



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: Huichica Hills Ranch #81 Water Project

PUBLIC NOTICE NUMBER: 2012-00095N

PUBLIC NOTICE DATE: July 31, 2012

COMMENTS DUE DATE: August 20, 2012

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1. **INTRODUCTION:** Vino Farms, LLC, through its agent, Analytical Environmental Services (POC: Peter Bontadelli, 916-447-3479, 1807 7th Street, Suite 100, Sacramento, CA 95811), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to create a recycled-water storage pond from an existing in-stream reservoir and to enhance a tributary to Hudeman Slough. 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 1319 Duhig Road, Napa County, California 95476 (APN: 126-121-001, Latitude: 38.2424 N, Longitude: 122.3667 W), within a 156+/- parcel, approximately 5 miles southwest of the City of Napa, within Section 36 of Township 5 North, Range 5 West, Mount Diablo Baseline and Meridian (MDBM) of the "Cuttings Wharf, CA" U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle. It is located within the Sonoma Creek Watershed, which is part of the San Pablo Bay watershed (HUC: 18050002).

Project Site Description: The project site occurs on currently managed, regularly-mowed, agricultural land. The proposed work would occur along an unnamed intermittent ditch which flows north to south through the project area. The existing, "in-stream," man-made reservoir (known as Dutra Reservoir #1) was constructed in the intermittent ditch. Currently, both the existing onsite reservoir and a larger reservoir located off-site (on the adjacent property to the south) occur on this intermittent ditch. There are approximately 1.2 acres of jurisdictional wetlands abutting the stream and onsite

reservoir. The onsite reservoir has experienced increased siltation over time, resulting in decreased storage capacity. The unnamed intermittent ditch is shown as a blue line drainage on USGS from its origin north of the project site, into Dutra Reservoir #1, out through culverts at the southern end of the reservoir, where it then flows off-site through a riparian corridor connecting to a larger reservoir on the adjacent property. It appears in aerial photography to continue south via manmade drainage ditches and culverts into Hudeman Slough, thereafter distributed through the Sonoma-Napa marshes which drain into San Pablo Bay, then into the Pacific Ocean.

Project Description: As shown in the attached drawings, the applicant proposes to convert the existing in-stream reservoir into an enlarged off-stream reservoir for the storage of recycled water for vineyard irrigation at Huichica Hills Ranch #81. The proposed off-stream reservoir would be constructed at the site of the existing reservoir and would provide greater storage capacity for recycled water. As part of the project, and in compliance with the Mitigation Monitoring and Reporting Plans prepared for the project, vegetation would be planted along the restored stream channel in a manner reflecting the existing conditions of the small riparian corridor to the north of the onsite reservoir.

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 provide adequate water for the surrounding vineyards.

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: 1) provide Vino Farms, LLC, with an adequate supply of water (49 acre-feet, approximately 16 million gallons) for irrigation of its vineyards; and 2) minimize the use of surface water and groundwater by using recycled water.

Project Impacts: Approximately 1.20 acres of seasonal wetlands would be permanently impacted. The existing reservoir is located along the drainage and 250 linear feet would be impacted. Temporary impacts would result from the project-related disturbance from construction vehicle access and earthmoving equipment.

Proposed Mitigation: Conversion of the existing in-stream reservoir to an off-stream reservoir would more than replace the current open water habitat functions. Project impacts would be offset by the restoration of the stream course and creation of approximately 1.58 acres of associated seasonal wetlands. As a result, there would be no net loss of wetlands or open waters and an overall gain of 500 linear feet of restored stream channel

Project Alternatives: The project proponent has submitted an alternatives analysis. Four project alternatives were submitted in addition to the proposed project (Alternative 1). Alternative 2 would replace the existing reservoir with a smaller, off-stream reservoir designed to reduce impacts to the surrounding wetlands, otherwise impacts by the proposed 49 acre-foot reservoir, and would restore the impaired stream and riparian habitat. While reducing wetland impacts, the smaller reservoir would not meet the calculated recycled water needs of the surrounding vineyards for irrigation. Alternative 3 would enlarge the existing reservoir to provide adequate storage capacity and keep it connected to the stream. The same 1.2 acres of wetlands would be impacted, but no changes would be made to the stream channel. Siltation would eventually reduce the capacity, necessitating maintenance dredging. Use of recycled water in an in-stream reservoir would directly cause downstream water quality impacts. Alternative 4 would employ storage tanks rather than enlarging the reservoir, making no changes or restoration to the existing reservoir or stream. In order to store the required amount of recycled water (approximately 16 million gallons), many tanks would be needed, in addition to space and funding. Under Alternative 5, the proposed project would not be implemented. This would result in no impacts to wetlands

and other waters of the U.S., but would not meet the stated project purpose and need.

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 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.

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 has applied for the following additional governmental authorizations for the project: 1) Streambed Alteration Agreement to be issued by the California Department of Fish and Game, and 2) Grading Permit to be issued by Sonoma County.

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 no Federally-listed species or designated critical habitat are present at the project location or in its vicinity. 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 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 conducted a review of the applicant's findings from the *National Register of Historic Places*, survey information on file with state offices, and other information, 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. 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. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE 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)). 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 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 Justin Yee, 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 *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/regulatory/>.