



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: Pine Gulch Creek Watershed Enhancement Project

PUBLIC NOTICE NUMBER: 2000-25428N

PUBLIC NOTICE DATE: 09-08-2011

COMMENTS DUE DATE: 10-08-2011

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1. INTRODUCTION: The Marin Resource Conservation District (POC: Nancy Scolari, 415-663-1170, P.O. Box 1146, Point Reyes Station, California 94956), through its agent, Huffman-Broadway Group, Inc. (POC: Gary Deghi, 415-925-2000, 828 Mission Avenue, San Rafael, California 94901), 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 construction of five irrigation ponds located at three farms in the community of Bolinas, Marin County, California. The duration of authorization, should it be accepted, would be for five years from the date of the permit issuance. 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 is located at three contiguous farms in the community of Bolinas, Marin County, California (Figure 1). Fresh Run Farms is located at 615 Paradise Valley Road (APN 188-090-15); Paradise Valley Farm is located at 235 Paradise Valley Road (APN 188-150-69); and Star Route Farms is located at 95 Olema-Bolinas Road (APNs 188-170-45 and 193-010-19) (37.909 degrees N-122.687 degrees W). The farms are accessed from Olema-Bolinas Road and Horseshoe Hill Road and occur along Pine Gulch Creek.

Project Site Description: The three farms are located in the lower portion of the Pine Gulch Creek watershed within 2.5 miles of the creek mouth. The creek runs 8.7 miles in a south-easterly direction before flowing into Bolinas Lagoon and then into the Pacific Ocean. Lower Pine Gulch Creek has been in agricultural production for

the last several generations, and some of the infrastructure has been in place since the late 1800's. All of the pond locations occur in areas that have a history of ongoing human use for logging and grazing in the upper areas and farming in the lowlands. To the east and west of the site are forested ridges of Douglas fir, coast live oak, and California bay communities.

A delineation verification at the project site was conducted by USACE personnel on March 24, 2010. Based on that verification, USACE identified 3.92 acres of wetlands and 0.51 acre of other waters that are jurisdictional waters of the U.S. (Figure 2)

Project Description: The applicant proposes to construct five off-stream irrigation storage ponds. As shown on the attached engineering drawings, all five ponds would be constructed above ground using fill material to construct berms to contain water for irrigation purposes (Figures 3 thru 7). Pond 1A is designed to hold 3.5 acre-feet of water (Fresh Run Farms), Pond 1B would hold 17 acre-feet (Fresh Run Farms), Pond 2 would hold 5.5 acre-feet (Paradise Valley Farm), Pond 3A would hold 26 acre-feet, and Pond 3B would hold 9.4 acre-feet (Star Route Farms). Points of diversion of water storage volumes from Pine Gulch Creek are shown on the attached drawings.

At all three farms, existing or new pumps placed alongside the creek at the point of diversion would draw surface water from Pine Gulch Creek through intake valves. The end of each intake valve would be covered with a screen to filter objects and sediment. A combination of existing pipes, replacement pipes, and new pipes would be used to convey the water from the creek to the irrigation ponds. These pipes would extend up the creek bank and would primarily follow existing farm

roads between the creek and the new irrigation ponds. Water from the irrigation ponds would be distributed with a water distribution system at least partially consisting of new underground pipes. Pumping of water and draw down of water would vary year to year, but would generally be managed to improve habitat for the federally listed threatened California red-legged frog (*Rana draytonii*).

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 eliminate agricultural diversions from Pine Gulch Creek.

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 eliminate commercial agricultural diversions of water for irrigation during periods of the year when water flow is naturally low in any case, thereby improving the habitat that Pine Gulch Creek provides to listed salmonids while maintaining commercial agricultural production.

Project Impacts: The construction of Pond 1A would not result in impacts to USACE jurisdiction, however, the construction of Ponds 1B, 2, 3A, and 3B would result in the permanent loss of 1.10 acre, 0.41 acre, 0.03 acre, and 1.45 acre respectively, for a total of 2.99 acres of jurisdictional seasonal wetlands impacts.

Proposed Mitigation: The applicant believes that the project would be self-mitigating and anticipates that the construction of the irrigation ponds would result in the creation of 1.13 acre of wetland and 4.32 acres of open water.

In addition, the applicant would include a riparian enhancement plan for impacts to existing riparian habitat for construction of Pond 3A.

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 California Coastal Commission.

Coastal zone management issues should be directed to the District Supervisor, California Coastal Commission, North Central Coast District Office, 45 Fremont Street, Suite 2000, San Francisco, California 94105-4508, by the close of the comment period.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project: A Streambed Alteration Agreement with the California Department of Fish and Game and has applied for and received a California Environmental Quality Act Mitigated Negative Declaration from Marin County on November 15, 2007.

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 the Federally-listed California red-legged frog is present at the project location or in its vicinity, and may be affected by project implementation. The project location provides suitable aestivation, migration, foraging, and breeding habitat for the frog.

To address project related impacts to this species the Marin County Agricultural Commissioner and the USFWS entered into a Programmatic Safe Harbor Agreement (Agreement) related to the frog. The Agreement serves as a basis for the USFWS to issue an Enhancement of Survival Permit under Section 10(a)(1)(A) of the Act, and authorizes incidental taking of the frog associated with construction of 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 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 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 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 the 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 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. 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 the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments.

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 practicable alternative to the project that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

6. PUBLIC INTEREST EVALUATION: 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 94103-13978; 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/>.