



DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
333 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94105-2197

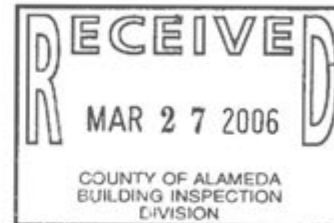
DEC 3 2004

404 PERMIT

Regulatory Branch (1145b)

SUBJECT: File Number 28514S

Ms. Patricia Berryhill  
Natural Resources Management  
737 Spruce Street  
Berkeley, California 94707



Dear Ms. Berryhill:

This letter is in reference to your submittal of November 10, 2004 on behalf of Mr. Vijay Agarwal concerning Department of the Army authorization to construct two road crossing on his property located at 2492 D Street in Hayward, Alameda County, California

Based on a review of the information you submitted, your project qualifies for authorization under Department of the Army Nationwide Permit 14 - **Linear Transportation Projects**, (67 Fed.Reg. 2020, January 15, 2002), pursuant to **Section 404 of the Clean Water Act** (33 U.S.C. Section 1344). See Enclosure 1. All work shall be completed in accordance with the plans and drawings titled "Tentative Tract 7337, 2492/2512 "D" Street, Alameda County, California", in 7 sheets dated September 29, 2004 included in your nationwide permit application.

The project must be in compliance with the General Conditions cited in Enclosure 2 for this Nationwide Permit authorization to remain valid. Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance, Enclosure 3, verifying that you have complied with the terms and conditions of the permit. Non-compliance with any condition could result in the revocation, suspension or modification of the authorization for your project, thereby requiring you to obtain an individual permit from the Corps. This Nationwide Permit authorization does not obviate the need to obtain other State or local approvals required by law.

This authorization will remain **valid for two years from the date of this letter** unless the Nationwide Permit is modified, suspended or revoked. If you have commenced work or are under contract to commence work prior to the suspension, or revocation of the Nationwide Permit and the project would not comply with the resulting Nationwide Permit authorization, you have twelve (12) months from that date to complete the project under the present terms and conditions of the Nationwide 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 (2) 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.

Should you have any questions regarding this matter, please call Bob Smith of our Regulatory Branch at 415-977-8450. Please address all correspondence to the Regulatory Branch and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available through the Forms and Contacts Block on our website: [www.spn.usace.army.mil/regulatory/](http://www.spn.usace.army.mil/regulatory/)

Sincerely,

*[Handwritten signature]*

CHIEF, SOUTH SECTION  
FOR

Edward A. Wylie  
Chief, South Section

Enclosures

*[Handwritten signature]*  
SMITH  
CESPN-OR-RS  
7-8450  
1-Dec-04

*[Handwritten signature]*  
WYLIE  
CESPN-OR-RS

CF:  
CESPN-OR-RS  
CESPN-OR-R Rdg File

STATE OF CALIFORNIA THE RESOURCES AGENCY  
DEPARTMENT OF FISH AND GAME

ARNOLD SCHWARZENEGGER GOVERNOR

CENTRAL COAST REGION  
(707) 944-5520  
Mailing address:  
POST OFFICE BOX 47  
YOUNTVILLE CALIFORNIA 94599  
Street address:  
7329 SILVERADO TRAIL  
NAPA CALIFORNIA 94558



received  
1/24/06

April 1, 2005

Notification Number: 1600-2004-0846-3

Vijay Agarwal  
38930 Blacow Road, Suite C  
Fremont, CA 94536

1602 LAKE AND STREAMBED ALTERATION AGREEMENT

This agreement is issued by the Department of Fish and Game pursuant to Division 2, Chapter 6 of the California Fish and Game Code:

WHEREAS, the applicant Vijay Agarwal, hereafter called the Operator, submitted a signed NOTIFICATION proposing to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed or lake of the following water: Unnamed drainage, located at 2492 and 2512 "D" Street, in the unincorporated area of the County of Alameda, State of California; and

WHEREAS, the Department has determined that such operations may substantially adversely affect existing fish and wildlife resources including water quality, hydrology, aquatic or terrestrial plant or animal species; and

WHEREAS, the project has undergone the appropriate review under the California Environmental Quality Act; and

WHEREAS, the Operator shall undertake the project as proposed in the signed PROJECT DESCRIPTION and PROJECT CONDITIONS (attached). If the Operator changes the project from that described in the PROJECT DESCRIPTION and does not include the PROJECT CONDITIONS, this agreement is no longer valid; and

WHEREAS, the agreement shall expire on December 31, 2005; with the work to occur between June 15 and October 15; and

WHEREAS, nothing in this agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of the responsibility for compliance with applicable Federal, State, or local laws or ordinances. Placement, or removal, of any material below the level of ordinary high water may come under the jurisdiction of the U. S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act;

THEREFORE, the Operator may proceed with the project as described in the PROJECT DESCRIPTION and PROJECT CONDITIONS. A copy of this agreement, with attached PROJECT DESCRIPTION and PROJECT CONDITIONS, shall be provided to contractors and subcontractors and shall be in their possession at the work site.

Failure to comply with all conditions of this agreement may result in legal action.

This agreement is approved by:

*Robert W. Fiederke*  
for Robert W. Fiederke  
Regional Manager  
Central Coast Region

cc: Warden Bowers  
Lieutenant Christensen

**DEPARTMENT OF FISH AND GAME**CENTRAL COAST REGION  
(707) 944-5520*Mailing address:*POST OFFICE BOX 47  
YOUNTVILLE, CALIFORNIA 94599*Street address:*7329 SILVERADO TRAIL  
NAPA, CALIFORNIA 94558Notification Number: 1600-2004-0846-3  
Unnamed drainages, Alameda CountyVijay Agarwal  
38930 Blacow Road, Suite C  
Fremont, CA 94536**PROJECT DESCRIPTION and PROJECT CONDITIONS****Description**

The project is located in the unincorporated Fairview area of Alameda County at 2492 and 2515 D Street. The project includes two adjoining undeveloped parcels located in the vicinity of Hayward. Two westerly flowing unnamed drainages traverse the property. The applicant proposes to construct 16 single-family homes on the project site. The project plans include a setback of approximately 50 feet across in riparian areas. A new private street measuring 29 feet wide and 600 feet long will be constructed to provide access to the new development from D Street. Construction of the new street will include extending the existing culvert within the southern drainage by approximately 40 feet and installation of a new 30 foot long culvert in the northern drainage.

**Conditions**

1. Work within the stream/riparian corridor shall be confined to the period June 15 to October 15. Revegetation work is not confined to this time period.
2. No phase of the project may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a storm event if that construction phase may cause the introduction of sediments into the stream. Seventy-two-hour weather forecasts from the National Weather Service shall be consulted prior to start up of any phase of the project that may result in sediment runoff to the stream.
3. Prior to clearing and grubbing operations, a qualified biologist shall clearly mark/flag trees within the designated construction corridor that should be avoided or will be trimmed only as directed by the arborist. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Vegetation outside the construction corridor shall not be removed or damage without prior consultation and approval of a Department representative. Where feasible, hand tools (chain saw, etc.) shall be used to trimmed vegetation to the extent necessary to gain access to the work sites. All cleared material/vegetation shall be removed out of the riparian/stream zone.

4. The disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Precautions shall be taken to avoid other damage to vegetation by people or equipment. The disturbed portions of the stream channel within the normal high-water mark of the stream shall be restored to as near their original condition as possible.
5. Gabions shall not be used in the stream channel.
6. Stream channels shall not be lined with river rock.
7. Storm drains lines/culverts shall be adequately sized to carry peak storm flows for the drainage to one outfall structure. The storm drain lines/culverts and the outfall structure shall be properly aligned within the stream and otherwise engineered, installed and maintained, to assure resistance to washout, and erosion of the stream bed, stream banks and/or fill. Water velocity shall be dissipated at the outfall, to reduce erosion using rock of the appropriate size to withstand high flows.
8. Equipment shall not be operated in wetted areas (including but not limited to ponded, flowing, or wetland areas) without the prior written approval of the Department.
9. Silt control measures shall be utilized throughout all phases of the project where silt and/or earthen fill threaten to enter Waters of the State. Silt control structures shall be monitored for effectiveness and shall be repaired or replaced as needed. Build up of soil behind the fence shall be removed promptly and any breaches or undermined areas repaired at once.
10. All exposed/disturbed areas within the project site shall be stabilized to the greatest extent possible. Erosion control measures, such as, silt fences, straw hay bales, gravel or rock lined ditches, water check bars, and broadcasted straw shall be used where ever silt laden water has the potential to leave the work site and enter State waters. Erosion control measures shall be monitored during and after each storm event. Modifications, repairs and improvements to erosion control measures shall be made whenever it is needed.
11. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential or contained behind erosion control structures. Erosion control structures such as straw bales and/or siltation control fencing shall be placed and maintained until the threat of erosion ceases. Frequent water bars shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
12. Poured concrete shall be excluded from the wetted channel for a period of 30 days after it is poured. During that time the poured concrete shall be kept moist, and runoff from the concrete shall not be allowed to enter a live stream. Commercial sealants (e.g. Deep Seal, Elasto-Deck BT Reservoir Grade) may be applied to the poured concrete surface where difficulty in excluding water flow for a long period may occur. If sealant is used, water

shall be excluded from the site until the sealant is dry.

13. Storm drains lines/culverts shall be adequately sized to carry peak storm flows for the drainage to one outfall structure. The storm drain lines/culverts and the outfall structure shall be properly aligned within the stream and otherwise engineered, installed and maintained, to assure resistance to washout, and erosion of the stream bed, stream banks and/or fill. Water velocity shall be dissipated at the outfall, to reduce erosion.
14. Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream shall be positioned over drip-pans. Any equipment or vehicles driven and/or operated within or adjacent to the stream must be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Vehicles must be moved away from the stream prior to refueling and lubrication.
15. The operator shall avoid (or at the very least, minimize) the removal of all trees and the disturbance to their root systems. Potentially impacted trees shall be monitored for a period of five (5) years and replaced with native trees which are suitable ecologically to the project area. For each native tree that is removed or disturbed, trees shall be replaced with native trees on-site at a minimum 5:1 ratio (replacement: loss). For each non-native tree that is removed or disturbed, trees shall be replaced with native trees on-site at a minimum 1:1 ratio (replacement: loss).
16. If construction, grading, or other project-related activities are scheduled during the nesting season of protected raptors and migratory birds (February 1 to August 15), a focused survey for active nest of such birds shall be conducted by a qualified biologist (as determined by a combination of academic training and professional experience in biological sciences and related resource management activities) within 15 days prior to the beginning to project-related activities. The results of the survey shall be faxed to (707)944-5595. Refer to Notification Number 1600-2003-5180-3 when submitting the survey to the Department. If active nest are found, the Operator shall consult with the Department and the United States Fish & Wildlife Service (USF&WS) regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and the Fish & Game Code of California. If a lapse in project-related work of 15 days or longer occurs, another focused survey and if required, consultation with the Department and USF&WS, will be required before project work can be reinitiated.
17. To protect and maintain riparian wetland systems and to ensure a "No Net Loss" in wildlife value or acreage or wetlands, the Operator shall submit to the Department an on or off-site mitigation plan or a combination which amounts to a 3:1 ratio for the square footage of wetlands/riparian area impacted by the construction activities, or shall purchase and donate a 3:1 ratio of wetlands/riparian land to a mainland Alameda County non-profit organization to be protected in perpetuity. The plan and location of the mitigation must be approved in writing by the Department of Fish and Game prior to

17. The operator shall avoid (or at the very least, minimize) the removal of all trees and the disturbance to their root systems. Potentially impacted trees shall be monitored for a period of five (5) years and replaced with native trees which are suitable ecologically to the project area. For each native tree that is removed or disturbed, trees shall be replaced with native trees on-site at a minimum 5:1 ratio (replacement: loss). For each non-native tree that is removed or disturbed, trees shall be replaced with native trees on-site at a minimum 1:1 ratio (replacement: loss).
18. If the Operator needs more time to complete the authorized activity, the work period may be extended on a day-to-day basis by Marcia Grefsrud at [mgrefsrud@dfg.ca.gov](mailto:mgrefsrud@dfg.ca.gov), (707)944-5559 or the Yountville office at (707) 944-5520.
19. A copy of this agreement must be provided to the contractor and all subcontractors who work within the stream zone and must be in their possession at the work site.
20. Building materials and/or construction equipment shall not be stockpiled or stored where they could be washed into the water or where they will cover aquatic or riparian vegetation.
21. Debris, soil, silt, bark, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. Any of these materials, placed within or where they may enter a stream or lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.
22. The contractor shall not dump any litter or construction debris within the riparian/stream zone. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site.
23. Department personnel or its agents may inspect the work site at any time.
24. The Operator is liable for compliance with the terms of this Agreement, including violations committed by the contractors and/or subcontractors. The Department reserves the right to suspend construction activity described in this Agreement if the Department determines any of the following has occurred:
  - A). Failure to comply with any of the conditions of this Agreement
  - B). Information provided in support of the Agreement is determined by the Department to be inaccurate.
  - C). Information becomes available to the Department that was not known when preparing the original conditions of this Agreement (including, but not limited to, the occurrence of State or federally listed species in the area or risk to resources not previously observed)
  - D). The project as described in the Agreement has changed or conditions affecting fish and wildlife resources change.

Any violation of the terms of this Agreement may result in the project being stopped, a citation being issued, or charges being filed with the District Attorney. Contractors and subcontractors may also be liable for violating the conditions of this agreement.

**Amendments and Renewals**

The Operator shall notify the Department before any modifications are made in the project plans submitted to the Department. Project modifications may require an amendment or a new notification.

This Agreement is transferable to subsequent owners of the project property by requesting an amendment.

To renew the Agreement beyond the expiration date, a written request for a renewal must be submitted to the Department (1600 Program, Post Office Box 47, Yountville, California 94599) for consideration at least 30 days before the Agreement expiration date. A renewal requires a fee. Renewals of the original Agreement are issued at the discretion of the Department.

To modify the project, a written request for an amendment must be submitted to the Department (1600 Program, Post Office Box 47, Yountville, California 94599). An amendment requires a fee. The Fee Schedule can be obtained at [www.dfg.ca.gov/1600](http://www.dfg.ca.gov/1600) or by phone at (707) 944-5520. Amendments to the original Agreement are issued at the discretion of the Department.

*Please note that you may not proceed with construction until your proposed project has undergone CEQA review and the Department signs the Agreement.*

*I, the undersigned, state that the above is the final description of the project I am submitting to the Department for CEQA review, leading to an Agreement, and agree to implement the conditions above required by the Department as part of that project. I will not proceed with this project until the Department signs the Agreement. I also understand that the CEQA review may result in the addition of measures to the project to avoid, minimize, or compensate for significant environmental impacts:*

Operator's name (print): Kijay Agarwal

Operator's signature: *Kijay Agarwal*

Signed the 16<sup>th</sup> day of Feb, 2005



1100-2004 For Department Use Only				
Notification No.	0846-3	Date Received	11-17-04	Date Completed
Fee Enclosed?	<input checked="" type="checkbox"/> Yes <i>154 #1302</i> <input checked="" type="checkbox"/> No			
Action Taken/Notes	Natural Resources Management			

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF FISH AND GAME

*Christensen*

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

All fields must be completed unless otherwise indicated.  
(See enclosures for instructions.)

Notification Type				
<input type="checkbox"/> Timber Harvesting Plan	No. _____	<input type="checkbox"/> Water Application	No. _____	
<input type="checkbox"/> Commercial Gravel Extraction	No. _____	<input checked="" type="checkbox"/> Other	_____	
Application Information				
	Name	Address	Telephone/Fax	
Applicant:	Vijay Agarwal	38930 Blacow Road, Suite C, Fremont, Ca 94536	Business:	(510) 914-6278
Operator:			Fax:	
Contractor (if known):			Business:	
Contact Person (if not applicant):	Patricia Berryhill, Natural Resources Mgmt	737 Spruce St Berkeley, CA 94707	Fax:	
Property Owners:	Vijay & Pratima Agarwal	38930 Blacow Road, Suite C, Fremont, Ca 94536	Business:	(510) 914-6278
			Fax:	
Project Location				
Location Description:	The Project is located in the unincorporated Fairview area of Alameda County, at 2492 and 2512 "D" Street (north side), just west of the intersection with Madeiros Avenue.. The Fairview area is located on the west-facing slopes of the Hayward Hills, east of the City of Hayward. The properties that make up the Project Site consist of two parcels and total 3.66-acres.			
County		Assessor's Parcel Number		
Alameda		Parcels 416-200-19-2 and 416-200-22-1		
USGS Map	Township	Range	Section	Latitude/Longitude
Hayward	Township 3 South	Range 2 West	Unsectioned (was originally part of the San Lorenzo Spanish land grant)	37 degrees, 40 minutes, 49.7 seconds North 122 degrees, 3 minutes, 24.9 seconds West
Name of River, Stream, or Lake:		Unnamed drainage		

Notification Number: 1600-2004-0846-3

Notification of Lake or Streambed Alteration (continued)

Tributary to?	San Francisco Bay		FIS		MAE	
Name of Applicant:	Vijay Agarwal		Project Description			
Project Name:	2492 & 2512 D Street - Hayward		DEC 1 2004			
Start Date:	To be determined	Completion Date:	To be determined	Project Cost:	Not available	Number of Stream Encroachments (Timber Harvesting Plans Only):
June 2005	6/05	November 2005	11/05	25,000		

Describe project below (attach separate pages if necessary)

Project Description

The project site includes two adjoining undeveloped parcels located in an unincorporated portion of Alameda County in the vicinity of the City of Hayward. The project site is bordered by D Street to the south, and residences to the north and east. Two westerly flowing unnamed drainages traverse the property. Currently, a portion of the southernmost drainage is routed through a culvert where an existing road crosses it. An additional drainage is located to the north.

The applicant proposes to construct 16 single-family residences on the approximately 3.66-acres at the project site. The new homes would be constructed on stepped building pads so that the existing topography on each lot would generally be preserved. The project plans include a setback of approximately 50 feet across in riparian areas that would remain undisturbed by the Project.

A new private street measuring 29 feet wide, including a 4-foot wide sidewalk on one side, and approximately 600 feet long would be constructed to provide access to the new development from "D" Street. All homes will front this private street, with the exception of Lot 16, which will be a flag lot behind Lot 1. None of the proposed new homes would have direct access to "D" Street; all new home residents would access this private street. The street would not be a through street; instead it would "hammerhead" at the end. A middle turnaround space also would be incorporated approximately 250 feet from "D" Street. Both the hammerhead and the middle turnaround would provide sufficient room for emergency vehicles to perform a three-point turn.

2 culverts  
70 feet

25 Setback from center

Project Impacts

Construction of the new street would include expanding the existing culvert within the southern drainage by approximately 40 feet as shown in the attached full-scale project plan set. Construction of the new street would require placement of a 30-foot long culvert into the northernmost drainage as indicated in the plans. Placement of the culverts represents the only project components that would be located within CDFG jurisdiction. All other project components have been setback from the drainages as shown in project plans.

Existing Condition of the Drainages

The southernmost drainage flows onto the site out of a short open stream channel and storm drain system that serves the single-family residential subdivisions along adjacent Stratton Court and Glenbrook Lane, and also accommodates drainage from Fairview Park, east of Stratton Court. This drainage traverses the Project Site for a distance of about 250 feet where it flows off-site, continuing as an open channel into the adjacent undeveloped parcels to the west. An existing roadway that runs north to south crosses the southern drainage on the Project Site. East of the roadway the drainage is characterized as a grassy swale that flows into a culvert beneath the driveway. West of the driveway the swale takes on the configuration of a channel with dense trees along the slopes providing nearly complete canopy cover, and a channel that is about 1 foot wide, on average. The tree species include redwoods, live oaks (*Quercus agrifolia*) and eucalyptus (*Eucalyptus sp.*). Photographs of the project site can be seen in Chapter 2 (Project Description) of the attached CEQA document.

A second drainage feature, identified as Drainage #2 in Figure 3-5 of the enclosed CEQA document, is a swale located in the northern portion of the site. It also flows east-to-west and enters the site from a storm drain culvert located on the eastern boundary in the landscaped common area of the adjacent Glenbrook subdivision. The swale is densely vegetated with non-native vegetation such as Himalayan black berry (*Rubus sp.*) and with emergent vegetation typical of seasonal and perennial wetlands including cattails (*Typha sp.*) and watercress (*Rorippa nasturtium-aquaticum*). Flows from this drainage flow westward to join Drainage #1 about 100 feet west of the Project Site, which continues as an open stream course for about 300 more feet to the northwest where it enters a storm drain conduit within the Monte Vista condominium development. Below the Monte Vista condominiums the stream flows again as an open channel for approximately 800 feet, after which it continues underground as part of the storm drainage system connecting to San Lorenzo Creek, about half a mile from the Project Site. The watershed upstream from the site is an area of approximately 24 acres.

The most extensive habitat on the site is weedy non-native grassland dominated by ripgut brome (*Bromus diandrus*) and wild oat (*Avena fatua*). Weedy plant species such as prickly lettuce (*Lactuca scariola*) and sweet fennel (*Foeniculum vulgare*) are scattered among the grasses, and large clumps of an

## Notification of Lake or Streambed Alteration (continued)

Tributary to?		San Francisco Bay				
Name of Applicant:		Vijay Agarwal				
<b>Project Description</b>						
Project Name:	2492 & 2512 D Street - Hayward					
Start Date:	To be determined	Completion Date:	To be determined	Project Cost:	Not available	Number of Stream Encroachments (Timber Harvesting Plans Only):

**Describe project below (attach separate pages if necessary)****Project Description**

The project site includes two adjoining undeveloped parcels located in an unincorporated portion of Alameda County in the vicinity of the City of Hayward. The project site is bordered by D Street to the south, and residences to the north and east. Two westerly flowing unnamed drainages traverse the property. Currently, a portion of the southernmost drainage is routed through a culvert where an existing road crosses it. An additional drainage is located to the north.

The applicant proposes to construct 16 single-family residences on the approximately 3.66-acres at the project site. The new homes would be constructed on stepped building pads so that the existing topography on each lot would generally be preserved. The project plans include a setback of approximately 50 feet across in riparian areas that would remain undisturbed by the Project.

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**Project Impacts**

Construction of the new street would include expanding the existing culvert within the southern drainage by approximately 40 feet as shown in the attached full-scale project plan set. Construction of the new street would require placement of a 30-foot long culvert into the northernmost drainage as indicated in the plans. Placement of the culverts represents the only project components that would be located within CDFG jurisdiction. All other project components have been setback from the drainages as shown in project plans.

**Existing Condition of the Drainages**

The southernmost drainage flows onto the site out of a short open stream channel and storm drain system that serves the single-family residential subdivisions along adjacent Stratton Court and Glenbrook Lane, and also accommodates drainage from Fairview Park, east of Stratton Court. This drainage traverses the Project Site for a distance of about 250 feet where it flows off-site, continuing as an open channel into the adjacent undeveloped parcels to the west. An existing roadway that runs north to south crosses the southern drainage on the Project Site. East of the roadway the drainage is characterized as a grassy swale that flows into a culvert beneath the driveway. West of the driveway the swale takes on the configuration of a channel with dense trees along the slopes providing nearly complete canopy cover, and a channel that is about 1 foot wide, on average. The tree species include redwoods, live oaks (*Quercus agrifolia*) and eucalyptus (*Eucalyptus sp.*). Photographs of the project site can be seen in Chapter 2 (Project Description) of the attached CEQA document.

A second drainage feature, identified as Drainage #2 in Figure 3-5 of the enclosed CEQA document, is a swale located in the northern portion of the site. It also flows east-to-west and enters the site from a storm drain culvert located on the eastern boundary in the landscaped common area of the adjacent Glenbrook subdivision. The swale is densely vegetated with non-native vegetation such as Himalayan black berry (*Rubus sp.*) and with emergent vegetation typical of seasonal and perennial wetlands including cattails (*Typha sp.*) and watercress (*Rorippa nasturtium-aquaticum*). Flows from this drainage flow westward to join Drainage #1 about 100 feet west of the Project Site, which continues as an open stream course for about 300 more feet to the northwest where it enters a storm drain conduit within the Monte Vista condominium development. Below the Monte Vista condominiums the stream flows again as an open channel for approximately 800 feet, after which it continues underground as part of the storm drainage system connecting to San Lorenzo Creek, about half a mile from the Project Site. The watershed upstream from the site is an area of approximately 24 acres.

The most extensive habitat on the site is weedy non-native grassland dominated by riggut brome (*Bromus diandrus*) and wild oat (*Avena fatua*). Weedy plants species such as prickly lettuce (*Lactuca scariola*) and sweet fennel (*Foeniculum vulgare*) are scattered among the grasses, and large clumps of an

## Notification of Lake or Streambed Alteration (continued)

unidentified thistle are also present. Coyote hush (*Baccharis pilularis*), a native shrub, is also scattered through the non-native grassland in the northern portion of the project site.

Thickets of Himalayan blackberry (*Rubus discolor*) interspersed with clumps of cattails (*Typha sp.*) and sedges (*Carex sp.*) dominate the northern drainage. Himalayan blackberry is also present along the southern drainage, along with various non-native tree species including several large blue gum (*Eucalyptus globulus*). Several small coast live oaks (*Quercus agrifolia*) are also scattered along this drainage.

Special-Status Species

Biological resource evaluations conducted at the project site included a wetland delineation, general wildlife assessment, botanical surveys, avian surveys, and special status species surveys. The CNDDDB and the US Fish and Wildlife Service databases were queried. Each of these reports is included in the CEQA document enclosed in this application. The outcome of the investigation s showed that the California red-legged frog (*Rana aurora draytonii*) has been documented to occur within 5 miles of the project area. Therefore, a formal Habitat Assessment for the California red-legged frog was performed according to U.S. Fish and Wildlife protocol. The habitat assessment is included as an appendix to the CEQA document enclosed within this application packet. The habitat assessment concluded that the species is not likely to occur at the project site. There would be no impacts to California red-legged frogs as a result of the proposed project.

A focused botanical survey of the Project Site was conducted in July 2004. No state listed plant species were observed during surveys and none are expected. However, marginally suitable habitat is present for the following species: bent-flowered fiddleneck (*Amsinckia lunaris*), round-leaved filaree (*Erodium macrophyllum*), fragrant fritillary (*Fritillaria liliacea*), and Mt. Diablo cottonweed (*Micropus amphibolus*). Botanical surveys will be conducted in the spring of 2005 to confirm that the species are not present on site. If the species are detected, individual plants will be either avoided or re-located as described in the attached CEQA document.

Mitigation

The existing condition of the unnamed channels is highly degraded and dominated by non-native vegetation as indicated in the appendices and photos included in the attached CEQA document. The applicant proposes to enhance habitat conditions within the two drainages on site as mitigation for placement of the culverts. The stream enhancement plan is also included as an appendix to the attached CEQA document and proposes to establish plant species indigenous to the region, increase vegetation community diversity and structure, to establish a high quality upland buffer from the proposed development that will provide habitat and cover for wildlife. The proposed stream enhancement plan includes a monitoring component and is consistent with Section 404 and 401 of the Clean Water Act.

Special-Status Species

The applicant will provide two additional focused botanical surveys of the Project Site by a qualified botanist to determine the presence or absence of listed plant species during the blooming periods of the remaining potentially-occurring target species. These focused surveys will be conducted in early-spring (March) and mid-spring. If the plants are found they will either be avoided, or construction in that portion of the project area will be delayed until the plants reach the appropriate point in their growth, phenologically and physiologically, to be re-located. Either the plants would set seed that would be collected, or in the case of the species which is a bulb, the bulbs would be collected when the plants reach dormancy. Plants would be moved to a suitable location on-site or off-site for planting.



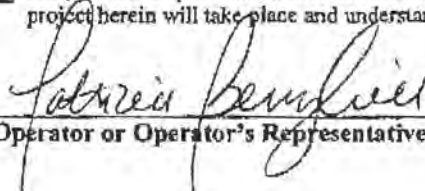
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Notification of Lake or Streambed Alteration (continued)

Attachments/Enclosures	
Attach or enclose the required documents listed below and check the corresponding boxes.	
<input checked="" type="checkbox"/> Project Description	<input checked="" type="checkbox"/> Map showing project location, including distances and/or directions from nearest city or town
	<input checked="" type="checkbox"/> Construction plans and drawings pertaining to the project
Completed CEQA Documents:	<input type="checkbox"/> Notice of Exemption
	<input type="checkbox"/> Negative Declaration
	<input checked="" type="checkbox"/> Mitigated Negative Declaration
	<input type="checkbox"/> Draft or Final Environmental Impact Report
	<input type="checkbox"/> Notice of Determination
Copies of applicable local, State, or federal permits, agreements, or other authorization:	<input type="checkbox"/> Local Describe:
	<input checked="" type="checkbox"/> State Describe: 401 Water Quality Certification (from RWQCB)
	<input checked="" type="checkbox"/> Federal Describe: Section 404 Notification (Army Corps of Engineers)

I hereby certify that all information contained in this notification is true and correct and that I am authorized to sign this document. I understand that in the event this information is found to be untrue or incorrect, I may be subject to civil or criminal prosecution and the Department may consider this notification to be incomplete and/or cancel any Lake or Streambed Alteration Agreement issued pursuant to this notification. I understand that this notification is valid only for the project described herein and that I may be subject to civil or criminal prosecution for undertaking a project that differs from the one described herein, unless I have notified the Department of that project in accordance with Fish and Game Code Section 1602. I understand that a Department representative may need to inspect the property where the project described herein will take place before issuing a Lake or Streambed Alteration Agreement pursuant to this notification. In the event the Department determines that a site inspection is necessary, I hereby authorize the Department to enter the property where the project described herein will take place to inspect the property at any reasonable time and certify that I am authorized to grant the Department permission to access the property.

I request the Department to first contact me at (510) 508-7554 to schedule a date and time to enter the property where the project herein will take place and understand that this may delay the Department's evaluation of the project described herein.

  
 \_\_\_\_\_  
 Operator or Operator's Representative

11-10-04  
 \_\_\_\_\_  
 Date



# California Regional Water Quality Control Board

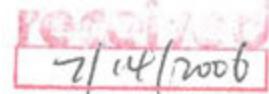
## San Francisco Bay Region



Jan Skopec  
Agency Secretary

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger  
Governor



Date: MAY 30 2006  
File No: 2198.09 (bkw)  
Site No: 02-01-C0804  
ACOE File No. 28514S

Mr. Vijay Agarwal  
38833 Bell Street, #206  
Fremont, CA 94536

Subject: Water Quality Certification for the Construction of Two Culverts to Support an Access Road at 2492 and 2512 D Street in Unincorporated Hayward in Alameda County

Dear Mr. Agarwal:

We have reviewed the application materials submitted by Vijay Agarwal (the Applicant), for the proposed placement of two culverts in un-named seasonal creek channels to support an access road at 2492 and 2512 D Street, in an unincorporated area of Alameda County, east of the City of Hayward, that is known as the Fairview Area (Project). In December of 2004, the Project received authorization from the United States Army Corps of Engineers (ACOE) under a Clean Water Act (CWA) Section 404 Nationwide Permit No. 14 (*Linear Transportation Projects*) (ACOE File No. 28514S). In accordance with Clean Water Act (CWA) Section 401, you have applied to this office for State water quality certification.

**Project Description:** The following Project description was derived from application materials received on November 17, 2004, and March 1, 2006. The Project site, located at a 2492 and 2512 D Street, in the unincorporated Fairview Area of Alameda County, is being subdivided for the construction of 16 single-family residences. A new private road will be constructed to provide access to the residences from D Street. This road will cross two un-named seasonal, headwater creek channels, identified in Project plans as Drainage 1 and Drainage 2. At Drainage 1, an existing culvert will be extended by about 40 feet, and, at Drainage 2, a new, 30-foot long culvert will be installed. Culverts will be constructed of 15-inch diameter, high density polyethylene pipe. Due to the steep topography of the site, the culvert outfalls will discharge to boulder cascades.

**Impacts:** The Project will permanently impact 0.044 acres of waters of the State at Drainage 1 and 0.016 acres of waters of the State at Drainage 2, for a total impact of 0.06 acres (2,614 square feet) of waters of the State. Impacts at Drainage 1 will extend over 40 linear feet (LF) of channel and impacts at Drainage 2 will extend over 30 LF of channel, for a total impact of 70 LF. About 739 cubic yards of engineered soil will be placed in Drainage 1 and about 521 cubic yards of engineered soil will be placed in Drainage 2, for a total fill volume of 1,260 cubic yards.

**Mitigation:** The two channels are currently dominated by non-native plant species. As mitigation for the Project's impacts, the Applicant will remove non-native pampas grass (*Cortaderia jubata*) from Drainage 2 and plant native trees within the eastern portion of Drainage 1 and along the entirety of Drainage 2. Native plantings will include the placement of 40 red willow (*Salix laevigata*) pole cuttings, and the seeding of narrow-leaved cattail (*Typha angustifolia*) at the former location of the pampas grass stand. Bare areas of soil along the drainages will be seeded with a mix of mugwort (*Asterias douglasiana*), California poppy (*Eschscholzia californica*), pigmy-leaf lupine (*Lupinus bicolor*), purple needlegrass (*Nassella pulchra*), figwort (*Scrophularia californica*), and three-weeks fescue (*Vulpia microstachys*), at a density of 15 pounds per acre.

**CEQA Compliance:** The Alameda County Planning Department filed a Notice of Determination for a Mitigated Negative Declaration for the Project on October 18, 2004.

**Certification and General Waste Discharge Requirements:** I hereby issue an order certifying that any discharge from the referenced Project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification. The following conditions are associated with this certification:

1. No debris, rubbish, creosote-treated wood, soil, silt, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or 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 waters of the State. Any of these materials placed within or where they may enter waters of the State by the Applicant, or any party working under contract, or with the permission of the Applicant, shall be removed immediately. When construction is completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed into waters of the State. During construction, neither the Applicant, nor any party working under contract, shall dump any litter or construction debris within waters of the State. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site;
2. The Applicant shall adhere to the conditions imposed by CWA Section 404, Nationwide Permit No. 14;
3. The Applicant shall adhere to the conditions imposed by the California Department of Fish and Game in the Streambed and Lake Alteration Agreement (Notification No. 1600-2004-0846-3) issued for the Project;
4. The Project shall be constructed in conformance with the Project Description and Mitigation Measures described in the application materials received by the Water Board on November 17, 2004, and the revised culvert designs received by the Water Board on March 1, 2006;
5. The culverts and outfalls shall be constructed in conformance with the *Improvement Plans for Tract Map 7337 in Unincorporated Territory of: Eden Township Alameda County*, prepared by GLA Civil Engineers, Inc. (414 Mason Street, Suite 404, San Francisco, CA 94102-1716), dated January 10, 2006 (Drainage 1 on Sheets 5 and 6 of 20; Drainage 2 on Sheets 7, 8, 9, and 15 of 20);
6. The Applicant shall implement all mitigation measures presented in the *Draft Stream Enhancement Plan for Agarwal Project at 2492 D Street Alameda County*, prepared by Heath Bartosh, Bear Republic Ecological Consulting, received by the Water Board on November 17, 2004. These measures shall include removing non-native pampas grass (*Cortaderia jubata*) from Drainage 2, placing 40 red willow (*Salix laevigata*) pole cuttings along Drainages 1 and 2, seeding narrow-leaved cattail (*Typha angustifolia*) at the former location of the pampas grass, and seeding bare areas of soil along the drainages with a mix of mugwort (*Asterias douglasiana*), California poppy (*Eschscholzia californica*), pigmy-leaf lupine (*Lupinus bicolor*), purple

needlegrass (*Nassella pulchra*), figwort (*Scrophularia californica*), and three-weeks fescue (*Vulpia microstachys*), at a density of 15 pounds per acre;

7. No equipment shall be operated in areas of flowing or standing water; no fueling, cleaning, or maintenance of vehicles or equipment shall take place within any areas where an accidental discharge to Arroyo del Valle may occur; construction materials and heavy equipment must be stored outside of the creek channel;
8. Prior to the start of the rainy season, the Applicant shall ensure that disturbed areas of the creek banks and disturbed areas that drain to the creeks are protected with correctly installed erosion control measures (jute, straw, coconut fiber erosion control fabric, coir logs, straw, etc.), and revegetated with propagules (seeds, cuttings, divisions) of locally collected native plants;
9. Where areas of bare soil are exposed during the rainy season, silt control measures shall be used where silt and/or earthen fill threaten to enter waters of the State. Silt control structures shall be monitored for effectiveness and shall be repaired or replaced as needed. Build up of soil behind silt fences shall be removed promptly and any breaches or undermined areas repaired at once;
10. To document the progress of native riparian vegetation planted as mitigation at the Project site, the Applicant shall establish at least four (4) permanent photo locations along the enhanced areas of Drainages 1 and 2 at the Project site. Photos taken from the photo-documentation points shall be included in the annual status reports for the Project (see Condition 11) to provide a visual evaluation of the site. Following planting, the Applicant shall photographically document the immediate post-planting condition of the site and submit a report to the Water Board, including the post-construction photographs, and a site map with the locations of the photo-documentation points;
11. The Applicant shall monitor and maintain native vegetation plantings for a minimum of five years after planting. Native vegetation plantings shall have a minimum survival rate of 80 percent at the end of the first five years following planting. If the survival rate drops below 80 percent during the first five years after planting, the Applicant is responsible for replacement plantings, watering, weeding, invasive exotic eradication, or any other practice necessary to attain the performance goals. Replacement plants shall be monitored and maintained to attain the survival and cover goals for five years after replanting. An annual status report shall be provided to the Water Board by December 31 of each year of monitoring and maintenance activities. This report shall include the survival rate of the plantings and photographs from the designated photo-documentation points (See Condition 10). Each report should assess the progress toward attaining survival and cover goals and any corrective measures necessary to achieve those goals;
12. This certification action does not apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to California Code of Regulations (CCR) Title 23, Subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought; and,
13. Certification is conditioned upon full payment of the required fee as set forth in 23 CCR Section 3833. Water Board staff received full payment on November 17, 2006.

Please be aware that any violation of water quality certification conditions is a violation of State law and subject to administrative civil liability pursuant to California Water Code (CWC) Section 13350. Failure to meet any condition of a certification may subject the Applicant to civil liability imposed by the

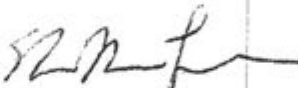


Regional Board to a maximum of \$5,000 per day of violation or \$10 for each gallon of waste discharged in violation of this action. Any request for a report made as a condition to this action (e.g., Conditions 10 and 11) is a formal request pursuant to CWC Section 13267, and failure or refusal to provide, or falsification of such requested report, is subject to civil liability as described in CWC Section 13268.

We anticipate no further action on this request. However, should new information come to our attention that indicates a water quality problem with this Project, the Water Board may issue Waste Discharge Requirements pursuant to 23 CCR Section 3857. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC Section 13330 and 23 CCR Section 3867.

Please contact Brian Wines of my staff at (510) 622-5680 or [bkw@rb2.swrcb.ca.gov](mailto:bkw@rb2.swrcb.ca.gov) if you have any questions. All future correspondence regarding this Project should reference the Site Number indicated at the top of this letter.

Sincerely,

*for*   
Bruce H. Wolfe  
Executive Officer

cc: SWRCB-DWQ, Oscar Balaguer  
USACE, San Francisco District, Attn: Regulatory Branch, 333 Market Street, San Francisco, CA  
94105 -2197 (File No. 28514S)  
U.S. EPA, Tim Vendlianski, WTR-8.  
CDFG, Central Coast Region, Attn: Robert Floerke, Regional Manager, P.O. Box 47, Yountville  
CA 94599 (Notification No. 1600-2004-0846-3).