



## MEMORANDUM

### Confidential and Privileged Document

<b>TO:</b>	Ross Campbell, Dutra Materials	<b>FROM:</b>	Jordan Rosencranz, WRA
<b>CC:</b>	Molly Jacobson, Dutra Materials	Rob Schell, WRA; Geoff Reilly, WRA	
<b>DATE:</b>	March 6, 2023		
<b>SUBJECT:</b>	Wetland and Riparian Restoration and Enhancement Plan Conformance Assessment		

### Executive Summary

Sonoma County asked Dutra Materials to assess whether permits would be needed from the RWQCB, Corps and other applicable agencies for impacts that were anticipated in the Wetland and Riparian Restoration and Enhancement Plan (WREP; version dated: January 2021). WRA has extensive experience in permitting requirements for restoration and enhancement projects, and we examined whether approvals from the U.S. Army Corps of Engineers (Corps), Regional Water Quality Control Board (RWQCB), Bay Conservation and Development Commission (BCDC), and California Department of Fish and Wildlife (CDFW) are required for associated WREP.

In summary, the plan area avoids placing fill in any wetland areas and therefore does not require either a Section 401 Water Quality Certification from the RWQCB, nor a Section 404 permit from the Corps of Engineers. Similarly, since the WREP avoids placing fill in the existing wetland areas, and avoids construction techniques that would damage the wetlands, no Corps, or RWQCB permits are required for this work either. CDFW approvals/permits would only be required when there is alteration of an existing stream or watercourse. No such actions are being proposed. Lastly, the project location is outside of BCDC jurisdiction.

### Background and Discussion

#### Actions proposed in Wetland and Riparian Restoration and Enhancement Plan

The WREP proposes creation of seasonal wetlands within uplands, creation of a landscaped berm within uplands, invasive species control and revegetation in uplands, and the enhancement of existing on-site seasonal wetlands. The proposed creation, monitoring, and adaptive management of the seasonal wetlands would occur entirely within upland habitats which are dominated by invasive/non-native species. Seasonal wetland creation in upland habitats avoids permanent and temporary impacts to existing aquatic habitats and ultimately leads to a net increase of wetland acreage on site. Creation would occur within the historical "Bay Fringe" zone, which has been greatly reduced in extent and quality over the past 200 years. The enhancement of the existing wetlands would involve non-mechanized clearing of non-native/invasive vegetation, as well as seeding and planting of native plants. Monitoring, adaptive management, and long-term protection of these features will ultimately contribute to the integrity and condition of these features, so that no future loss of on-site created, existing, and enhanced wetlands and riparian habitat would occur. No discharges of dredge or fill materials such as grading or dewatering, are proposed within habitat features or areas under Corps, RWQCB, BCDC, or CDFW jurisdiction.

### **U.S. Army Corps of Engineers**

Under section 404 of the Clean Water Act, the Corps regulates discharges of “dredged or fill material” into waters of the U.S., which includes wetlands (33 U.S.C. § 1344.; 33 C.F.R. Part 328). All components of the WREP fall outside of the Corps’ regulatory scope. First, with respect to the seasonal wetland creation component of the WREP, no existing wetlands will be impacted. Grading and revegetation activities will occur entirely within upland habitats. Thus, no permit will be required for seasonal wetland creation. Second, enhancement activities within the existing wetlands, such as removal of non-native/invasive vegetation, as well as native planting and seeding, will be done by hand. No plowing, discing, or other mechanized land clearing are proposed within waters of the U.S, and therefore, the proposed actions are not subject to a 404 permitting process.

### **Regional Water Quality Control Board**

The RWQCB has authority under section 401 of the Clean Water Act to certify whether discharge, fill, or grading authorized by a federal agency, such as the Corps under Section 404, would comply with California’s state water quality standards. Since no discharge of dredge or fill materials such as grading is required within the seasonal wetland enhancement area to complete the restoration and enhancement activities detailed in the WREP, the RWQCB does not have authority over these activities.

The RWQCB’s jurisdiction also includes the Porter-Cologne Act that regulates discharges of waste to waters of the state. The definition of discharge under the Porter-Cologne Act and State Wetlands Definition and Procedures is the same as the Clean Water Act, and no discharges as defined by the Clean Water Act will occur as part of the WREP implementation. In addition, per the State Wetlands Definition and Procedures, placement of dredged or fill material in a manner that does not affect the quality of waters of the state is not considered a discharge of dredged or fill material, and no permit is required. Regardless of this clarification for minor work in waters of the state, neither wetland creation or enhancement components of the WREP include grading or other discharge of fill or dredge material within existing waters of the state. As a result, no Clean Water Act section 401 certification or waste discharge requirement permit is required.

### **California Department of Fish and Wildlife**

Section 1602 of the Fish and Game Code, states that “[a]n entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake” without first notifying CDFW. (Fish & Game Code § 1602; 14 Cal. Code Regs. § 720.). As there are no patches of riparian vegetation, rivers, streams, or lakes within the WREP Plan Area, there is no requirement to notify CDFW. Furthermore, The WREP does not propose any work that might impact existing linear drainage ditches within the Plan Area.

### **Bay Conservation and Development Commission**

BCDC has authority over the San Francisco, San Pablo, and Suisun Bays to a point below the confluence of the Sacramento and San Joaquin Rivers, certain creeks and tributaries, a shoreline band 100 feet inland from the line of highest tidal action along the bay, salt ponds, and managed wetlands diked off from the bay. (Gov. Code § 66610). In its letter of February 22, 2008, to Sonoma County commenting on the Draft Environmental Impact Report for the Haystack Landing Project, BCDC confirmed that its authority extended only to the edge of marsh vegetation up to 5 feet mean sea level along the Petaluma River. The WREP excludes the area within BCDC

jurisdiction from proposed wetland restoration and enhancement. Thus, the activities detailed in the WREP would be outside of BCDC's jurisdiction.

## **Conclusion**

Based on review of the WREP, the jurisdictional authority of regulatory agencies addressed in this memo, implementation of the proposed WREP activities does not require issuance of permits from the Corps, RWQCB, CDFW, or BCDC as actions that are proposed within the WREP fall outside the jurisdictional authority of these agencies. Moreover, due to workflow considerations, it is the longstanding policy of the Corps, RWCQB, CDFW, and BCDC to not issue "no effect opinions" for activities not affecting resources within their jurisdiction. Only valid and complete applications with associated processing fees are subject to agency review and correspondence. Given the complete avoidance of jurisdictional resources, written conformation to this effect cannot be reasonably expected.