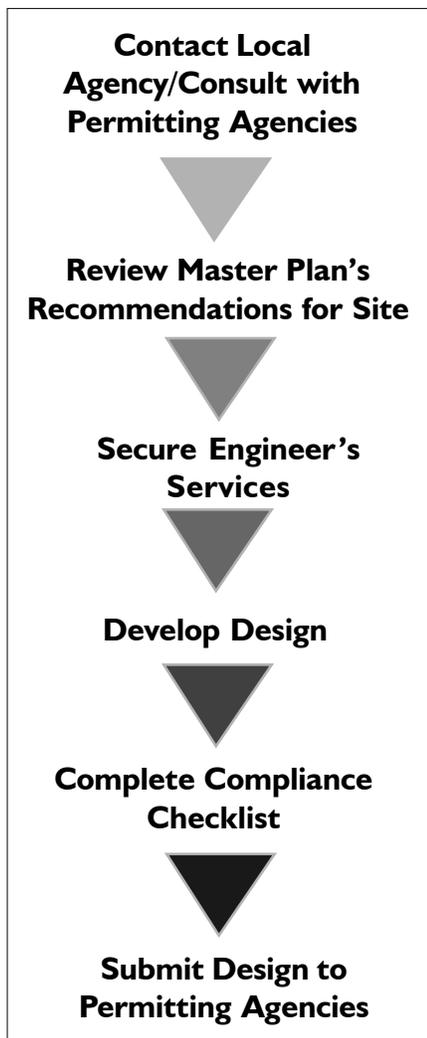


SECTION 8: THE CURRENT PERMITTING PROCESS FOR PROJECTS PROPOSED ON SAN FRANCISQUITO CREEK

8.1 THE PROJECT PERMITTING PROCESS FOR THE PRIVATE LANDOWNER

Creeks are important ecological resources regarded as sensitive habitats. Several federal, state and local agencies oversee regulations that protect creeks in the San Francisco Bay Area. The U.S. Army Corps of Engineers, the California Department of Fish and Game, the Regional Water Quality Control Board, the Santa Clara Valley Water District, and San Mateo County Flood Control District are among the agencies requiring permits and other approvals for any project that may affect creek habitat, including bank stabilization.

Figure 8A The project planning process



A landowner must follow several steps to obtain permits or approvals for a project in or near San Francisquito Creek ('project' being defined as buildings, bank stabilization projects, grading, major landscaping, pool, deck, or wall construction and concrete paving). Currently, he or she must contact all appropriate agencies, whether or not the agency ultimately will be involved in the proposed project. Local city planning and/or public works departments can be of assistance in beginning this process and should be contacted as a first step, as illustrated in Figure 8.1. Any landowner planning modifications within fifty feet of the top of bank should also consult the recommendations in this Master Plan report to determine potential upstream and downstream impacts.

8.2 CURRENT PERMITTING AGENCIES AND REQUIREMENTS

City Grading Permits

A permit is required for any excavation or fill that will encroach on or alter a natural drainage channel or water course, up to and including the top of bank. There is a sliding fee schedule depending upon earthwork volume. Landowners should contact the City of Palo Alto, Public Works Engineering at (650) 329-2151, the City of Menlo Park, Building Division at (650) 858-3390, or the City of East Palo Alto, Building Department at (650) 853-3129.

Santa Clara Valley Water District Construction/Encroachment Permit

A permit is required for projects located within 50-feet of top of creek bank in Santa Clara County. No fee is required. Landowners should contact the Santa Clara Valley Water District at (408) 265-2600.

San Mateo County Flood Control District

A permit is required for projects within 15-feet of the top of creek bank in San Mateo County. Landowners should contact the San Mateo

County Flood Control District at (650) 363-4100 to determine permit requirements.

U.S. Army Corp of Engineers (ACOE)

The ACOE may authorize bank stabilization projects that meet certain conditions under a Nationwide Permit, a relatively simple and streamlined permitting process for specific activities. Penalties for unauthorized fill of wetlands or creeks are significant. Nationwide Permit #13 authorizes projects that meet all of the following criteria:

- Are less than 500-feet in length;
- Result in less than one cubic yard of material per linear foot placed below the high water mark;
- Result in the minimum amount of fill required to achieve bank stabilization goals;
- Do not jeopardize the continuing ability of an endangered species to inhabit the creek.

Applicants should contact the South Section Chief of the Regulatory Branch at (415) 977-3324 to ensure that the proposed project meets Nationwide Permit requirements. Projects that do not meet the four criteria above may still be permissible but are required to go through a more lengthy permit review process.

U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS)

These two federal agencies comment on ACOE permit applications where the proposed project may affect an endangered species that uses the creek as habitat. For example, bank stabilization projects that change the flow or water quality of a creek could adversely affect the steelhead trout and, possibly, the red-legged frog. While bank stabilization at a single property would not likely affect these species, the combined impact of many similar projects within a relatively concentrated area of the creek could be significant. If several similar projects are proposed, FWS and ACOE will require that the combined impact on endangered species be assessed as if they were a single project. Only after the ACOE determines that impacts to endangered species are adequately avoided or mitigated will the use of a Nationwide Permit be approved. The FWS Endangered Species Office may be reached at (916) 979-2710.

California Department of Fish and Game (CDFG)

The CDFG regulates projects along creeks that could diminish the value of habitat for fish and wildlife. The CDFG uses Streambed Alteration Agreements (SAA) to ensure that impacts to habitat values are mitigated by revegetation after the work is completed. An SAA may also require that the work be timed to avoid impacts. The SAA is a permit by which

the applicant agrees to certain conditions for any project affecting the creek bed or bank. Typically, the CDFG asserts its authority over riparian vegetation or the projected limit of the 100-year flood elevation, whichever is greater. Therefore, bank stabilization that necessitates the removal of trees at the top of the bank, well above the ordinary water line, may still require an SAA. The CDFG may be contacted at (707) 944-5520 for more information and an application.

Regional Water Quality Control Board (RWQCB)

The RWQCB regulates the discharge of any material into creeks and other water bodies that could diminish water quality. Bank stabilization often requires working in the channel and can result in sediments and other materials entering the water and affecting water quality. The RWQCB issues certifications of compliance with water quality standards to applicants for ACOE permits. The RWQCB can be contacted at (510) 286-1255 for a Waiver of Water Quality Certification.

Landowners are encouraged to cooperate with each other to develop plans for stabilization of their properties. By working together, groups of landowners can share the costs of planning, engineering, and environmental consultants. Local city planning or engineering departments should be contacted for assistance.

8.3 SPECIAL CONSIDERATIONS FOR PALO ALTO LANDOWNERS

For property owners in the City of Palo Alto, the responsibility for creek bank restoration and/or revegetation may fall into either case below:

Case 1: Santa Clara Valley Water District (District) has ownership or easements rights on the creek.

If creek bank repair/restoration is required to maintain the channel capacity and stabilize the bank, the District may perform and pay for the work (subject to funding and existing workload constraints). The landowner may undertake a privately funded project, subject to obtaining a District Construction/Encroachment Permit and other regulatory approvals.

Case 2: Creek bank is privately owned.

The landowner may undertake a privately funded project, subject to obtaining a District Construction/Encroachment Permit and other regulatory approvals. After repairing the creek bank to the satisfaction of the District, the owner may offer the District easement rights to the creek bank. Acceptance of the easement is at the District's discretion.

8.4 PROPOSED PERMITTING SCENARIO

Section 9 of this report will discuss a proposed mitigation/conservation banking method of project implementation that is currently in development.