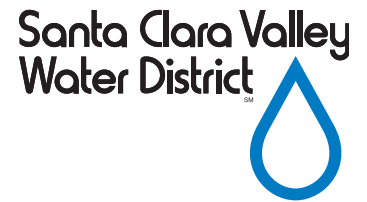


Resource Agency Referrals for Streamside Development



Handout 2 of 7











The table below was developed in consultation with the resource agencies listed. It is targeted toward activities that might be done by single family-homeowners or residents. Its purpose is to help streamside property owners identify which governmental agencies they should contact for permits when planning a construction project along a stream. It focuses on seven key project characteristics that may involve resource agency permitting.

A checked box in the table below indicates that the agency should be contacted, although in many cases this is conditional (see the text accompanying the checks). **A checked box does not necessarily mean that a permit is necessarily required.**

Your construction project may have other characteristics in addition to those described below that require permits from resource agencies. Other common activities include the installation of utility crossings, bridges or culverts. For larger and more complex construction projects, additional information is available from the "Creek/Wetland Permitting Guide" located on the JARPA (Joint Aquatic Resource Permit Application) website at <http://sfep.abag.ca.gov/projects/JARPA/Crkstop.pdf>. Please direct further questions to the resource agencies themselves.

Be sure to check with your local planning or building department to determine if permits are needed from your city or county.

<i>Project Characteristic</i>	<i>1. Planting vegetation for bank stabilization or erosion control</i>	<i>2. Installing hardscape (i.e., rocks, walls, gunite, etc.) for bank stabilization or erosion control</i>	<i>3. Diverting or obstructing stream flow</i>	<i>4. Removing riparian or wetland trees or vegetation</i>	<i>5. Constructing an outfall (drainage pipe) that discharges into a stream</i>	<i>6. Building, repairing or replacing a structure adjacent to a stream or wetland</i>	<i>7. Removing downed or dead trees from a creek or creek bank</i>
Resource Agency (agency descriptions follow this table)							
SANTA CLARA VALLEY WATER DISTRICT Community Projects Review Unit 5750 Almaden Expressway San Jose, CA 95118 (408) 265-2607, ext. 2650 www.valleywater.org	✓	✓	✓	✓	✓	✓	✓
	For modifications or activities on district-owned properties, facilities, or easements						
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD San Francisco Bay Region 1515 Clay St., Suite 1400 Oakland, CA 94612 (510) 622-2300 www.waterboards.ca.gov/sanfranciscobay Central Coast Region 895 Aerovista Place, Suite 101 San Luis Obispo, CA 93401 (805) 549-3458 (805) 549-3147 www.waterboards.ca.gov/centralcoast	✓ Appropriate BMPs as specified by the Regional Boards should be followed to control sedimentation and turbidity	✓	✓	✓	Depends on whether a determination has been made that the activity could have an impact on water quality or beneficial uses		Depends on impacts to water quality from turbidity, wildlife habitat, and channel stability
		Attention to waterbody-specific beneficial uses and channel stability					

Project Characteristic Resource Agency (agency descriptions follow this table)	1. Planting vegetation for bank stabilization or erosion control	2. Installing hardscape (i.e., rocks, walls, gunite, etc.) for bank stabilization or erosion control	3. Diverting or obstructing stream flow	4. Removing riparian or wetland trees or vegetation	5. Constructing an outfall (drainage pipe) that discharges into a stream	6. Building, repairing or replacing a structure adjacent to a stream or wetland	7. Removing downed or dead trees from a creek or creek bank
CALIFORNIA DEPARTMENT OF FISH AND GAME Central Coast Region 7329 Silverado Trail Napa, CA 94558 P.O. Box 47 Yountville, CA 94599 (707) 944-5500 www.dfg.ca.gov/regions/region3.html	 DFG should be notified. CEQA and Streambed Alteration Agreement (SAA) may be required depending on extent of work.	 CEQA and Streambed Alteration Agreement (SAA) required. Mitigation required	 CEQA and SAA required. Mitigation probably required	 CEQA and SAA required. Mitigation may be required and compliance with Migratory Bird Treaty Act	 CEQA and SAA required if construction in riparian zone. BMPs as specified by DFG still needed if outside the riparian zone	 CEQA and SAA required if construction in riparian zone. BMPs as specified by DFG still needed if outside the riparian zone	 CEQA and SAA required if amount removed is substantial. Notification is still preferred even if only one or two trees are being removed
Special attention when listed or special status species are involved*							
UNITED STATES ARMY CORPS OF ENGINEERS San Francisco District 333 Market Street San Francisco, CA 94105-2197 (415) 977-8604 www.spn.usace.army.mil/		 Permit required for fill below "ordinary high water." For homeowner projects this would most likely be in the form of a Nationwide Permit. If any federally listed species are present, the Corps consults with USFWS and/or NOAA Fisheries Service					
US FISH AND WILDLIFE SERVICE Sacramento Fish and Wildlife Office 2800 Cottage Way, Room W-2605 Sacramento, California 95825 (916) 414-6600 http://www.fws.gov/sacramento/	Permit may be required. Involvement is triggered by the lead federal or state agency (per Federal Endangered Species Act and Essential Fish Habitat designations), only if the project affects a federally listed species*						
NOAA FISHERIES SERVICE Southwest Regional Office Santa Rosa Area Office 777 Sonoma Avenue Santa Rosa, CA 95404 (707) 575-6050 http://swr.nmfs.noaa.gov/srohcd.htm	Permit may be required. Involvement is triggered by the federal lead agency (per Federal Endangered Species Act and Essential Fish Habitat designations)*						
SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION 50 California Street, Suite 2600 San Francisco CA 94111 (415) 352-3600 http://www.bcdc.ca.gov/	San Francisco Bay Conservation and Development Commission jurisdiction is not expected to occur in most streamside projects.						

*In the vicinity of streams and freshwater wetlands, the most frequently encountered listed or special status species include: steelhead, Chinook salmon, the California red-legged frog and the California tiger salamander. For baylands, the most frequently encountered listed or special status species include: the California clapper rail and the salt marsh harvest mouse. For a more detailed catalog of listed and special status species for animals, see: <http://www.dfg.ca.gov/whdab/pdfs/TEAnimals.pdf>.

The Resource Agencies and Their Mandates

Santa Clara Valley Water District

The Santa Clara Valley Water District is the primary water resources agency for Santa Clara County, California. It works to ensure there is enough clean, safe drinking water for homes and businesses and works diligently to protect Santa Clara Valley residents and businesses from the devastating effects of flooding. The district's stream stewardship activities include creek restoration and wildlife habitat projects, pollution prevention efforts and a commitment to natural flood protection. The district works closely with local permitting agencies to ensure that the community's interests in flood protection, clean water and stream stewardship are incorporated into project designs and construction activities.

The district is responsible for property and facilities that it owns and maintains. Any proposed work involving property and facilities owned by the district will require an Encroachment Permit as defined by district Ordinance 06-1. Contact the district if you are unsure whether your project requires a permit, or is located on a district easement or property.

Regional Water Quality Control Boards.

The mission of the San Francisco Bay and Central Coast Regional Water Quality Control Boards is to protect surface and groundwaters of their respective regions. Dischargers whose projects disturb 1 or more acres of soil or whose projects disturb less than 1 acre but are part of a larger common plan of development that in total disturbs 1 or more acres, are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.

Under the federal Clean Water Act (CWA) either dredging or wetland fill activities require permits from the Army Corps of Engineers. Section 401 of the CWA requires that the Regional Board certify that these federal permits meet State water quality standards. Thus, projects that include any type of dredging or fill need to be reviewed and approved by the Board. Approval is provided by a state Water Quality Certification. The Board's concerns are that the projects minimize their impacts on water quality. Statutory authority for the Regional Boards also comes from California's Porter-Cologne Water Quality Control Act. All parties proposing to discharge material that

could affect waters of the state must file a report of waste discharge with the appropriate regional board. The regional board will issue waste discharge requirements (WDRs) in a public hearing, or by waiving WDRs (with or without conditions) for that proposed discharge. The term discharge of waste includes fill, any material resulting from human activity, or any other discharge that may directly or indirectly impact waters of the state.

It is important to note that, while Section 404 permits from the Corps and 401 certifications are required when the activity results in fill or discharge directly below the ordinary high water line of waters of the United States, any activity that results or may result in a discharge that directly or indirectly impacts waters of the state or the beneficial uses of those waters are subject to WDRs.

California Department of Fish and Game.

The Department of Fish and Game is responsible for conserving, protecting, and managing California's fish, wildlife, and native plant resources. The department is also responsible for the diversified use of fish and wildlife including recreational, commercial, scientific and educational uses.

Section 1602 of the California Fish and Game Code requires project proponents to notify the Department before beginning any activity that will do one or more of the following: 1) substantially obstruct or divert the natural flow of a river, stream, or lake; 2) substantially change or use any material from the bed, channel, or bank of a river, stream, or lake; or 3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake. If the Department determines that the activity could substantially adversely affect an existing fish and wildlife resource, a Lake or Streambed Alteration Agreement (SSA) is required.

The SAA basically is a contract between the applicant and the Department of Fish and Game specifying what will and will not be done in the riparian zone and stream course. The Department of Fish and Game is interested in any work that occurs anywhere (in, on, over, or under the creek) between the streambed sloping upwards to the top of the bank. If you have any uncertainty about the need for an SAA you should contact the Department of Fish and Game, and they will let you know if they need to be involved. The SAA is subject to the California Environmental Quality Act (CEQA) and all information necessary for stream projects must be disclosed.

The U.S. Army Corps of Engineers.

The regulatory authority of the Corps of Engineers for creek projects is based on Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Section 404 of the Clean Water Act requires Corps authorization for work involving placement of fill or discharge of dredged materials into any "waters of the United States." Section 10 of the Rivers and Harbors Act requires Corps authorization for work or structures in or affecting "navigable waters." Corps jurisdiction extends to the ordinary high water line for non-tidal waters and to the line of high tide (for dredge or fill), or mean high water line (for work or structures) for tidal waters. If you have questions, want to obtain a permit application packet, need information describing the regulatory program, or want to request a pre-application consultation meeting, contact the San Francisco District regulatory office.

U.S. Fish and Wildlife Service

The U. S. Fish and Wildlife Service reviews and comments on projects pursuant to the Fish and Wildlife Coordination Act, the Clean Water Act, and the National Environmental Policy Act. The service's comments focus on the effects of projects on all fish and wildlife resources and the habitats that support those resources. Such projects may include, but are not limited to, flood control, urban and industrial development, habitat restoration activities, etc.

The service also reviews projects for their effects pursuant to the Federal Endangered Species Act (Act).

The act, through Section 9, prohibits the take of any species listed as threatened or endangered pursuant to the Act without a specific exemption. The term "take" is broadly defined and if "take" is going to occur, a permit from the service is required. If there is another federal agency involved, exemption from the act's "take" provisions of the Act can be achieved through a Section 7 process. If there is no federal involvement than a permit pursuant to Section 10, also known as a Habitat Conservation Plan, is required.

National Marine Fisheries Service.

The National Marine Fisheries Service (NMFS) is the federal agency responsible for the conservation and management of the nation's living marine resources. Projects or activities that may affect marine fish and related habitat within NMFS jurisdiction are reviewed for any potentially harmful effects. The evaluations are conducted under the authorities of the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act, Fish and Wildlife Coordination Act, and the National Environmental Policy Act. NMFS reviews ensure that sensitive populations of marine and anadromous fish (such as salmon and steelhead which return to freshwater

streams during spawning), as well as aquatic and riparian habitat that support these fish, can survive and recover in the presence of human activities. Through these reviews, the need to conserve and protect fish and habitat is balanced with the need to responsibly utilize natural resources for economic and other purposes. The types of projects and activities of interest to NMFS include streambank stabilization, streambed alteration, habitat restoration, flood control, urban and industrial development, and water resource utilization. When projects or activities require a federal permit, such as a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers, then NMFS consults with the federal agency under Section 7 of the ESA.

When there is no federal involvement, then for projects that incidentally "take" a listed species a permit under section 10 of the ESA is required.

San Francisco Bay Conservation and Development Commission.

Any person proposing to fill, extract materials or change the use of water, land or structures in or around San Francisco Bay must first obtain a permit from the San Francisco Bay Conservation and Development Commission. Fill is very broadly defined to include:

- Solid fill, such as dirt, concrete, wood and structures,
- Pile-supported fill, such as fixed boat piers and docks,
- Floating fill, such as floating docks, houseboats, and vessels moored for extended periods of time and even
- Structures cantilevered over the commission's jurisdiction.

The commission's permit jurisdiction includes San Francisco Bay which is defined as any area within the greater San Francisco Bay up to mean high tide (except in areas of tidal marsh where the commission's jurisdiction extends to five feet above mean sea level) and a "shoreline band" that extends 100 feet inland from areas subject to tidal action. If your project is near the mouth of any creek flowing into San Francisco Bay, check with the commission to find out if it has jurisdiction.