

EMERGENCY PROJECT PROCESS

This document is intended to provide private landowners in Marin County with guidance and direction around the emergency permitting process. Please consult with the agencies identified below, as regulations are subject to change. Before an emergency project can be approved by CA Department of Fish and Wildlife (CDFW) or Regional Water Quality Control Board (RWQCB), the project must fit California Environmental Quality Act's (CEQA) criteria for an 'emergency' as they are subject to state law. CEQA is the statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid and/or mitigate those impacts. The Army Corps of Engineers defines an emergency separate from CEQA and is described in a section of this document, below. If the project is not determined to be an emergency project by the agencies, then the landowner must comply with the standard permitting procedure. The CDFW, RWQCB and ACOE have legal obligations to protect natural resources. The RWQCB and ACOE **must** be contacted **prior** to undertaking an emergency project.

DEFINITIONS OF AN EMERGENCY

CEQA Emergency Project Defined

§ 21060.3. EMERGENCY

"Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

For example, if a residential bridge was deteriorating for a period of time, lacking needed maintenance and falls out during a storm, it is not considered an 'emergency' because the collapse could have been prevented.

CEQA Emergency Project Exemptions

15269. EMERGENCY PROJECTS

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Section 180.2 of the Streets and Highways Code, Section 180 et Seq.

US Army Corps of Engineers (ACOE) defines an emergency separate from CEQA and states,

“An emergency situation is present where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services (i.e., a situation that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately).”

PERMIT AUTHORIZATIONS

Regional Water Quality Control Board (RWQCB) and Army Corps of Engineers (ACOE)

The ACOE’s emergency permit is a Regional General Permit region 5 and triggers the RWQCB’s emergency process. The ACOE would like notice of the emergency via fax, phone or email with plans for immediate remedy / emergency stabilization. This permit is approved for a short period of time to prevent complete failure and stabilize the emergency and includes emergency notice to wildlife agencies (National Marine Fisheries Service, U.S. Fish and Wildlife Service) if listed threatened or endangered species are present. A report is due within 45 days of project completion with details of the work and engineering plans. If listed species are present, the ACOE will complete the emergency consultation with the wildlife agency. The emergency stabilization is generally not the entire repair and the applicant can apply for a well thought out repair that includes mitigation for both the emergency work and full stabilization.

To obtain the RGP5 application issued and authorized by ACOE please visit;

http://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.shtml

Step 1:

- 1) You must notify ACOE and wait for approval to proceed under the Regional General Permit. You may notify them via phone, fax, email or mail;

South Branch Chief, Katerina Galacatos at 415-503-6778 or Katerina.Galacatos@usace.army.mil or fax 415-503-6990

If mailing, notification should be sent:
ATTN: Katerina Galacatos
U.S. Army Corps of Engineers
San Francisco District
Regulatory Division, CESP-N-R
1455 Market Street
San Francisco, CA 94103-1398

- 2) Simultaneously, notify RWQCB's case handler for Marin County 48 hours prior to starting construction;

Nicole Fairley at Nicole.Fairley@waterboards.ca.gov or by phone at 510-622-2424. If Nicole is unavailable, contact the Section Leader, Xavier Fernandez at Xavier.Fernandez@waterboards.ca.gov or by phone at 510-622-5685. Finally, if Xavier is also unavailable, contact the Division Chief, Keith Lichten at Keith.Lichten@waterboards.ca.gov or by phone at 510-622-2380.

Then the applicant has 3 days to send \$720 and a completed Notice of Intent form to the RWQCB at:

ATTN: 401 Certifications, Marin County
1515 Clay Street, Suite 1400
Oakland, CA 94612

Send a copy of the NOI to the State Board Program Manager via mail to the following address:

ATTN: Bill Orme
CWA Section 401 WQC Program
Division of Water Quality
State Water Resources Control Board
1001 "I" St. 15th Floor
Sacramento, CA 95814

- 3) Once the NOI (found online at http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/1745862_sb14008in_attachment_d.docx) and \$720 check has been sent to RWQCB in Oakland, work MUST commence within 7 days of receiving a notice of applicability (notice from the Water

Board that the Enrollee has successfully enrolled under this Certification) and there is a 6 month period to complete the project with a potential 30-day extension if given permission.

- 4) Mitigation may be required and details can be seen in **Section 2. Notification/Communication, e. Mitigation** at:
http://www.spn.usace.army.mil/Portals/68/docs/regulatory/Emergency%20Permits/RGP5_2014.pdf
- 5) Within 45 days of completing the project, a Notice of Completion Form is required and can be found at http://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.shtml. This form will need to be completed and mailed to the designated representatives at ACOE, RWQCB and SWRCB to the addresses previously listed.

Step 2:

CA Department Fish and Wildlife

There is no fee involved in this process with CDFW

Code Section 1610 states that notification is not required to commence emergency work but CDFW *MUST be notified in writing within 14 days AFTER work begins*. Once the project is completed, you will need to submit a post project report with information typically included in a 1600 Streambed Alteration Agreement application. CDFW typically considers emergency work to be immediate and temporary in nature; not a permanent fix to the problem. If there is time to design the project, it is not a true emergency and the project proponent should apply for a 1600 permit upfront.

The CEQA definition of an emergency applies to this code and includes projects that require;

- 1) Immediate emergency work necessary to protect life or property
- 2) Immediate repairs to public service facilities in order to maintain service as a result of a disaster in an area where the Governor has declared a state of emergency AND/OR
- 3) Emergency projects undertaken, carried out or approved by a state or local governmental agency to maintain, repair, or restore an existing highway, that has been damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage

The notification requirement can be met by completing the form at:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=3781&inline>

Submit the notification to the Department regional office at:

ATTN Scott Wilson
7329 Silverado Trail
Napa, CA 94558

Although under Code Section 1610 the notification requirement is exempt, other provisions in the CDFW code are applicable such as section 5650 (prohibiting the discharge or release of deleterious substances or materials) and section 5901 (prohibiting the construction or maintenance of any device or contrivance that prevents or impedes fish passage). In addition, the work conducted should prevent toxic materials entering the creek that can be deleterious to aquatic life in addition to reducing disturbance or removal of vegetation.

Step 3:

County of Marin

Notify the County that there is an emergency by calling Land Development Berenice Davidson at (415) 473-3770 or by emailing to BDavidson@marincounty.org. The general number to reach the Land Development Department is (415) 473-6549. The landowner can then install temporary measures to abate a true emergency. The County does not issue emergency permits for this temporary work, however after the site has been stabilized, the applicant then needs to propose a permanent solution and get a creek permit from the Land Development Department who requires that the landowner show that they have input from other agencies before they issue the County Creek Permit for the final project.

The County Creek Permit can be found online at:

http://www.marincounty.org/~media/files/departments/pw/forms/land-use/creek_permit.pdf