



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

REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Norma Camacho, Santa Clara Valley Water District

PERMIT NO.: 1996-225250S

ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

PROJECT DESCRIPTION: To conduct Stream Maintenance Program Phase 2 (SMP2) activities in streams and channels throughout Santa Clara County, for the purpose of reducing flood risk. SMP2 maintenance activities include bank stabilization, sediment removal, vegetation management, management of animal conflicts, and minor maintenance, as described in the February 7, 2014 version of the *2014-2023 Stream Maintenance Program Manual* (February 7, 2014 SMP2 Manual).

PROJECT LOCATION: The SMP2 program area includes watersheds in five geographic areas in Santa Clara County: Lower Peninsula Watersheds, West Valley Watersheds, Guadalupe Watershed, Coyote Watershed, and Pajaro (Uvas/Llagas) Watersheds. Figure 1-1 on page 1-6 of the February 7, 2014 SMP2 Manual shows these five watershed areas within the context of the overall program area. Waterways within the program area include modified channels, modified channels with ecological values, and unmodified channels, as defined in the February 7, 2014 SMP2 Manual Section 1.5.2. Figures 1-2, 1-3, 1-4, 1-5 and 1-6 show the distribution of the various channel types within each of the five SMP watershed areas.

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on April 15, 2019. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. You must comply with the conditions specified in the water quality certifications issued for your project by the Regional Water Quality Control Board (RWQCB), San Francisco (SF) and Central Coast (CC) Regions. By letter of April 9, 2014, the SF RWQCB issued conditional water quality certification for the project (No. R2-2014-0015), authorizing an unspecified volume of fill discharge into waters of the United States, pursuant to Section 401 of the CWA (33 U.S.C. § 1341) and waste discharge requirements under the Porter-Cologne Water Quality Control Act (California Water Code § 13000 et seq.). The conditional water quality certification expires on December 31, 2019. By letter of April 15, 2014, the Regional Water Quality Control Board (RWQCB), Central Coast Region, issued conditional water quality certification for the project (No. 34311WQ02), authorizing an unspecified volume of fill discharge into waters of the United States, pursuant to Section 401 of the CWA (33 U.S.C. § 1341) and waste discharge requirements under the Porter-Cologne Water Quality Control Act (California Water Code § 13000 et seq.). The conditional water quality certification expires on December 31, 2019. For your convenience copies of the certifications are attached (Enclosure 1).
6. You must comply with the conditions specified in the Bay Conservation and Development Commission (BCDC) Permit No. M77-113, issued on February 9, 1978, as amended through May 5, 2015 (Enclosure 1a). You must renew the BCDC authorization prior to the May 5, 2015 expiration, and as necessary thereafter, in order for this Regional General Permit (RGP) to remain valid in BCDC jurisdiction.
7. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
8. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

SPECIAL CONDITIONS:

1. To remain exempt from the prohibitions of Section 9 of the Endangered Species Act, the non-discretionary Terms and Conditions for incidental take of federally-listed Species shall be fully implemented as stipulated in the biological opinions issued by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). The USFWS Biological Opinion (BO), entitled "Formal Endangered Species Act Consultation on the Santa Clara Valley Water District Stream Maintenance Program in Santa Clara County, California" (USFWS File No. 08ESMF00-2012-F-0398, Enclosure 2) was issued by the USFWS on April 4, 2014, and includes non-discretionary Terms and Conditions on page 54. The NMFS BO, entitled "Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Act Response for Santa Clara Valley Water District Stream Maintenance Plan 2014-2023" (NMFS File No. SWR-2011-3722, Enclosure 3) was issued by the NMFS on April 8, 2014 and includes non-discretionary Terms and Conditions on pages 66-70. Project authorization under this permit is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the authorization for your project. The USFWS and NMFS are, however, the authoritative federal agencies for determining compliance with the incidental take statement and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.
2. SMP2 project activities shall be conducted in accordance with Chapters 1-8 of the February 7, 2014 SMP2 Manual, prepared by the Santa Clara Valley Water District, including the *SPM-2 Errata Sheet, Post February 27, 2014 Version, March 26, 2014* (Enclosure 4).

3. The Corps has not reviewed or approved the contents of Chapters 9-12 of the SMP2 Manual, consequently, SMP2 notification, reporting, and compensatory mitigation requirements including monitoring and performance standards, shall adhere to the requirements set forth in special conditions 4-8 of this RGP.
4. Project notification will be provided using the attached interagency notification form (Enclosure 5). SMP2 notification will be submitted by the permittee as a single “notification of proposed work” (NPW) package by April 15 of each year. A second NPW package may be submitted by August 1 of each year for work identified following late season high flow events. The Corps will make best efforts to provide notices to proceed within 45 days of submittal of complete SMP2 NPW packages containing all of the information specified in the notification form for each project, including compensatory mitigation plans when they are required. The permittee shall not proceed with project activities until receiving the Corps’ written notification to proceed.
5. To offset permanent and temporary impacts associated with SMP2 bank stabilization activities, the permittee shall implement the attached *Compensatory Mitigation Proposal for Bank Stabilization Projects Authorized Under SCVWD Stream Maintenance Program 2* (Enclosure 6), which stipulates that:
 - Off-site mitigation (i.e. mitigation outside the footprint of the authorized bank stabilization structure) requires submittal of compensatory mitigation plans to the Corps. Off-site compensatory mitigation plans must be approved in writing by the Corps, and must be implemented prior to or concurrent with the bank stabilization impacts for which off-site mitigation is being provided.
 - For off-site mitigation sites located within the mapped SMP coverage area, the compensatory mitigation plans must include a map showing the location of the mitigation site, an SMP mitigation site identification number, a planting plan diagram (to scale), planting specifications, and the date the plantings are to be installed. For off-site mitigation sites outside of the mapped SMP coverage area, the compensatory mitigation plans must be prepared in accordance with the USACE mitigation plan requirements for general permits (33 CFR 332.4[c]) and the most current version of the USACE San Francisco District’s Mitigation and Monitoring Proposal Guidelines.
 - Compensatory mitigation for SMP2 bank stabilization activities will be provided at the ratios presented in Table 1: *Bank Stabilization Mitigation by Channel Type for SMP-2*.
 - Performance standards for onsite mitigation for bank stabilization projects shall be as described in the section entitled, “Monitoring Methods and Success Criteria for Onsite Mitigation for Bank Stabilization Projects Authorized Under SCVWD Stream Maintenance Program - 2.”
 - Annual monitoring reports will be submitted to the Corps by December 31st for years 1, 3, and 5. Results of qualitative monitoring that is conducted in years 2 and 4 will be included in monitoring reports prepared for years 3 and 5. Maps showing monitoring locations and representative photographs will be included with each report.

Reports will be prepared in the following format:

1. Introduction
2. Methods
3. Results
4. Summary table showing annual monitoring results of current and all previous years in comparison to success criteria for current and all previous years
5. Discussion (including performance in relation to success criteria)
6. Management Recommendations
7. Literature Cited
8. Appendices
9. Map of mitigation site location

- Mitigation sites will be monitored by a qualified biologist or a qualified vegetation program specialist to evaluate the survival and successful establishment of the plantings. Monitoring will be conducted annually over a 5-year period. Site performance and final success will be evaluated through both quantitative and qualitative monitoring. Qualitative monitoring will be conducted annually, with quantitative assessments being performed in Years 1, 3, and 5 following planting. The data collected during monitoring visits will be used to determine if the site is progressing incrementally toward meeting the final success criteria, and to recommend management modifications or the implementation of contingency measures to help meet the final success criteria. If the final success criteria are not met by Year 5, remedial measures will be implemented and quantitative monitoring will continue annually, until the final success criteria are achieved.
6. Off-site compensatory mitigation plans for bank stabilization projects must be approved in writing by the Corps prior to bank stabilization project implementation.
 7. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 5 will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the Corps.
 8. To complete the compensatory mitigation obligation for phase 1 of the Stream Maintenance Program (“SMP1”), the permittee shall ensure that the conservation easements and long-term management plans for the Hendry’s Creek, Coyote Ridge and Upper Penitencia Creek properties are completed and recorded by December 31, 2014, and that the conservation easement and long-term management plan for the Barrett Canyon Creek property is completed and recorded by December 31, 2015. If these dates are not met, the permittee shall notify the Corps in writing no later than December 31 of the deadline year, stating the reason for the delay, when the activities will be completed, and providing a proposal for additional compensatory mitigation to offset temporal losses to aquatic resource functions that may result from the lack of site protection and/or maintenance funding.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
 5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. Section 325.7 or enforcement procedures such as those contained in 33 C.F.R. Sections 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. Section 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

John K. Baker, P.E.
Lieutenant Colonel, U.S. Army
District Engineer

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEEE)

(DATE)