



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

PUBLIC NOTICE

PROJECT: Sonoma Marin Area Rail Transit (SMART) IOS-1 South

PUBLIC NOTICE NUMBER: 2011-00346N

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COMMENTS DUE DATE: July 7, 2013

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1. **INTRODUCTION:** The Sonoma Marin Area Rail Transit (POC: Mr. Bill Gamlen, 707-794-3330, 5401 Old Redwood Highway, Suite 200, Petaluma, California 94954), through its agent, ICF International (POC: Ms. Leslie Allen, 415-677-7143, 620 Folsom Street, Suite 200, San Francisco, California 94107), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill material into jurisdictional waters of the United States associated with the reconstruction and modification of rail line along approximately 18 miles of existing track in Sonoma County and Marin County, California. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*), and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The project site is located along the SMART railroad right-of-way (ROW) from milepost (MP) 37.02 in Petaluma, Sonoma County, California down to milepost 19.3 in San Rafael, Marin County, California.

Project Site Description: The SMART rail line from Petaluma to San Rafael is single-track, generally running along the center line of the ROW, with an occasional second track used for passing. The ROW varies in width from 50 feet to 150 feet, but an estimate of the average width is 60 feet. The entire line has been altered over the last 100 years to accommodate rail construction, maintenance, and many commercial and industrial access users. The southern limit of the line begins near the Highway 101 overpass, and from there northward to Gallinas Creek it occurs mostly in residential and

commercial development and some undeveloped lands and wetland areas. From the creek to the community of Hamilton (MP 23.1), the line passes through undeveloped lands associated with ranches and wetlands. Then to MP 29.3 the line passes through higher density residential, commercial, and industrial development in the City of Novato, with some undeveloped lands and wetland areas. From Basalt Creek to the terminus of the alignment, land uses consist of primarily undeveloped lands associated with large areas of wetland and agricultural areas.

The condition of the track varies. From MP 19.3 to MP 25.8 the track is currently out of service and has not been commercially used for 20 years, with little to no maintenance. Some bridges are safe only for small work equipment and hi-rail vehicles. Vegetation is generally unmaintained and there are several areas that have washed out from flood events in the past. North of MP 25.8, the track is still in use and maintained to a Class II railroad providing freight service on a weekly basis.

Project Description: As shown on the project drawings titled "IOS-1 South Permit Application," dated May 2013, available at <http://www.spn.usace.army.mil/Portals/68/docs/regulatory/publicnotices/2011-00346plans.pdf> (28MB PDF file), the applicant proposes railway improvements along 17.72 miles of the Northwest Pacific Railroad (NWP) from San Rafael in Marin County (MP 19.3) north to just south of the Petaluma River in Sonoma County (MP 37.02) (Figures 1 and 2). Project construction is anticipated to begin in September 2013 and will take approximately three years to complete. As the railway is an existing facility, construction activities associated with the project would involve rehabilitation of the existing track, improvements to grade crossings, replacement and repair of various bridges, replacement of drainage culverts,

installation of additional culverts, installation of a new signal system, and installation of safety structures within portions of the ROW. During the construction period of IOS-1 South, the entire ROW at any given point could be used as a staging area at some point (with the exception of areas delineated as wetlands, waters or other sensitive habitats) for the storage of construction equipment and materials. Additional off-site staging in existing available yards and nearby commercial properties may be used as the contractor is able to negotiate their use. Twelve offsite locations have been identified as potential staging areas for storage of construction equipment and material (Figure 3). The project is divided into four main elements: 1) track work, 2) bridges, 3) culverts, and 4) systems and communication improvements.

Track work would consist primarily of rail rehabilitation, including replacement of ties and rail, and widening of the guideway with existing and new ballast (Figure 4). Most of the ground disturbance occurs from this work. Additional work that would occur as part of track work would include the installation of permanent retaining walls, restoration of old drainage ditches, restoration of at grade crossings, and ground preparations for the installation of the rail's systems and communications elements for operations, such as signal installations.

The current track crosses 15 bridges (Figure 5). Two of the bridges are for cattle crossing underpasses and 13 are waterway (stream/slough/wetland) crossings. The cattle crossing underpass bridges (MP 21.72 and MP 22.32) will be replaced with concrete box culverts, one 12 feet wide and one 10 feet wide. Most of the existing bridges are timber open deck or timber ballast deck. The Schultz Slough bridge is a concrete deck on concrete piles, and the Gallinas Creek bridge has one span of steel thru girder. The proposed bridge work at the 13 waterway crossings, which includes full bridge replacements (six bridges), bridge support structure replacement, or bridge repairs is shown on Figure 5 and the "IOS-1 South Bridge Details," dated April 22, 2013.

A total of 89 existing culverts have been identified within the ROW; 87 are located underneath and more or less perpendicular to the rail line and two overlap partially with the ROW. Some of the existing culvert crossings consist of multiple culvert pipes (i.e., double barrel culvert at one location). Eleven (11) of the 87 culverts crossed by the rail line will remain intact and left in place. Culverts at three locations will be extended, and existing culverts at

39 locations will be replaced. Three existing timber bridges (the two cattle crossing underpass bridges and the bridge across Pacheco Creek, as mentioned above will be replaced with concrete box culverts. Seventy-nine (79) new culverts will be installed under the rail line at forty locations; some culverts will be single barrel or single box culverts while others will be multiple barreled or multiple boxed culverts. The proposed design of new and replacement culverts in IOS-1 South was informed by a 2011 hydrologic and hydraulic analysis at 30% design.

Systems and communication improvements are required for safe railroad operations. The existing system is antiquated, unreliable, and unsafe. The current conditions of these systems are also not sufficient for higher speed trains carrying passengers. The improvements will primarily include automatic cab signaling, automatic train control, automatic train stop system, and positive train control. All of these systems are designed for railroad safety first and railroad efficiency second. The two primary activities involved with systems and communications improvements are the installation of conduit banks and signal installations. None of the activities associated with systems and communication improvements would result in any additional impacts to wetlands, drainages or other surface waters other than what is shown on the proposed conditions maps.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is to rehabilitate an existing railroad line for use as a high speed passenger rail.

Overall Project Purpose and Need: The overall project purpose serves as the basis for the Section 404(b)(1) alternatives analysis, and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, while allowing a reasonable range of alternatives to be analyzed. The overall project purpose is to provide an efficient and reliable multimodal transit option, consisting of passenger rail service and an ancillary pedestrian and bicycle pathway for local and regional travelers in Sonoma and Marin Counties, cities and towns. The applicant states there is a need for a diverse, multimodal transportation system within Sonoma and Marin Counties, which is reflected in the growing

congestion, travel times, and delays on highway 101, especially during peak travel periods.

Project Impacts: The project would result in the permanent loss of 1.971 acres of jurisdictional waters of the U.S. and temporary impacts to 5.879 acres of jurisdictional waters of the U.S. mainly from dewatering of creeks.

Proposed Mitigation: The applicant has proposed to mitigate for freshwater wetlands at a 1:1 ratio through purchase of in-kind wetland establishment or restoration wetland credits in an approved mitigation bank with a service area that covers the project site. In addition, salt marsh, brackish marsh, and open waters would be mitigated at a 2:1 ratio through purchase of in-kind creation or restoration credits at an approved mitigation bank hydrologically connected to San Francisco Bay.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed, if the RWQCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period.

Coastal Zone Management: Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification that indicates the activity conforms with the State's coastal zone management program. Generally, no federal license or permit will be granted until the appropriate State agency has issued a

Consistency Certification or has waived its right to do so. The project does not occur in the coastal zone, and a *preliminary* review by USACE indicates the project would not likely affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by the San Francisco Bay Conservation and Development Commission.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111, by the close of the comment period

Other Local Approvals: The applicant will be applying for the following additional governmental authorizations for the project: Section 1602 Lake or Streambed alteration agreement for modification of streams and selected culverts through the California Department of Fish and Wildlife.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the project neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's Regulations at 40 C.F.R. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

Endangered Species Act (ESA): Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, USACE has conducted a review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant, to determine the presence or absence of such species and critical habitat in the project area. Based on this review, USACE has made a preliminary determination that the federally listed threatened Green sturgeon (*Acipenser medirostris*), endangered coho salmon (*Oncorhynchus kisutch*), threatened Central California coastal steelhead (*Oncorhynchus mykiss*), endangered California red-legged frog (*Rana draytonii*), endangered California clapper rail (*Rallus longirostris obsoletus*), and salt marsh harvest mouse (*Reithrodontomys raviventris*), and designated critical habitat are present at the project location or in its vicinity, and may be affected by project implementation. To address project related impacts to these species and designated critical habitat, USACE will initiate consultation with USFWS and NMFS, pursuant to Section 7(a) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area. Based on this review, USACE has made a *preliminary* determination that EFH is present at the project location or in its vicinity, and that

the critical elements of EFH may be adversely affected by project implementation. To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRS of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely affect sanctuary resources. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce, or his designee.

National Historic Preservation Act (NHPA): Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this undertaking, USACE has conducted a review of latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant, to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are present in the permit area, and that such

resources may be adversely affected by the project. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

5. COMPLIANCE WITH THE SECTION 404(b)(1)

GUIDELINES: Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is not dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the (rebuttable) presumption of the availability of a less environmentally damaging practicable alternative to the project that does not require the discharge of dredged or fill material into special aquatic sites. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

6. PUBLIC INTEREST EVALUTION: The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

7. CONSIDERATION OF COMMENTS: USACE is soliciting comments from the public; Federal, State and local agencies and officials; Native American Nations or

other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Bryan Matsumoto, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent, or by contacting the Regulatory Permit Manager by telephone or e-mail cited in the public notice letterhead. An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>