

SECTION 6 - OBTAINING PERMITS FOR STREAM-BANK REPAIR

(Taken from the Stream-Bank Repair Guidance Manual for the Private Landowner: Guadalupe and Alamosas Creeks)

Practical Points to Help You Obtain Permits for Your Project

As noted earlier, if you are working in or around a creek or stream, you will likely need permits from a local, state, and/or federal agency. Below are some practical points to help you obtain permits for your project as quickly and efficiently as possible. Following this list is a matrix of activities and the agencies, which may require permits for those activities.

- **Learn the rules.** Familiarize yourself with applicable state, local, and federal agency permitting requirements. Determine which agencies may be involved in your project. Take time to study the protocols and regulations of these agencies. Refer to their web sites. Read staff reports, permit conditions, and studies relating to your project or similar projects.
- **Contact the agencies in charge of granting permits for your project.** You may need to obtain different permits for your project from a number of agencies. Contact the agencies that may need to issue a permit for your project to determine who will be involved. Ask about the agency's permitting process, obtain relevant forms, and discuss potential timelines for obtaining your permits. Do not expect to get schedule commitments at this stage, but at least get an idea of the how the process works and a feel for how long it may take.
- **Write a complete project description.** A complete project description is crucial. Include drawings, photographs and other supporting materials to assist the regulatory agencies in understanding what your project entails. Photographs and descriptions enable them to provide guidance and direction before a site visit can be scheduled.
- **Consult early and become familiar with agency staff.** Consultation with permitting and regulatory agencies should begin as early as possible. An in-person meeting is the best way to discuss your project. Try to have plans, maps, photographs of the project location, and other information available at the meeting. You can also request that a staff person meet you at the site.
- **Reduce adverse environmental impacts.** Design your project to eliminate or reduce as many potential health concerns and environmental impacts as possible. Consider environmentally superior alternatives described in the previous section. These methods are also generally easier and much faster to permit. Incorporate the suggestions you receive during early consultation. Employ a qualified design consultant with specialized expertise in stream analysis and design.
- **Pay attention to details.** Follow all the rules and listen to agency staff guidance. Respond promptly to requests for information. Be on time for meetings with representatives of the regulating agencies. Do not cut corners. Get in writing all dates, procedures, fees, etc..
- **Be willing to negotiate.** Recognize that government regulators may have a great deal of authority over your project, but that they are willing to negotiate. You should be, too.
- **When in doubt, ask.** If you are not sure whether your project needs a permit or whether it is regulated at all, ask. Going ahead without following the proper guidelines will ultimately

cost you time, money, and goodwill.

- **Keep good records.** Keep notes of conversations and meetings. Ask for interpretations of rules to be written by the agency representatives. An easy way to do this is to confirm conversations by E-mail. Remember, agency staff time is limited; it is easier for them to review or comment on your understanding than for them to compose the correspondence.

Prohibited Activities

Before you decide to do work near a creek or river, you should consider that it is illegal to place, store, or dispose of materials of any kind on the banks of, or into, a watercourse. Prohibited materials include dirt, soil, and concrete; pool and spa water; paints, solvents, and soaps; yard and animal waste; automobile and machinery fluids; and firewood and building materials. Remember to comply with best management practices that prevent pollution from entering the waterway and damaging the

ecosystem.

Agencies That May Require Permits

Use this chart to help you determine which agency may be involved in your project. A checked box indicates that an agency may be involved and should be contacted, but does not mean they definitely

	Santa Clara Valley Water District	Your City's Planning or Public Works Dept	NOAA	CalEPA DTSC	SWRCB Water Rights	Regional Water Quality Control Board	California Fish and Game	Army Corps of Engineers	U.S. Fish & Wildlife Service
Involve work on the bank of a river, stream, or lake?	X	X				X	X	X	X
Involve excavation of the bank?	X	X				X	X		
Involve placement of piers?	X		X	X		X	X	X	
stabilization or erosion control?	X	X				X	X	X	X
Require the removal of riparian or other wetland vegetation?	X	X	X			X	X	X	X
Involve planting riparian or wetland vegetation?	X		X			X	X	X	X
Affect native plants, wildlife, or fisheries?	X		X			X	X		X
Result in stormwater discharge into a creek or wetland?	X	X				X	X	X	X
Divert or obstruct the natural flow or change the natural bed or bank of a creek or wetland?	X	X				X	X	X	X
Involve repair, rehabilitation, or replacement of any structure or fill adjacent to a creek or wetland?	X	X				X	X	X	X
Involve placement of bank protection or stabilization structures or materials (e.g., gabions, riprap, concrete slurry/sacks)?	X	X				X	X		X
Involve building any structure adjacent to a creek or wetland?	X	X				X	X	X	X
Involve fish and wildlife enhancement, attraction, or harvesting devices and									

	Santa Clara Valley Water District	Your City's Planning or Public Works Dept	NOAA	CalEPA DTSC	SWRCB Water Rights	Regional Water Quality Control Board	California Fish and Game	Army Corps of Engineers	U.S. Fish & Wildlife Service
Use materials from a streambed (including but not limited to boulders, rocks, gravel, sand, and wood debris)?	X	X		X		X	X	X	X
Require the disposal or deposition of debris, waste, or any material containing crumbled, flaked, or ground pavement with a possibility that such material could pass into a creek or wetland?	X	X		X		X	X	X	X
Involve the removal of any materials from, or add fill to, a creek or wetland?	X	X	X	X		X	X	X	X
Involve grading or fill near a creek or wetland?	X	X	X			X	X		X
Involve a bridge or culvert?	X	X				X	X	X	X
Involve utility pipe lines?	X	X				X		X	
Involve a septic leach field near a creek or wetland?	X	X				X	X		
Require a water well near a creek or wetland?	X	X	X				X		
Involve work within historic or existing coastal wetlands?	X					X	X	X	X
Remove water from a creek for storage or direct use on non-riparian land?	X	X	X		X	X	X	X	X
Require that hazardous materials be generated and/or stored on site?	X	X		X		X			
Take place in, adjacent to, in a building adjacent to or near a river that has been designated as "wild and scenic" under state or federal law?	X					X	X	X	X

	Santa Clara Valley Water District	Your City's Planning or Public Works Dept	NOAA	CalEPA DTSC	SWRCB Water Rights	Regional Water Quality Control Board	California Fish and Game	Army Corps of Engineers	U.S. Fish & Wildlife Service
Require water to be diverted from a river, stream, or lake for the project or activity?	X	X			X	X	X	X	X
Affect water quality by the deposition of silt, an increase in water temperature, a change in the pH level, or in some other way?	X		X			X	X	X	X
Occur in an area where endangered or rare plant species are thought or known to occur?	X	X				X	X		X
Occur in an area where endangered or threatened fish, bird, or animal species are thought or known to occur?	X	X	X			X	X		X

will be involved.

San Francisco Bay Area Joint Aquatic Resource Permit Application

As discussed earlier, projects in or near creeks and even intermittent streams can be regulated by many agencies, the local city government, local agencies, such as the Santa Clara Valley Water District, state agencies, such as the San Francisco Bay Regional Water Quality Control Board, and California Department of Fish and Game, and federal agencies, such as the Army Corps of Engineers and U.S. Fish and Wildlife Service, to name a few. For projects with an aquatic component, such as work near a creek or stream, a single application called the San Francisco Bay Area Joint Aquatic Resource Permit Application (JARPA) has been designed to replace individual applications for state, regional, and federal agencies. As suggested earlier, consider taking advantage of this consolidated application to streamline the project permit application process.

If a project requires local approval, such as that of the local city government or Santa Clara Valley Water District, be sure to check with these agencies about what to include in the application, since the JARPA document does not consider local agency requirements.

California Environmental Quality Act

Prior to obtaining permits for a project, a California Environmental Quality Act (CEQA) review will be required if the project is undertaken by a public agency or if a public agency needs to issue a permit for a project. CEQA is found in Section 21000 et seq. of the Government Code, and the CEQA guidelines are found in Section 1500 et seq. of the California Code of Regulations. The Guidelines have the force of law, and lay out the way CEQA is administered.

(See http://ceres.ca.gov/topic/env_law/ceqa/)

The purpose of the CEQA review is to inform project decision-makers of the issues associated with the project, to identify significant environmental impacts and reduce them, and to disclose to the public the rationale for the decision to approve a project. The agency responsible for the CEQA review is called the lead agency, and it is usually the agency with the most involvement in the project. The local municipality's planning department usually handles the CEQA review, however, CDFG is also a lead agency for purposes of issuing a Streambed Alteration Agreement.

Once the lead agency is identified, all other agencies that require a permit to be issued for the project, whether state or local, become responsible. Responsible and trustee agencies must consider the environmental document prepared by the lead agency and do not, except in rare instances, prepare their own environmental documents.

There are four possible scenarios regarding CEQA requirements:

1. The project is exempt from CEQA. Exemptions are listed in the CEQA Guidelines. Specific rules should be consulted, but essentially, a categorical exemption cannot be used if the project has the potential for an individual or cumulative significant effect on the environment. Documentation of exemptions should be obtained from the lead agency. Unless a public hearing is required by the local agency for the project, a categorical exemption does not require a public hearing. The document is simply filed at the county for a specified period.
2. A **Negative Declaration** is issued by the lead agency for the project.
A Negative Declaration can be issued if the project will have no significant impact on the environment without the need for mitigation measures to reduce a project impact to a less than significant level. A public hearing to adopt the findings and the Negative Declaration is required.
Hint: If, at any time along the permitting or review process, you find that your proposed project can have a significant impact on the environment, and by redesigning your project, the impact can be eliminated or reduced to insignificant, you will save yourself time and money by redesigning your project.
3. A Mitigated Negative Declaration is issued for the project. This means that there are significant impacts from your project on the environment, but mitigation measures during implementation can be adopted to reduce these impacts to a less than significant level. A mitigation monitoring and reporting plan is required to identify, what, who, when and where for each mitigation measure, thus ensuring that all mitigation measures are implemented. A public hearing is required.
4. An **Environmental Impact Report (EIR)** is required to study the significant impacts of your project on the environment. Various alternatives to your project must be identified and evaluated and the environmentally preferred alternative must be selected unless there are overriding circumstances that make the project desirable, even though there are significant unmitigated impacts. This finding must be made by the approving body of the lead agency, along with the findings and MMRP. Because there are more alternatives to evaluate, there is a slightly longer review period and a requirement to specifically respond to comments. For this reason, an EIR can be the most