



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, CA 94103-1398

# PUBLIC NOTICE

PROJECT: Reissuance of RGP 6  
(Southern Sonoma County Resource Conservation District levee maintenance)

PUBLIC NOTICE NUMBER: 2004-249121N

PUBLIC NOTICE DATE: October 18, 2017

COMMENTS DUE DATE: November 17, 2017

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**1. INTRODUCTION:** The Sonoma Resource Conservation District (RCD) (POC: Kari Wester), 1221 Farmers Lane, Suite F, Santa Rosa, California 95405, has applied to the U.S. Army Corps of Engineers (Corps), San Francisco District, for reissuance of Department of the Army Regional General Permit (RGP) 6 to authorize dredging in the Petaluma River drainage basin in Sonoma and Marin Counties and the Sonoma Creek drainage basin, Sonoma County, California for the purpose of obtaining material to maintain existing levees. 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.*).

The current permit remains valid until October 31, 2017. The duration of this reissuance would be for an additional five years.

**2. PROPOSED PROJECT:**

**Project Site Location:** These levee maintenance projects are located within the Petaluma River drainage basin in Sonoma and Marin Counties and the Sonoma Creek drainage basin, Sonoma County, California (see attached vicinity map).

**Project Site Description:** All of the project sites contain levees which protect the parcels from flooding in the adjacent jurisdictional waters. All of these levees have been maintained for at least 19-20 years, and many were constructed prior to the passage of the Clean Water Act.

**Project Description:** The sponsoring agency, the RCD, has applied for authorization for 25 participating

members (down from 32 members at the issuance of the previous RGP) to dredge material from the channels and/or wetlands adjacent to the existing levees on their property for the purpose of obtaining material to maintain the levees. Attached are figures, showing the location of all of the levee parcels. The owners of these parcels shall use this RGP to maintain their levees.

**Basic Project Purpose:** The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by the Corps to determine whether the project is water dependent. The basic project purpose is to maintain existing levees.

**Overall Project Purpose:** 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 maintain levees which are damaged from winter storms or are in need of periodic maintenance. The levees are necessary to protect private land. These activities have been conducted for the last 19 years under Department of the Army permits.

**Project Impacts:** This regional general permit would authorize the dredging of up to 4 cubic yards (cy) of material within jurisdictional waters and wetlands per foot of levee, not to exceed 10,000 cy per property owner, per year. There are currently 25 property owners approved by the RCD to use this permit. However, it is rare for more than 10 property owners to use this permit in any given year and almost all impacts are less than 6,000 cubic yards of material dredged per year per property owner.

**Proposed Mitigation:** Mitigation for this project has been completed. Under an agreement approved by the Corps, the applicant, EPA, and USFWS, the applicant was required to mitigate for disturbance created by levee maintenance with the construction of 71 acres of wetland in association with the Tolay Creek Restoration Project located south of the Highway 121/37 intersection in Southern Sonoma County, California.

All agencies agreed that the mitigation was to mitigate for levee maintenance activities in perpetuity. The mitigation acreage was derived by determining the maximum annual acreage of wetland disturbed by levee maintenance activity. This disturbed acreage was then multiplied by five, based on an assumption that the disturbed area would take five years to recover. This acreage yielded the required 71 acres of mitigation.

**Project Alternatives:** Impacts could be avoided to waters of the U.S. if the material for levee repairs was taken from upland sources. However, the purchase and transportation of this material would result in a very high cost, which would be impracticable for the property owners.

### 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.*). The applicant will submit an application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the project. The applicant is hereby notified that, unless the Corps is provided documentation indicating a complete application for water quality certification has been submitted to the California Regional Water Quality Control Board (RWQCB) within 30 days of this Public Notice date, the District Engineer may consider the Department of the Army permit application to be withdrawn. 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. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant is hereby advised to apply for a Consistency Determination from the San Francisco Bay Conservation and Development Commission to comply with this requirement.

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:** RGP 6 is administered by the Southern Sonoma Resource Conservation District, and any levee maintenance work must be approved by the SSRCD prior to any work being performed by a property owner under this RGP.

### 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, the Corps 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, the Corps 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 U.S. Army Corps 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 the Corps and other non-regulated activities the Corps 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, the Corps consulted with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) during the previous permit action as required by Section 7 of the Endangered Species Act of 1973. Consultation included the salt marsh harvest mouse (*Reithrodontomys raviventris*), Ridgway's rail (*Rallus obsoletus*), the Sacramento splittail (*Pogonichthys macrolepidotus*), and the green sturgeon (*Acipenser medirostris*). The USFWS and NMFS determined that project activities would not adversely affect these species when reasonable and prudent measures were incorporated into the project. Based on this, the Corps has made a *preliminary* determination that Federally-listed species and designated critical habitat may be present at the project locations or in their vicinity, and that consultation will be 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, the Corps 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, the Corps has made a *preliminary* determination that there would be no adverse effects to EFH. The Corps will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by NMFS.

**Marine Protection, Research, and Sanctuaries Act (MPRSA):** Section 302 of the MPRSA 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 the Corps 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, the Corps 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, the Corps has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. The Corps will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until the Corps concludes Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

**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)). Since the project does not entail the discharge of dredged or fill material into waters of the United States that would result in more than minimal adverse environmental effects, application of the Guidelines will not be required.

**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:** The Corps 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 the Corps 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, 16<sup>th</sup> Floor, San Francisco, California 94103-1398, or by email at [bryan.t.matsumoto@usace.army.mil](mailto:bryan.t.matsumoto@usace.army.mil); comments 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 San Francisco District website: <http://www.spn.usace.army.mil/Missions/Regulatory>.