



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS
~~100 MARKLETON STREET~~ 211 Main St.
SAN FRANCISCO, CALIFORNIA ~~94102~~ 94105

REPLY TO
ATTENTION OF:

SPNCO-R

6 July 1976

PUBLIC NOTICE NO. 71-22(b)

TO WHOM IT MAY CONCERN:

1. On 11 June 1971 the San Francisco District, by Public Notice 71-22, announced that it would exercise its regulatory authority pursuant to the Rivers and Harbors Act of 1899 (33 U.S.C. 401, et seq.) over navigable waters of the United States subject to tides up to the line on shore reached by the plane of the mean higher high water. On 18 January 1972 this District elaborated upon Public Notice 71-22 and announced in Public Notice 71-22(a) that Corps permits also would be required for all new work in unfilled portions of the interior of diked areas below former mean higher high water. The United States District Court for the Northern District of California recently upheld the exercise of jurisdiction announced in those public notices in the case of Leslie Salt Co. v. Froehlke, No. 73-2294 WTS (March 11, 1976).
2. Following the Leslie Salt decision, the San Francisco District received further guidance from the Office of the Chief of Engineers regarding the exercise of Rivers and Harbors Act jurisdiction over the Hahn Shopping Center site in Corte Madera, California, portions of which lie landward of dikes and below former mean higher high water. This District announced the terms of that guidance in Public Notice 11101-47 on 21 June 1976. The purpose of this public notice is to set forth the general criteria by which the San Francisco District will exercise its Rivers and Harbors Act jurisdiction in areas landward of dikes and below former mean higher high water in light of the guidance announced in Public Notice 11101-47. This public notice is a statement of administrative policy only and does not purport to affect the definition of the Corps' legal jurisdiction, which definition is a matter of Congressional or judicial determination. This Public Notice also does not pertain to the Corps' authority pursuant to Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344).
3. Rivers and Harbors Act permits will continue to be required for all new work landward of dikes below former mean higher high water as announced in Public Notice 71-22(a), except where any of the following conditions are present:
 - (a) the work will occur in an area which would not return to its former condition of daily tidal inundation even if the dikes were broken; or
 - (b) the work will occur in an area characterized by the prevalence of streets, houses, and other similar construction; or
 - (c) the work will occur in an area which was not historically inundated, such as an area which subsided below the mean higher high water line after construction of a dike.

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4. In order for the District Engineer to determine whether proposed work falls within any of the foregoing criteria, persons intending to undertake new work landward of dikes and below former mean higher high water should submit their plans for such work to the District Engineer before commencement thereof. Inquiries regarding the applicability of the policies and practices set forth herein should be addressed to the District Engineer, U. S. Army Engineer District, San Francisco, 211 Main Street, San Francisco, California, 94105, ATTENTION: Regulatory Functions Branch, (phone: 415-556-5966).

H. A. FLERTZHEIM, JR.
Colonel, CE
District Engineer