

FACT SHEET

Permitting Information for Creek Maintenance



Responsibility for Creek Maintenance

Every property owner has a duty to maintain their property in a reasonably safe condition that does not interfere with a neighbor's ability to enjoy their property. A property owner is not required to enlarge or increase the capacity of a creek for flood protection purposes. Maintenance duties may include vegetation management, erosion repair, and removal of graffiti, trash, debris, and fallen trees. Some activities are subject to permitting by local, state and federal regulatory agencies prior to performing the work. Avoidance and minimizations of impacts to regulated habitat and species must be considered.

Not all creek maintenance work requires permitting. Subject to best management practices to prevent pollution, activities such as hand removal of trash or graffiti removal would not require permits.

Additional creek maintenance work could require permitting from the following agencies:

- **Local municipality**
- **California Department of Fish and Wildlife (CDFW)**
- **U.S. Army Corps of Engineers (USACE)**
- **Regional Water Quality Control Board(RWQCB)**
- **San Francisco Bay Conservation and Development Commission (BCDC)**

Local and County Planning Departments

Prior to beginning work (e.g., **vegetation and/or tree removal, grading, building**, etc.), property owners are responsible for contacting their respective jurisdiction's planning department to secure any applicable permits. Contact your local municipality (your city or Santa Clara County) planning department to determine if the California Environmental Quality Act (CEQA) review is necessary for your proposed creek maintenance activities. The planning department can also help property owners comply with CEQA, which requires state and local government agencies to evaluate potential environmental impacts of proposed activities.

Visit Santa Clara County Planning and Development's website: plandev.sccgov.org/home

California Department of Fish and Wildlife

The CDFW manages California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. All **creeks, lakes, and ponds as well as associated riparian vegetation**, are subject to CDFW jurisdiction.



Fish and Game Code Section 1602 regulates projects that alter the flow, bed, banks or channel of rivers, streams and lakes. Section 1602 requires project proponents to notify and potentially enter into a Lake and Streambed Alteration Agreement (LSAA) with CDFW before beginning any activity that may divert, obstruct, or change the natural flow; change or use any material from the bed, channel, or bank of, any river, stream, or lake; or result in disposal or deposition of debris or waste. Any river, stream, or lake includes those that are dry part of the year.

Prior to performing any work around creeks, lakes, ponds, and associated riparian vegetation, property owners are responsible for notifying CDFW and entering into a LSAA, if determined necessary. Visit wildlife.ca.gov/Conservation/Environmental-Review/LSA for more information.

U.S. Army Corps of Engineers

The USACE administers and enforces Section 10 of the Rivers and Harbors Act of 1899 (RHA) and Section 404 of the Clean Water Act (CWA). Under RHA Section 10, a permit is required for **work or structures in, over or under navigable waters of the United States**. Under CWA Section 404, a permit is required for the discharge of dredged or fill material into "waters of the United States" (WOTUS). Many waterbodies and wetlands in the nation are waters of the United States and are subject to USACE regulatory authority. The USACE evaluates permit applications for essentially all construction activities that occur in the nation's waters, including wetlands.

The San Francisco District uses the WOTUS definition when making permit decisions and providing landowners written determinations of the limits of federal jurisdiction on their property. The limits of USACE jurisdiction extend to the **ordinary high-water mark in non-tidal waters and also include adjacent**

wetlands. The landward limits of USACE jurisdiction in tidal waters extends to the high tide line. Visit www.spn.usace.army.mil/Missions/Regulatory.aspx for more information.

If the USACE is issuing a permit, the USACE may consult with U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (ESA) to ensure that an action will not jeopardize the continued existence of endangered or threatened species or result in adverse modification of designated critical habitat. ESA Section 9 prohibits the take of any fish or wildlife species listed as endangered or threatened unless otherwise authorized by federal regulations. Take means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." "Harm" is defined as "any act that kills or injures the species, including significant habitat modification."

USFWS is dedicated to the conservation, protection, and enhancement of fish, wildlife and plants, and their habitats. USFWS is responsible for protection of listed plants and wildlife other than marine species and anadromous fishes. Native bird species are protected by Migratory Bird Treaty Act. USFWS enforces the Bald and Golden Eagle Protection Act, which provides protection of bald eagle and golden eagle by prohibiting taking, possession, and commerce of such birds. Visit fws.gov for more information.

NMFS is responsible for protection of federally listed marine species and anadromous fishes. Federally threatened or endangered species determined to occur in Santa Clara County include steelhead and green sturgeon. Visit fisheries.noaa.gov for more information.

Regional Water Quality Control Boards (RWQCB)

The Porter-Cologne Act established the State Water Resources Control Board (SWRCB) and divided California into nine regions, each overseen by a RWQCB. The SWRCB and its nine RWQCBs have jurisdiction over the **bed and banks of a stream channel and its beneficial uses**. Each RWQCB makes critical water quality decisions for its region, including setting standards, issuing waste discharge requirements, determining compliance with those requirements, and taking appropriate enforcement actions.

There are two regional water quality control boards that have jurisdiction in Santa Clara County.

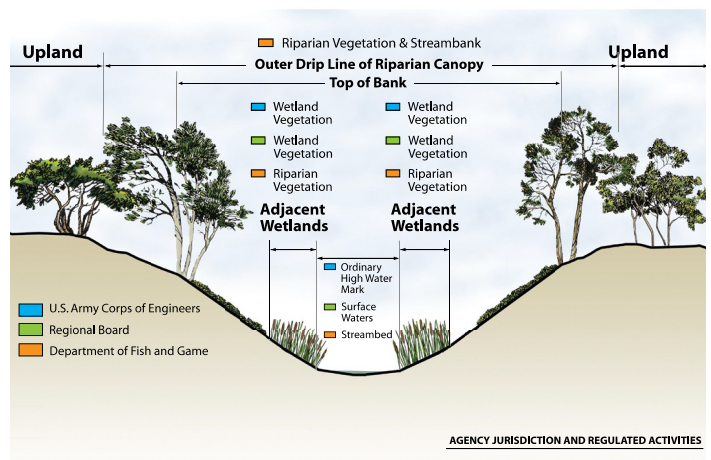
San Francisco Bay RWQCB (Region 2) oversees watersheds draining to San Francisco Bay. Visit waterboards.ca.gov/sanfranciscobay for more information.

Central Coast RWQCB (Region 3) oversees watersheds draining to Pajaro River and then to Monterey Bay. Visit waterboards.ca.gov/centralcoast for more information.

San Francisco Bay Conservation and Development Commission

BCDC has regulatory responsibility over development in San Francisco Bay and along Bay's nine-county shoreline. It is necessary to obtain BCDC approval prior to undertaking work in the Bay or within 100 feet of the shoreline, including filling, dredging, shoreline development and other work.

Maintenance activities that are conducted within tidal waters of South San Francisco Bay or areas determined to be within shoreline band may also require BCDC permit. Visit bcdc.ca.gov for more information.

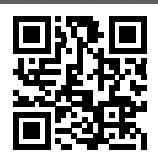


Questions?

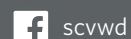
Please contact Public Information Representative Jennifer Codianne via email at jcodianne@valleywater.org or by calling 408-630-3876.

CONTACT US

To find out the latest information on Valley Water projects or to submit questions or comments, use our **Access Valley Water** customer request system at access.valleywater.org.



FOLLOW US



scvwd



valleywater



valleywater



Join our mailing list:

<https://delivr.com/2uz9z>

