



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: 2009-00447N

PUBLIC NOTICE NUMBER: 2009-00447N

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COMMENTS DUE DATE: August 30, 2012

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1. **INTRODUCTION:** The California Department of Transportation (Caltrans, POC: Ms. Sharon Stacey 530-225-3513) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, to amend a Department of the Army Permit to rehabilitate or replace deteriorated culverts and install standard drainage inlet and outlet structures located in Mendocino County. USACE proposes to amend a recently issued Regional General Permit (RGP) which authorized culvert work along State Routes (SR) 128 and 253. A RGP is used to authorize recurring activities within a defined regional geographic area that do not have more than minimal impacts either individually or cumulatively on the aquatic environment. The amendment would expand the defined regional geographic area to include the County of Mendocino. 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: All Caltrans culvert rehabilitation and replacement projects within Mendocino County that are in accordance with the below project description would qualify for authorization under the modified RGP. The currently proposed work would occur along SR 128 and would include a 50.9 mile stretch from SR 1 to the Sonoma County Line near Highway 101. Work along SR 253 would include a 17.5 mile stretch from Anderson Valley to Highway 101 south of Ukiah. Work would also be occurring along SR 1 between Post Miles 3.87 and 47.19 and along SR 20 between Post Miles 13.76 and 48.90. All of the work would occur close to the roadways and within the Caltrans right-of-way. The project area for individual culvert replacements would

consist of the immediate vicinity of each culvert including approximately 0.15 acre on the upstream and downstream sides of the roadway. See the enclosed project location maps (figures 1 and 2).

Project Site Description: The project area includes road shoulders and other disturbed areas along highways, much of the understory is dominated by non-native ruderal species. Other plant communities also within the project area could include northern coastal scrub, California bay forest, alluvial redwood forest, mixed evergreen forest, mix north slope cismontane woodland, upland Douglas fir forest, red alder riparian forest, north coast riparian scrub, vernal marsh, pasture, and vineyard.

Project Description: Caltrans proposes to rehabilitate or replace culverts within the project area. Culvert sizes range from 18" to 6' by 12' box culverts. Some drainage work would be completed at inlets and outlets, and minor vegetation removal may be performed to improve water flow. Minor grading may also be performed at various locations when deemed necessary to prevent water buildup at inlets and/or outlets. Caltrans would use either half-width construction or jacking construction methods. Half-width construction is accomplished by building half the culvert at a time in order to allow for one lane of controlled traffic to remain open. Specific designs may call for modifying the ends of the culvert with a headwall, a flared end section, an inlet structure, or a downdrain. Rock slope protection, rock weirs, and/or rock dissipaters may also be required. Authorization would also include off-pavement work pads for construction at inlets and outlets that cannot be reached with equipment from the road. Off-pavement work pads would also be located outside of USACE jurisdictional wetlands and waters of the U.S. Temporary

flow diversions on perennial streams would also be required. Typical design cross-sections and dewatering plans are included as figures 3-6.

Annual Reporting: Two annual reports would be required. The first annual report (referred to as the advanced notification) would consist of a draft work plan for the coming year. Along with other information this plan would include work locations, any proposed off-pavement work pad locations and size, estimates of impact to jurisdictional wetlands and to other Waters of the U.S., construction methods, and proposed work timeframes. The second annual report would summarize work completed in the previous year and would provide a running summary of mitigation efforts.

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 reduce flooding potential.

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 rehabilitate or replace deteriorating culverts, in order to maintain appropriate drainage within Mendocino County.

Project Impacts: Impacts to wetlands and waters of the U.S. associated with each culvert replacement would vary depending on specific site conditions associated with each culvert replacement. The upper limit would be discharge of permanent fill into 0.05 acre for an individual culvert replacement. Over the life of the permit no more than 1.0 acre of fill may occur associated with the overall authorized project. Anticipated impacts for the upcoming year would be reported to USACE by Caltrans in the advanced notification. Caltrans would not be authorized to begin work until specific written authorization is provided by USACE upon review of the advanced notice.

Proposed Mitigation: Compensatory mitigation for unavoidable impacts to waters of the U.S. would occur through creation, restoration, riparian planting, or enhancement of the appropriate tributaries and/or wetlands within the watershed where impacts are proposed to occur. Permanent impacts to wetlands would be mitigated at a

3:1 ratio through either an approved mitigation bank or through wetland restoration. Approval of the advanced notice would be contingent on appropriately proposed compensation for anticipated impacts and demonstration of successful implementation of the previously proposed mitigation.

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 modified RGP would require that Caltrans provide a 401 Regional Water Quality Control Board (RWQCB) certification for each individual culvert replacement or rehabilitation prior to authorization of individual culverts under the RGP. No Department of the Army authorization 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, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403, 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 federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Determination 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 Determination or has waived its right to do so. Since portions of the project occurs in the coastal zone or may affect coastal zone resources, no work will be authorized under the RGP until Caltrans has applied for a Consistency Determination to comply with this requirement for culverts within the coastal zone.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS: Caltrans has been delegated as National Environmental Policy Act (NEPA) lead by the Federal Highway Administration (FHWA). Upon review of the Department of the Army permit application and other supporting documentation, USACE concurs with Caltrans 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 NEPA 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 concurrence determination 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. Caltrans, delegated as NEPA lead by the FHWA, will be required to provide documentation of the completed consultation with the appropriate resource agency prior to authorization of any culvert under the RGP. The Corps will review the documentation and determine whether it is sufficient to address ESA compliance for the RGP activity, or whether additional ESA consultation is necessary. Authorization of an activity under the RGP would not authorize the "take" of a threatened or endangered species as defined under the ESA.

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*. Caltrans, delegated as NEPA lead by the FHWA, will be required to provide documentation of the completed consultation pursuant to MSFCMA prior to authorization of any culvert under the RGP.

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 Caltrans and 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. Caltrans, delegated as NEPA lead by the FFHWA, has conducted a review all pertinent cultural resource informational sources that could provide

information on the presence of historic resources, and survey information on file with various State, city, and county municipalities. Additionally, all Native American tribes that consider the project to be located in their aboriginal territory have been consulted to determine if any locations of tribal concern are located within the project areas. An archaeological survey of each of the project locations was conducted and based on this investigation, tribal consultation efforts and the background research, Caltrans has made a determination that historic or archaeological resources are not likely to be present in the permit area, and that no historic properties will be affected by this undertaking. USACE will render a final concurrence 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 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 been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

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/>.