



DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1455 MARKET STREET, 16<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94103-1398

DEC 21 2015

Regulatory Division

Subject: File Number 2014-00418S

Ms. April Zohn  
Lux Environmental Consulting, LLC  
6006 SE Francis Street  
Portland, Oregon 97206

Dear Ms. Zohn:

This correspondence is in reference to your submittal of November 12, 2014, on behalf of the San Mateo County Resource Conservation District, concerning Department of the Army (DA) authorization for erosion control and prevention treatments in the Pilarcitos Creek watershed. The proposed project is located at 32 sites encompassing 6.12 acres and 15,365 lineal feet along 2.91 miles of Pilarcitos Creek in Half Moon Bay, San Mateo County, California (37.508°N and 122.386°W; APN: 093-060-050, 056-370-080, 056-370-020, 056-550-030, and 056-550-020; Township 5S, Range 5W, and Sections 10-11).

Work within U.S. Army Corps of Engineers' (Corps) jurisdiction will involve the implementation of various erosion control and erosion prevention treatments along three roads in the Pilarcitos Creek watershed to reduce road-related sediment runoff. Specifically, the work will include: stream crossing improvements consisting of culvert removal, repair, and replacement; bank erosion improvements where loose material will be excavated and the site will be armored with riprap; and road drainage improvements involving the reshaping of existing roads to improve drainage and decrease sedimentation. Work will require placement of 542 cubic yards of fill within 0.15 acre or 2,134 lineal feet of Pilarcitos Creek and ephemeral tributaries. All work shall be completed in accordance with the plans and drawings in 21 sheets titled: "USACE File #2014-00418S, Coastside County Water District Property Rural Roads Improvement Project, December 3, 2015" (enclosure 1).

Section 404 of the Clean Water Act (CWA) generally regulates the discharge of dredged or fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters. Section 10 of the Rivers and Harbors Act generally regulates construction of structures and work, including excavation, dredging, and discharges of dredged or fill material, occurring below the plane of mean high water in tidal waters of the United States; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States. Navigable waters of the United States generally include all waters subject to the ebb and flow of the tide;

and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce. A Preliminary Jurisdictional Determination (JD) has been completed for your site. Preliminary JDs are written indications that there may be waters of the U.S. on a parcel or indications of the approximate location(s) of waters of the U.S. on a parcel. Preliminary JDs are advisory in nature and may not be appealed. While this preliminary jurisdictional determination was conducted pursuant to Regulatory Guidance Letter No. 08-02, *Jurisdictional Determinations*, it may be subject to future revision if new information or a change in field conditions becomes subsequently apparent. The basis for this preliminary jurisdictional determination is fully explained in the enclosed *Preliminary Jurisdictional Determination Form*. Please see the enclosed Preliminary JD map in 11 sheets titled: "Preliminary Jurisdictional Determination requested by April Zohn of Lux Environmental, Pilarcitos Creek, San Mateo County, California," dated December 4, 2015 (enclosure 2). You are requested to sign and date this form and return it to this office within two weeks of receipt.

Based on a review of the information in your submittal, the project qualifies for authorization under Department of the Army Nationwide Permit (NWP) #14 for *Linear Transportation Projects*, 77 Fed. Reg. 10,184 (Feb. 21, 2012) (enclosure 3), pursuant to Section 404 of the CWA of 1972, as amended (33 U.S.C. § 1344 *et seq.*). The project must be in compliance with the terms of the NWP, the general conditions of the Nationwide Permit Program, and the San Francisco District regional conditions cited in enclosure 4. You must also be in compliance with any special conditions specified in this letter for the NWP authorization to remain valid. Non-compliance with any term or condition could result in the revocation of the NWP authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps. This NWP authorization does not obviate the need to obtain other State or local approvals required by law.

This verification will remain valid until March 18, 2017, unless the NWP authorization is modified, suspended, or revoked. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a NWP will remain authorized provided the activity is completed within 12 months of the date of a NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 C.F.R. § 330.4(e) and 33 C.F.R. § 330.5 (c) or (d). This verification will remain valid if, during the time period between now and March 18, 2017, the activity complies with any subsequent modification of the NWP authorization. The Chief of Engineers will periodically review NWPs and their conditions and will decide to modify, reissue, or revoke the permits. If a NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. It is incumbent upon you to remain informed of any changes to the NWPs. Changes to the NWPs would be announced by Public Notice posted on our website (<http://www.spn.usace.army.mil/Missions/RegulatoryPublicNotices.aspx>). Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification

of Compliance, enclosure 5, verifying that you have complied with the terms and conditions of the permit.

This authorization will not be effective until you have obtained a Section 401 water quality certification from the San Francisco Bay Regional Water Quality Control Board (RWQCB). If the RWQCB fails to act on a valid request for certification within two months after receipt of a complete application, the Corps will presume a waiver of water quality certification has been obtained. You shall submit a copy of the certification to the Corps prior to the commencement of work.

This authorization also will not be effective until you have obtained a concurrence from the California Coastal Commission that your project will comply with California's Coastal Zone Management Act. If the Commission fails to act on a valid request for concurrence with your certification within six months after receipt, the Corps will presume a concurrence has been obtained. You shall submit a copy of the concurrence to the Corps prior to the commencement of work.

General Condition 18 stipulates that project authorization under a NWP does not allow for the incidental take of any federally-listed species in the absence of a biological opinion (BO) with incidental take provisions. As the principal federal lead agency for this project, the Corps initiated consultation with the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to address project related impacts to listed species, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*). By email of March 20, 2015, NMFS concurred that the project's impacts are not likely to jeopardize the continued existence of the Central California Coast steelhead and may be covered by the incidental take statement of a programmatic BO for fisheries restoration projects (#151422SWR2006R00190:JMA), cited in enclosure 6. By letter of November 18, 2015, USFWS issued a BO (08ESMF00-2015-F-0981), cited in enclosure 7, with an incidental take statement for the California red-legged frog. In the same letter, USFWS also concurred with the determination that the project is not likely to adversely affect the San Francisco garter snake and the marbled murrelet.

In order to ensure compliance with this NWP authorization, the following special conditions shall be implemented:

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 entitled "Permitting of Fisheries Restoration Projects within the Geographic Boundaries of NMFS' Santa Rosa, California Field Office" (pages 63-67), dated June 21, 2006 (enclosure 6), and "Formal Consultation on the Coastside County Water District



Property Rural Roads Improvement Project in Marin County, California and appending to the (U.S. Army Corps of Engineers (Corps) File Number SPN-2014-00418S) to the June 14, 2014 *Programmatic Biological Opinion for Issuance of Permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, including Authorizations Under 22 Nationwide Permits, for Project that May Affect the Threatened California Red-Legged Frog in Nine San Francisco Bay Area Counties, California*” (pages 21-23), dated November 18, 2015 (enclosure 7). Project authorization under the NWP 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 NWP authorization for your project. The NMFS and USFWS 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. Incidents where any individuals of Central California Coast steelhead listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this NWP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the San Francisco District of the U.S. Army Corps of Engineers at (415) 503-6795. The finder should leave the plant or animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure, or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.
3. The USFWS concurred with the determination that the project was not likely to adversely affect the San Francisco garter snake and the marbled murrelet. This concurrence was premised, in part, on project work restrictions outlined in enclosure 7. These work restrictions are incorporated as special conditions to the NWP authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
4. All construction work shall incorporate appropriate standard Best Management Practices, including stabilizing and seeding exposed upland slopes, to control and minimize bank erosion, sediment input, and turbidity in the affected creek. 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 the waterways.

5. Culverts shall be installed and/or repaired in such a way as to provide adequate energy dissipation of outflow to prevent erosion impacts to receiving waters.
6. Any areas that are temporarily disturbed during construction will be returned to pre-construction conditions and reseeded with native vegetation.
7. A post construction report shall be submitted 45 days after the conclusion of construction activities. The report shall document construction activities and contain as-built drawings (if different from drawings submitted with application) and include before and after photos.

You may refer any questions on this matter to Daniel Breen of my Regulatory staff by telephone at (415) 503-6769 or by e-mail at Daniel.B.Breen@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: <http://www.spn.usace.army.mil/Missions/Regulatory.aspx>

Sincerely,

  
Tori White  
Acting Chief, Regulatory Division

Enclosures

Copies Furnished (w/ encls):

Ms. Kellyx Nelson  
San Mateo County Resource Conservation District

625 Miramontes Street, Suite 103  
Half Moon Bay, CA 94109

Mr. Joe Guistino  
Coastside County Water District  
766 Main Street  
Half Moon Bay, CA 94019

Copy Furnished (w/ encl 1 only):

CA RWQCB, Oakland, CA

Copies Furnished (w/o encls):

U.S. EPA, San Francisco, CA  
CA SWRCB, Sacramento, CA  
USFWS, Sacramento, CA (Attn: Leif Goude)  
NMFS, Santa Rosa, CA (Attn: Joe Pecharich)