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

US Army Corps of Engineers ®
San Francisco District

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Stream Maintenance Program – Santa Clara and Pajaro Basins

PUBLIC NOTICE NUMBER: 1996-22525S
PUBLIC NOTICE DATE: 05-Oct-2012
COMMENTS DUE DATE: 05-Nov-2012

PERMIT MANAGER: Ian Liffmann TELEPHONE: 415-503-6769 E-MAIL: ian.liffmann@usace.army.mil

1. **INTRODUCTION**: The Santa Clara Valley Water District (District) (POC: Ann Draper, 408-630-2665), 5750 Almaden Expressway, San Jose, CA 95118-3686, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit for routine channel maintenance activities within the Santa Clara and Pajaro watersheds in Santa Clara County, 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.*), and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. **PROPOSED PROJECT**:

Project Site Location: The proposed work would occur on waterways within the Santa Clara and Pajaro watersheds within Santa Clara County, up to an elevation of 1000 feet.

Project Site Description: The waterways covered within the proposal include natural streams, constructed channels and canals, lakes, and wetlands within the project area, and associated adjacent upland areas. The project areas include both natural and heavily developed settings.

Project Description: The applicant proposes to update the currently permitted Stream Maintenance Program. This update provides routine maintenance activities for streams and canals in order to reduce the risk of flooding. Maintenance activities include bank stabilization, sediment removal, vegetation management, management of animal conflicts, and canal maintenance. The Program also includes minor, smaller in size maintenance activities to repair and maintain SCVWD facility functions. Transportation and disposal of sediment and vegetation would also occur as part of the SMP. Routine maintenance activities are anticipated, expected, and consistent with stream and channel maintenance needs that occur annually in different locations. The SMP includes an updated SMP Manual that is intended to fully replace the original Program documents that guided the SMP from its inception in 2002 through 2012. The SMP 2012-2022 Update Manual has been developed to provide guiding policies and specific direction on approach for the implementation of maintenance activities.

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 the risk of flooding within Santa Clara County.

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 the design flow conveyance capacity (or the appropriate capacity when no design capacity exists) of District facilities, and maintain the structural and functional integrity of District facilities.

Project Impacts: Impacts from the project would result mostly from sediment removal, bank stabilization efforts, and vegetation management. Please see the attached tables showing the total areas where projects took place over the last ten years under this permit. Please note that areas of actual impact were often smaller than the total areas noted

where projects took place. Unavoidable impacts of similar magnitude are projected over the life of the permit.

Proposed Mitigation: The existing SMP mitigation program was developed in 2002 to provide defined "up front" programmatic mitigation for sediment removal activities. The majority of this mitigation consisted of land acquisition and habitat restoration, with easements and management plans to protect the land and resources into the future, as well as some on-site mitigation projects such as vegetation management and habitat improvements. This original mitigation continues to address SMP's impacts in perpetuity for maintenance activities and work areas identified in the 2002 program work projections. For areas added to the SMP which were not addressed in the original permit, additional mitigation would be required. For new mitigation, an approach is being developed which prioritizes habitat restoration and enhancement activities which best match existing functions (in-kind mitigation), but also have the highest likelihood for success, sustainability, and do not result in an increased maintenance effort. Working together, land acquisition and habitat restoration, invasive plant species management, riparian planting and restoration, and developing in-stream habitat complexity projects would provide a broad spectrum of natural system functions and values that mitigate impacts from sediment removal maintenance projects.

Project Alternatives: Evaluation of this proposed activity's impacts includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). An evaluation has been made by this office under the guidelines and it was determined that the proposed project is water or wetland dependent.

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, or Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401, 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 has applied for a Consistency Certification 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.

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 following Federally-listed species and designated critical habitat is are present at the project location or in its vicinity, and may be affected by project implementation. The species that have potential to be found in the project area are as follows: Central California Coast Steelhead (*Oncorhynchus mykiss*), South-Central California Coast Steelhead (*Oncorhynchus mykiss*), Southern Green Sturgeon (*Acipenser medirostris*), Tiburon Paintbrush (*Castilleja neglecta*), Coyote Ceanothus (*Ceanothus ferrisiae*), Santa Clara Valley Dudleya (*Dudleya setchellii*), Metcalf Canyon Jewel-flower (*Streptanthus albidus*), Bay Checkerspot Butterfly (*Euphydryas editha bayensis*), California Tiger Salamander (*Ambystoma californiense*), California Red-legged Frog (*Rana aurora draytonii*), California Condor (*Gymnogyps californianus*), California Clapper Rail (*Rallus longirostris obsoletus*), Western Snowy Plover (*Charadrius alexandrinus nivosus*), California Least Tern (*Sterna antillarum browni*), Least Bell's Vireo (*Vireo bellii pusillus*), Salt Marsh Harvest Mouse (*Reithrodontomys raviventris*), and San Joaquin Kit Fox (*Vulpes macrotis mutica*). To address project related impacts to these species and designated critical habitat, USACE has initiated formal consultation with USFWS and NMFS, pursuant to Section 7(a) of the Act. Any 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. § 18 01 *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*. To address project related impacts to EFH, USACE has initiated consultation with NMFS, pursuant to Section 305(5(b)(2) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

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 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 and archeological sites have the potential to occur in the program area. However, with the implementation of program best management practices, no adverse effects are expected to result from the implementation of the program activities. 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 dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion lowers 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.

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 Ian Liffmann, 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/.