

SUMMARY OF PERMITS REQUIRED FOR WORK IN CREEKS AND RIVERS IN SONOMA COUNTY

Work in creeks and rivers in California is regulated by several public agencies, including the U.S. Army Corps of Engineers (Corps) under §404 of the federal Clean Water Act, the Regional Water Quality Control Boards (RWQCB) under §401 of the federal Clean Water Act and the state's Porter-Cologne Act, the California Department of Fish and Game (DFG) under §1600 et seq. of the Fish and Game Code, and the local city or county where the project takes place. If water is to be diverted or impounded from a surface or underground stream or other body of water, a permit or registration may be needed from the State Water Resources Control Board, Division of Water Rights (California Water Code §1200, et seq.). Dams may require written approval from the California Department of Water Resources, Division of Safety of Dams (California Water Code §6000, et seq.). Projects may require grading, zoning, or building permits from Sonoma County or other local permits. Work in the coastal zone requires a Coastal Development Permit.

U.S. Army Corps of Engineers §404 Nationwide and Individual Permits:

Under §404 of the federal Clean Water Act, the Corps regulates discharges of dredged or fill material into any channel that is a navigable water of the U.S. or its tributary or that has real or potential interstate commerce value. A channel is defined as a watercourse that has a bed and bank with an ordinary high water mark (OHWM).¹ Functionally, the Corps regulates nearly all creeks and rivers. Nationwide Permits (NWP) have been developed to allow projects that meet specific criteria and that do not result in adverse environmental effects; other projects that do not meet the criteria for a NWP must apply for an Individual Permit. In California, Corps offices are located in San Francisco, Sacramento, and Los Angeles. Sonoma County is in the Corps' San Francisco District; its homepage is at <http://www.spn.usace.army.mil/>.

Regional Water Quality Control Board §401 Certifications:

Under §401 of the federal Clean Water Act, the Corps is required to meet state water quality regulations prior to granting a §404 permit for work in a creek or river. In California, this is accomplished by application to the local RWQCB for certification that the requirements have been met. There is a \$500-2,150 filing fee for this application, and the RWQCB may impose conditions to insure that the project does not result in negative environmental impacts. Sonoma County is in the North Coast district; its homepage is at <http://www.swrcb.ca.gov/rwqcb1/>.

Regional Water Quality Control Board Waste Discharge Requirements:

When a project involves work in a stream that is not subject to regulation under §404 of the federal Clean Water Act, the project may require issuance or a waiver of Waste

¹ The Corps has jurisdiction over all perennial and intermittent streams and over ephemeral streams that have an ordinary high water mark (OHWM). District Engineers use their judgment on a case-by-case basis to determine whether an OHWM is present. Ephemeral streams are defined as having flowing water only during, and for a short duration after, precipitation events; they are located above the water table year-round.

Discharge Requirements (WDRs) under the state's clean water act, known as the Porter Cologne Act. The application form is the same as for the §401 Certification, and the filing fee is also \$500-2,150. Consult the North Coast district's homepage at <http://www.swrcb.ca.gov/rwqcb1/> for further information.

California Department of Fish and Game §1602 Streambed Alteration

Agreement:

Under §1600 et seq. of the California Fish and Game Code, DFG has jurisdiction over any activity in a creek or river in which there is at any time an existing fish or wildlife resource or from which such resources derive benefit. Projects affecting or potentially affecting such resources must obtain an agreement from DFG, which usually imposes conditions to protect the environment. See <http://www.dfg.ca.gov/1600/> for application, instructions, and current filing fees.

Sonoma County and City Regulations:

Projects that involve excavation of more than 2 feet in depth and/or fill of more than 50 cubic yards require a grading permit from the Sonoma County Permit Resource Management Division (PRMD). Placement of a bridge may require a building permit from PRMD. Much of Sonoma County is within Biotic or Scenic Resource Zones, for which special set backs and zoning permit regulations apply. Work within the Coastal Zone requires a Coastal Development Permit from PRMD. Work within city limits may also be regulated, and local regulations should be checked as part of project planning.

State Water Resources Control Board, Division of Water Rights:

If water from a surface or underground stream or other body of water is taken for storage or direct use on non-riparian land, a registration or permit must be obtained from the State Water Resources Control Board, Division of Water Rights (California Water Code §1200 et seq.).

Registration of Small Domestic Use or Livestock Stockpond Appropriation

For direct diversion of not more than 4,500 gallons or storage of not more than 10 acre-feet per annum, a Registration of Small Domestic Use or Registration of Livestock Stockpond Appropriation application form may be used; the filing fee is \$250. These registrations must be renewed every 5 years. The lawn or garden irrigation area under a Small Domestic Use registration must be 0.5 acres or less.

Application to Appropriate Water by Permit

For direct diversion of more than 4,500 gallons, storage of more than 10 acre-feet per annum, or irrigation of more than 0.5 acres, an Application to Appropriate Water by Permit must be used. The Water Right Application fee varies, and there is a California Department of Fish & Game Water Right Filing Fee of \$850. Other costs include preparation of environmental documents required by the California Environmental Quality Act (CEQA) and a water availability document.

Forms and application information are found at <http://www.waterrights.ca.gov/forms/>.

California Department of Water Resources, Division of Safety of Dams:

Construction or enlargement of dams that are 25 feet or more in height that store more than 15 acre-feet of water and/or dams that store 50 acre-feet or more of water that are more than 6 feet high require written approval of the plans and specifications by the California Department of Water Resources, Division of Safety of Dams, P.O. Box 942836, Sacramento, CA 94236-0001 (California Water Code §6000 et seq.).

Other Regulations:

The above agencies are required to comply with a host of other regulations, including, but not limited to, the California Environmental Protection Act (CEQA), the National Environmental Policy Act (NEPA), the state and federal Endangered Species Acts (ESA), the Historic Preservation Act, and the Coastal Zone Management Act. Typically, compliance also involves consultation with the U.S. Fish and Wildlife Service (USFWS), the Native American Heritage Commission, and the Office of Historic Preservation (OHP) through its California Historical Resources Information System (CHRIS). NOAA Fisheries must be consulted when listed anadromous fish are potentially present.

Some other useful websites include:

CEQA Statutes and Guidelines: <http://ceres.ca.gov/ceqa/>. See Guidelines' Appendices for forms and timeline.

NEPA Regulations: <http://www.epa.gov/compliance/nepa/index.html>.

NOAA Fisheries ESA Program: <http://www.noaa.gov/fisheries.html>.

USFWS ESA Program: <http://endangered.fws.gov/index.html>.

California Natural Diversity Data Base:

<http://www.dfg.ca.gov/whdab/html/cnddb.html>.

Native American Heritage Commission (NAHC): <http://www.nahc.ca.gov>.

Office of Historic Preservation (OHP): <http://www.ohp.parks.ca.gov/>.

California Historical Resources Information System (CHRIS): link is on OHP page.