



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Santa Clara Valley Water District

PERMIT NO.: Regional General Permit (RGP) No. 17 (Corps File No. SPN-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:

The Santa Clara Valley Water District ("Valley Water") will conduct Stream Maintenance Program Phase 2 (SMP2) activities in streams and channels throughout Santa Clara County for the primary purpose of reducing flood risk. Additional program goals include maintaining the structural and functional integrity of Valley Water facilities while protecting public safety, water quality, and aquatic habitat values. SMP2 maintenance activities include bank stabilization, sediment removal, vegetation management, management of animal conflicts, and minor maintenance activities, as described in the *2019-2023 Stream Maintenance Program Manual* ("SMP2 Manual," March 5, 2020).

Bank stabilization projects will repair eroded stream beds and banks to protect existing infrastructure, reduce sediment loading, and preserve water quality and habitat values. Sediment removal projects will remove excess sediment from stream channels to maintain flow conveyance, reduce flood risk, or improve fish passage. Vegetation management activities will include trimming, thinning, or removing vegetation that causes flow blockages and are intended to improve flow conveyance, minimize fire risks, and maintain levee integrity and access to Valley Water facilities. Management of animal conflicts will be performed in response to animals burrowing into levees or channel banks, foraging at mitigation sites, or interfering with other work activities. Additional minor maintenance activities may consist of fence repairs, access road maintenance, sediment removal of 25 cubic yards or less, or other minor repairs necessary to maintain Valley Water facilities that do not fall into the other project categories.

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 of the March 5, 2020, 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 March 5, 2020 SMP2 Manual Section 1.3.8. 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 December 31, 2023. 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 by the Regional Water Quality Control Board (RWQCB), San Francisco Bay (SF) and Central Coast (CC) Regions. By letter of May 18, 2020, the SF RWQCB issued a water quality certification for the project (No. R2-2020-0017), 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.). By letter of May 19, 2020, the CC RWQCB issued a technically conditioned water quality certification for the project (No. 34319WQ06), 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 water quality certifications will expire on December 31, 2023. For your convenience, copies of the water quality certifications are attached (Enclosure 1).
6. You must comply with the conditions specified in the San Francisco Bay Conservation and Development Commission (BCDC) Permit No. M1977.113.07, issued on February 9, 1978, as amended through April 16, 2021 (Enclosure 2).
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 the National Marine Fisheries Service (NMFS). The USFWS Biological Opinion (BO), entitled “Programmatic 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 3) 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 Essential Fish Habitat Response for Santa Clara Valley Water District Stream Maintenance Program 2014-2023 (Corps File Number 1996-225250)” (NMFS File No. SWR-2011-3722, Enclosure 4) 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. Should the Corps determine that a project proposed for coverage under this RGP may affect, but is not likely to adversely affect a species covered by the USFWS BO, and that the proposed project complies with all Terms and Conditions of the USFWS BO, no additional consultation under Section 7 will be required.
3. SMP2 project activities shall be conducted in accordance with the March 5, 2020, version of the SMP Manual, prepared by the Santa Clara Valley Water District.
4. SMP2 notification shall 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. All construction work shall incorporate appropriate best management practices (BMPs), including stabilizing and seeding exposed upland slopes, to control and minimize bank erosion, sediment input, and turbidity in the affected wetlands and other waters of the U.S. as described in the SMP manual. No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products, or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into any waters of the U.S.
6. Following the completion of construction, any temporary fill placed within wetlands or below the ordinary high water mark or high tide line of other waters of the U.S. shall be removed in its entirety, and all areas where only temporary impacts are being authorized shall be restored to their pre-construction conditions. Excavated substrate consisting of coarse sand, gravel, and cobble may be used as backfill material for construction purposes; all other material excavated below the ordinary high water mark or high tide line, including debris, mud, silt, and organic matter, shall be hauled off-site and disposed of at an upland location not subject to Corps’ regulatory authority.
7. To offset permanent impacts associated with SMP2 bank stabilization activities, you shall implement the proposed compensatory mitigation at Saratoga Creek, Calera Creek, Pajaro Basin, Google Landings, and Uvas Creek. To offset temporary impacts associated with SMP2 activities, you shall provide mitigation as described in the SMP Manual utilizing the SMP Invasive Plant Management Program. Prior to the discharge of dredged or fill material into waters of the U.S. associated with this project, Valley Water shall submit and receive written approval of a Final Mitigation and Monitoring Plan for each site in compliance with the 2008 Mitigation Rule. Final Mitigation and Monitoring Plans shall include a description of the proposed mitigation site, a description of the proposed enhancement/creation activities and how they would enhance aquatic resource acreage and/or function, a site protection instrument or other means of protecting the mitigation site in perpetuity, a mitigation work plan, a maintenance plan, a list of performance standards, a monitoring plan, a long-term management plan, and an adaptive management plan. Compensatory mitigation for SMP2 bank stabilization activities shall be provided at the ratios presented in Table 10-1c: Summary of Mitigation Credit by Channel Type of the SMP manual.
8. Annual monitoring reports for the mitigation sites shall 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:
 - a. Introduction
 - b. Methods
 - c. Results

- d. Summary table showing annual monitoring results of current and all previous years in comparison to success criteria for current and all previous years
 - e. Discussion (including performance in relation to success criteria)
 - f. Management Recommendations
 - g. Literature Cited
 - h. Appendices
 - i. Map of mitigation site location
9. 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.
10. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 7 will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the Corps. Additional compensatory mitigation will be required if program impacts exceed those anticipated and/or additional compensatory mitigation is determined to be required.

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.

Katerina Galacatos
South Branch Chief, Regulatory Division

(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)