



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: Wrigley, Ford, and Wrigley-Ford Creek Maintenance

PUBLIC NOTICE NUMBER: 2011-00097S

PUBLIC NOTICE DATE: May 9, 2011

COMMENTS DUE DATE: June 9, 2011

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1. **INTRODUCTION:** The City of Milpitas (POC: Mr. Fernando Bravo, 408-586-3328, 455 East Calaveras Boulevard, Milpitas, California 95035-5411), through its agent, H.T. Harvey & Associates (POC: Mr. Max Busnardo, 408-458-3222, 983 University Avenue, Building D, Los Gatos, California 95032) 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 to increase and maintain flow capacity within the Wrigley-Ford, Ford, and Wrigley Creeks in Milpitas, 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.).

2. PROPOSED PROJECT:

Project Site Location: The Project area encompasses approximately 6.79 acres within the bed and banks of Ford Creek, Wrigley Creek, their confluence, and the reach just downstream of the confluence known as Wrigley-Ford Creek located in the City of Milpitas, Santa Clara County California (figure 1).

Project Site Description: The Project area contains 0.76 acre of willow riparian, 1.88 acres of freshwater emergent wetland, 2.81 acres of ruderal vegetation/bare ground, 0.28 acre of ornamental/landscaped, and 0.23 acre of developed land. The downstream terminus of the Project area at the Wrigley-Ford Creek pump station is located just upstream of the confluence of Wrigley-Ford Creek with Berryessa Creek.

Project Description: Based on a hydrologic study conducted by Shaaf & Wheeler the flood conveyance in this area is substantially reduced relative to the design

capacity of the system. The reduced flood conveyance is due to sediment accumulation, combined with increased channel roughness caused by riparian and wetland vegetation establishment. Work to alleviate these concerns would be broken into two categories, initial actions and long-term maintenance. Initial actions within Ford Creek would include pruning existing willow trees (to a height of 1.5 feet above the existing top of bank), removal of some existing willow trees (trees that are obstructing flow in the channel bottom), grading in the vicinity of root wad removal (approximately 520 linear feet), sediment removal from within two, 48-inch diameter culverts, and mechanical removal of tall-emergent wetland vegetation. Long-term maintenance would include keeping woody vegetation from becoming established, trimming herbaceous vegetation within the channel, and removal of sediment from culverts, as needed. Within the reach of Wrigley Creek, initial measures would include removal of a portion of willows currently obstructing flow. Long-term maintenance in Wrigley Creek would include sediment removal from culverts under Hwy 237 and from an associated sediment detention basin in Wrigley Creek, as well as precluding woody vegetation from becoming established on the channel banks to maintain flow capacity. Finally, initial measures on Wrigley-Ford Creek would include removal of sediment from the four culverts under Railroad Court, and pruning of willow canopy. Long-term maintenance would include periodic removal of sediment that accumulates within the culverts, pruning of woody vegetation rooted on the eastern creek bank, and trimming of herbaceous vegetation on the western creek bank. The attached drawings depict the applicant's proposed project (figures 2 – 4).

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 prevent flooding.

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 increase and maintain flow capacity within the Wrigley-Ford, Ford, and Wrigley Creeks in Milpitas, California, in order to prevent and/or reduce flooding, and contain large flood events within the channels of Ford, Wrigley, and Wrigley Ford creeks.

Project Impacts: The project would temporarily impact 0.21 acre of wetland vegetation either through culvert outlet excavation, sediment excavation within the Upper Ford Creek channel, mechanical wetland vegetation removal within the Lower Ford Creek channel, and/or annual mowing activities within the Upper and Lower Ford Creek. Effects would occur to 0.22 acre of riparian habitat as a result of tree removal and pruning. Each occurrence of culvert cleaning and culvert outlet excavation would result in effects to 85 linear feet of channel through the removal of 245 cubic yards of sediment. Initial sediment excavation within the Upper Ford Creek channel would affect 520 linear feet through removal of 125 cubic yards of excavation.

Proposed Mitigation: The City of Milpitas has submitted a mitigation and monitoring plan that describes the type and quantity of impacts to jurisdictional habitats, and presents the conceptual mitigation and monitoring plan to compensate for these impacts. The goal of the plan is to establish at least 0.87 acre of high-quality riparian habitat and at least 0.21 acre of wetland habitat within the project site. Riparian habitat impacts would be mitigated at a ratio of 3:1 through restoration of riparian habitat immediately upstream of the confluence of Wrigley-Ford Creek and Berryessa Creek (figure 5). Impacts to existing wetland vegetation are considered temporary since wetland habitat is expected to naturally re-establish along Ford Creek within the footprint of the propose excavation. The temporary wetland habitat impacts would be mitigated in-place, in-kind, and at a 1:1 ratio. This would be achieved through the maintenance of suitable conditions for the persistence of wetland vegetation within the bed and banks of Ford Creek. The wetland mitigation site would be monitored for 5 years and the riparian mitigation site would be monitored for 10

years. Successful completion of compensatory mitigation would require agency acknowledgement upon final submittal of the annual monitoring report.

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 has recently submitted an application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the project. 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: 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

Other Local Approvals: The applicant has also applied for a Streambed Alteration Agreement to be issued by the California Department of Fish and Game.

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 insure 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 Federally-listed species and designated critical habitat are not present at the project location or in its vicinity, and that consultation will not be required. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by USFWS and/or NMFS

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 National Marine Fisheries Service (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 not present at the project location or in its vicinity, and that consultation will not be required. USACE 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 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 reviewed 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 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.

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 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 practicable alternative to the project that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. USACE has made a *preliminary* determination that the review of on-site alternatives that considers a range of avoidance and minimization measures demonstrates that the proposed project is the least damaging practicable alternative.

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 Paula Gill, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-13978; 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 *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/regulatory/>.