



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

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Len Materman, San Francisquito Creek Joint Powers Authority

PERMIT NO.: 2013-00030S

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 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 project involves construction of flood control improvements along 7,450 linear feet of lower San Francisquito Creek, from Highway 101 downstream to San Francisco Bay. Work will include the following major components:

- Rebuilding levees, degrading levees, and relocating a portion of the southeast levee to widen the channel for increased channel capacity and protection from extreme tides.
- Excavating sediment deposits within the channel to maximize conveyance, and regrading a stable channel profile with marsh terraces.
- Constructing floodwalls in the upper reach to increase capacity.
- Extension of Friendship Bridge via a boardwalk across new marshland within the widened channel.

Approximately 5,650 linear feet of floodwalls will be constructed on both banks from U.S. Highway 101/East Bayshore Road downstream to approximately Daphne Way on the northwest bank (East Palo Alto side) and Geng Road on the southeast bank (Palo Alto side). Downstream of the floodwalls, approximately 2250 linear feet of the existing levee on the northwest side of the channel will be raised and strengthened to the location of the O'Connor Pump Station near Friendship Bridge. On the southeast side, approximately 2727 linear feet of new levee will be constructed inland of the existing levee on land currently occupied by the Palo Alto Golf Course, and the existing levee along this reach will be removed, except for an approximately 300-foot section around the southeastern footing of Friendship Bridge. Levee construction will permanently impact 0.70 acres of wetlands on the northwest side and 0.79 acres of wetlands on the southeast side. Portions of the channel along the toe of the floodwalls and levees will be armored with approximately 22,000 cubic yards (cy) of rock slope protection (RSP) along 4,000 linear feet (3.71 acres) of stream banks. Approximately 11,000 cy of accumulated sediment will be excavated from 4800 linear feet (2.12 acres) of the existing channel, and a new stable channel bordered by floodplain terraces will be graded within the levees. The existing Friendship Bridge will be retained and extended via a boardwalk from the retained southeastern footing across the new floodplain terrace to the relocated southeast levee. A total of 15.14 acres of native high-marsh and marsh ecotone vegetation will be planted/seeded throughout the expanded floodplain terrace. Project activities will require relocation of electrical transmission towers and poles; abandonment of existing and construction of new gas transmission lines; and realignment or relocation of sewer lines and storm drains, most of which will occur within areas to be impacted by levee construction and channel grading. Utility work will include realignment of a sewer line crossing of the creek near Friendship Bridge using open trenching, installation of a new gas line crossing under the channel using micro-tunneling upstream of Friendship Bridge, and relocation of an electrical transmission line crossing over the channel from its existing location near the north end of Jasmine Way to a new crossing location approximately 250 feet upstream. Construction of project elements will likely occur over two years, and up to 4500 linear feet of the channel will be dewatered between June 15th and October 15th each year to allow in-channel construction. Dewatering each year will be done with upstream and downstream coffer dams consisting of sheetpiles spanning the channel. Downstream of the lower cofferdam a rock energy dissipator for bypass discharge will cover approximately 7250 square feet (0.17 ac) and consist of 570 cy of temporary fill. A minimum number of gravel bags will only be used in the event of seepage past the sheet piles.

All dewatering materials will be removed from the channel immediately after each construction season and properly stored where no material can enter the channel.

In response to agency feedback and requirements, the following modifications have been incorporated into the project:

- 1) Faber Tract levee stability improvement: To reduce concerns regarding levee erosion and the potential for mass levee failure which would impact the Faber Tract tidal marsh, approximately 12,000 cy of clean imported fill will be added to the levee separating the creek from the Faber tract marsh downstream of Friendship Bridge. Approximately 850 linear feet of the existing levee will be strengthened by raising the levee crest elevation from a minimum elevation of 11 feet to 13 feet, and incorporating a 6H:1V levee side slope into the Faber Tract marsh, resulting in permanent impacts to 0.30 acres of existing tidal marsh. This levee side slope will help protect the levee toe from erosion due to flow overtopping as it transitions to a higher elevation closer to Friendship Bridge.
- 2) Bay levee degrade: Removal of approximately 600 feet of the existing levee downstream of the Faber Tract, along the Outer Faber Marsh area adjacent to San Francisco Bay. Approximately 2,820 cy of sediment/soil will be removed within approximately 0.73 acres of existing levee footprint to lower the area down to marsh plain elevation.
- 3) RSP reduction: Proposed RSP has been reduced by approximately 2.33 acres from the original project design, resulting in a new RSP area total of 3.71 acres. The 2.33 acres will be replaced with vegetative levee protection and turf reinforcement mat that will provide soil stabilization and habitat improvements.
- 4) Faber Marsh enhancement to offset impacts to Ridgway's rail and salt marsh harvest mouse: Five high tide refugia islands vegetated with native high marsh vegetation will be created in the outer Faber marsh, consisting of 100 cubic yards of fill placed across 0.03 acre of existing marsh plain. An additional 0.19 cubic yards of marsh will be temporarily impacted by work activities during island construction. Vegetation enhancement will also occur along 5120 linear feet (5.66 acre) of perimeter berm around the Faber Tract marsh.
- 5) Instream velocity refugia for migrating steelhead: A total of approximately 840 cubic yards of rock and woody debris will be placed in the creek channel to create up to 6 instream habitat structures, totaling 0.09 acre.

All work shall be completed in accordance with the plans and drawings titled "USACE File #2013-00030S, San Francisquito Creek, July 2015, Figure 1 to 119" (enclosure 1). High tide refugia islands shall be constructed in accordance with the plans and drawings titled "USACE File #2013-00030S, High tide refuge islands, October 2015, Figure 1 to 3" (enclosure 2). Channel dewatering and coffer dam construction shall be completed in accordance with the plans and drawings titled "USACE File #2013-00030S, Temporary water diversion plan, February 2016, Figure 1 to 9" (enclosure 3).

PROJECT LOCATION: Lower San Francisquito Creek downstream of Highway 101, on the border between the City of East Palo Alto, San Mateo County, and the City of Palo Alto, Santa Clara County, California.

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on February 28, 2021. 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. For your convenience, a copy of the water quality certification or waiver is attached. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. 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.
7. 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 enclosed Biological Opinions from NMFS dated December 30, 2015 (NMFS # SWR-2013-9572) (enclosure 4) and USFWS dated January 15, 2016 (USFWS # 08ESMF00-2013-F-0401) (enclosure 5). 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 statements and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.
2. The JPA shall provide compensatory mitigation for impacts to waters of the U.S. by fully implementing the *San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project: Mitigation and Monitoring Plan*, dated December 2015. Restoration performance standards shall be adhered to, and an annual monitoring report shall be submitted to USACE by December 31 for five years following the completion of construction. This report shall include dated photographs that cover the entire project reach, including the creek and both banks. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions shall be provided.
3. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 2 will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers.
4. The JPA shall submit 60 percent and 90 percent design plans for steelhead habitat features (*i.e.*, debris jams and rock weir) to NMFS and USACE for review and approval at least 90 days prior to the initiation of construction activities.
5. In addition to General Condition 3, you shall comply with the following:
 - a. If cultural resources are encountered during project implementation, the JPA shall immediately cease all work activities in the area (within approximately 100-feet) of the discovery. Prehistoric archaeological materials might include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil (“midden”) containing heat-affected rocks, artifacts, or shellfish remains; and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered

stone tools, such as hammerstones and pitted stones. Historic-period materials might include stone, concrete, or adobe footings and walls; filled wells or privies; and deposits of metal, glass, and/or ceramic refuse. USACE shall be notified of the discovery and a professional archaeologist shall be retained by the JPA to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted for USACE approval, and project related activities shall not resume within 100 feet of the find until USACE provides written authorization.

- b. If human remains are encountered unexpectedly during construction excavation and grading activities, no further disturbance shall occur within 100 feet of the find until the County Coroner has made the necessary findings as to origin and disposition pursuant to PRC Section 5097.98. If the remains are determined to be of Native American descent, the coroner has 24 hours to notify the Native American Heritage Commission (NAHC). The NAHC will then identify the person(s) thought to be the Most Likely Descendent of the deceased Native American, who may make recommendations regarding the appropriate treatment of the remains. Project-related activities in the vicinity of the find shall not resume until USACE provides written authorization.

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. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 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. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

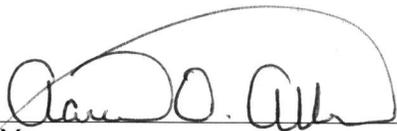
6. **Extensions:** General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give 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) February 23, 2016
 (DATE)
 Len Materman
 San Francisquito Creek Joint Powers Authority

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



 John C. Morrow 23 Feb 2016
 Lieutenant Colonel, U.S. Army (DATE)
 District Commander

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.

 (TRANSFEE) _____
 (DATE)