

**Facility:** Coyote Creek**Date Issued:** December 30, 2005**Permit No.:** 05446**Permittee:** San Francisco Bay Bird Observatory
Attention: Ms. Janet Hanson
1290 Hope Street
P.O. Box 247
Alviso, CA 95002**Telephone:** (408) 946-6548**File:** 19010
Coyote Creek
Ely Zanker Road
Nly McCarthy Lane**Re:** Access to Santa
Clara Valley Water
District Right of Way
to Perform Bird
Studies**Purpose of Permit:**

- ☒ Encroachment 1. Encroachment on Santa Clara Valley Water District (District) easement and fee title right of way along Coyote Creek for bird studies including mistnetting and bird banding.
- ☐ Construction 2. Continued use of a trailer and parking facilities on the levee pad adjacent to the overflow channel.
- ☐ Temporary 3. Continued use of a portable toilet at the site.
4. Maintenance of minor landscaping around the trailer site.
5. Vehicular access along levees to the sites.

Construction Expiration Date: _____ **Encroachment Expiration Date:** _____ Until Revoked**PERMITTEE MUST NOTIFY AND FURNISH SCHEDULE OF WORK TO:**

District's Field Operations Unit, c/o Mr. Don Duran, (408) 265-2607, extension 3034, at least 2 normal working days before starting any work under this permit. **Failure to notify is cause for revocation of permit and removal of work.** Exercise of this permit shall indicate acceptance of and agreement to comply with all provisions included herein. This permit is subject to the General Provisions listed on the reverse side hereof or as expressly modified in the additional Special Provisions listed below. Violation of any provision shall be cause for immediate revocation of permit.

SPECIAL PROVISIONS

1. Permittee shall provide a copy of the final report(s) presenting the results of the survey to the District, attention to Mr. Don Arnold.
2. Permittee is responsible for the full cost of repairing any damage to the District's facilities caused by the exercise of this permit.
3. Permittee must return District fee title right of way and easement to its original condition, or better to the satisfaction of District's inspector.

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Approval:

ORIGINAL SIGNED BY_____
Sue A. Tippetts, P.E.
Engineering Unit Manager
Community Projects Review Unitcc: D. Duran, S. Tippetts, M. Klemencic, D. Arnold, S. Yung, T. Hipol, E. Hayes, File (2)

eh:fd

GENERAL PROVISIONS

- A. PERMITTEE MUST MAINTAIN A COPY OF THIS PERMIT AND APPROVED PLANS ON JOBSITE FOR DURATION OF CONSTRUCTION PERIOD.
- B. All work shall be constructed in accordance with approved plans and to the satisfaction of the District's Inspector. No change of program, as outlined in application or drawings submitted with application, will be allowed except upon written permission of the District. The work area must be restored to the satisfaction of the District's Inspector.
- C. Activities and uses authorized under this permit are subject to any instructions of the assigned District representative. ALL INSTRUCTIONS MUST BE STRICTLY OBSERVED.
- D. Permittee is responsible for complying with any applicable water quality standards adopted by the District, Regional Water Quality Control Board, State Water Resources Control Board, or other jurisdictional or properly empowered regulatory agency.
- E. The permittee shall not use, store, transport, or place any hazardous substances, hazardous wastes, or materials contaminated with hazardous substances on District right of way or adjacent to District right of way such that it may purposefully or accidentally be spilled or otherwise discharged onto same right of way. If a discharge of a hazardous substance or waste occurs as a result of the permittee's operation, the permittee is responsible to: (1) notify the proper authorities; (2) investigate, remove, and monitor the hazardous substances or wastes to the satisfaction of the District and any regulatory agency; (3) bear any and all costs associated with the remedial activities; and (4) be recognized as the generator and owner of the wastes.
- F. The permittee shall submit to the District a fully completed "Import Material Certification Form" for any soils that will be placed or stored on District right of way that do not originate from within the legal boundaries of such right of way.
- G. Permittee shall assume entire responsibility for all activities and uses under this permit and shall indemnify, defend and hold harmless, District, its Directors, officers, agents, and employees from any and all demands, claims, expenses, costs, or liability of any nature, including death or injury to any person, property damage, or any other loss, caused by or arising out of, or incurred in connection with, or resulting from, the exercise of this permit by permittee, or permittee's officers, agents, subcontractors, assignees, or employees, or any of them, including, but not limited to, negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on permittee.
- H. Any damage caused to District structures including, but not limited to, fencing, levee surfacing, and asphalt walkway by reason of exercise of this permit shall be repaired at the cost of permittee to the satisfaction of the District. Should permittee neglect to make repairs promptly, District may make repairs or have repairs made, and permittee agrees to reimburse District for all costs of such repairs. District may require a security deposit in advance from permittee to secure the performance of this clause. Unexpended portions of any deposit shall be refunded to permittee within 14 working days of the expiration of this permit. The posting of such a security deposit shall not relieve the permittee from any liability under this permit which exceeds the value of the deposit required.
- I. This permit is valid only to the extent of District jurisdiction. Permits required by other interested agencies and consent of underlying fee owners of District easement lands are the responsibility of the permittee. NOTHING CONTAINED IN THIS PERMIT SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE DISTRICT.
- J. This permit is subject to all prior unexpired permits, agreements, easements, privileges, or other rights, whether recorded or unrecorded, in the area specified in this permit. Permittee shall make arrangements with holders of such prior rights.
- K. Unless otherwise specified herein, this permit may be revoked or canceled at any time by the District when required for flood control, conservation, or water utility purposes.
- L. Upon written notice of cancellation or revocation of this permit for any cause whatsoever, permittee shall restore District right of way and structure to the condition prior to the issuance of the permit and then shall vacate District property. Should permittee neglect to restore the premises or structures to a satisfactory condition, the District may perform such work or have work performed, and permittee agrees to reimburse the District for all costs of the work so performed upon receipt of a statement therefor.
- M. Trench safety has not been checked and is not implied with this permit. Compliance with Section 6705 of the Labor Code concerning trench excavation and the obtaining of a "Permit to Excavate" issued by the Division of Occupational Safety and Health as required by Labor Code Section 6500 shall be the responsibility of the permittee.
- N. Permittee shall be responsible for compliance with California Labor Code Section 6300 (and following).

SPECIAL PROVISIONS—Continued

4. Obstructions to the existing waterway between October 15 and April 15 will not be allowed except by special permit from the District. Allow at least 15 days from the District to review and approve detailed plans and provisions for emergency flows.
5. Permittee shall use only nonpotable or reclaimed water for completion of activities under this permit, unless the District approves another source.
6. Permittee shall, at permittee's own expense, secure and maintain, in full force and effect at all times during its activity under this permit, general and automobile liability and workers' compensation insurance in forms, to limits of liability, and with a carrier satisfactory to the District, insuring permittee and the Santa Clara Valley Water District, its Directors, officers, agents, employees, and volunteers from and against any claim, loss, liability, cost or expense arising out of or in any way connected with this permit. A certificate of insurance and separate additional insured endorsement shall be delivered to and approved by the District before this permit shall be effective.
7. All work associated with this permit is to be in accordance with the plans that were submitted to and accepted by the District.
8. The permit replaces District Permit 99429 to allow continued bird studies. Permit 99429 is hereby revoked.

