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Eileen White  
Executive Officer

Attachments (*Provided as separate documents*):

- A: *The East Bay Regional Park District Routine Maintenance and Restoration Activities in Various Waterbodies in Alameda and Contra Costa Counties, California in the San Francisco Bay Region*
- B: Self-Monitoring Program
- C: Mitigation Requirements