



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: RGP-6 renewal (Southern Sonoma County Resource Conservation District levee maintenance)

PUBLIC NOTICE NUMBER: 2004-249121N

PUBLIC NOTICE DATE: 2-8-2012

COMMENTS DUE DATE: 3-8-2012

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1. **INTRODUCTION:** The San Francisco District of the U.S. Army Corps of Engineers proposes to renew a 5-year Regional Permit (RGP-06) to the Southern Sonoma County Resource Conservation District (SSCRCD), 1301 Redwood Way, Suite 170, Petaluma, California 94954 (contact Michael Bowers, 707-794-1242, ext. 109) to authorize dredging in the Petaluma River drainage basin in Sonoma and Marin Counties and the Sonoma Creek drainage basin, Sonoma County, California for the purpose of obtaining material to maintain existing levees. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).

The current permit remains valid until July 31, 2012. This renewal would extend that authorization for an additional five years. All aspects of the permit will remain the same.

2. PROPOSED PROJECT:

Project Site Location: These levee maintenance projects are located within the Petaluma River drainage basin in Sonoma and Marin Counties and the Sonoma Creek drainage basin, Sonoma County, California (see attached vicinity map).

Project Site Description: All of the project sites contain levees which protect the parcels from flooding in the adjacent jurisdictional waters. All of these levees have been maintained for at least 15 years, and many were constructed prior to the passage of the Clean Water Act.

Project Description: The sponsoring agency, the Southern Sonoma County Resource Conservation District

(SSCRCD) has applied for authorization for participating SSCRCD members to dredge material from the channels and/or wetlands adjacent to the existing levees on their property for the purpose of obtaining material to maintain the levees. This regional permit would authorize the dredging of up to 4 cubic yards (cy) of material per foot of levee, not to exceed 10,000 cy per property owner, per year. Attached are figures, showing the location of all of the levee parcels. The owners of these parcels shall use this RGP to maintain their levees.

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 maintain existing levees.

Project Description: The sponsoring agency, the Southern Sonoma County Resource Conservation District (SSCRCD) has applied for authorization for participating SSCRCD members (see attached list) to dredge material from the channels and/or wetlands adjacent to the existing levees on their property for the purpose of obtaining material to maintain the levees. This regional permit would authorize the dredging of up to 4 cubic yards (cy) of material per foot of levee, not to exceed 10,000 cy per property owner, per year. Attached are figures, showing the location of all of the levee parcels. The owners of these parcels shall use this RGP to maintain their levees.

The permit would contain the following special conditions:

1. **No excavation shall occur within 10 feet of the toe of the levee, on the waterborne side of the levee.**

2. **To avoid impacts to nesting California clapper rails, no dredging shall occur between February 1 and August 31, unless surveys by a qualified biologist indicate that clapper rails are not nesting within 500 feet of the project area.**
3. **No dredging authorized by this permit may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species which normally migrate through the area.**
4. **No discharge of dredged material may consist of unsuitable material (e.g. trash, debris, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).**

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 levees which are damaged from winter storms or are in need of periodic maintenance. The levees are necessary to protect private land. These activities have been conducted for the last 14 years under Corps Regional Permits.

Project Impacts: This regional permit would authorize the dredging of up to 4 cubic yards (cy) of material within jurisdictional waters and wetlands per foot of levee, not to exceed 10,000 cy per property owner, per year. There are currently 33 property owners approved by the SSCRD to use this permit. However, it is rare for more than 10 property owners to use this permit in any given year and almost all impacts are less than 6,000 cubic yards of material dredged per year per property owner.

Mitigation: Mitigation for this project has been completed. Under an agreement approved by the Corps, the applicant, EPA, and USFWS, the applicant was required to mitigate for disturbance created by levee maintenance by the construction of 71 acres of wetland in association with the Tolay Creek Restoration Project located south of the Highway 121/37 intersection in Southern Sonoma County, California.

All agencies agreed that the mitigation was to mitigate for levee maintenance activities in perpetuity. The mitigation acreage was derived by determining the maximum annual acreage of wetland disturbed by levee maintenance activity. This disturbed acreage was then multiplied by five, based on

an assumption that the disturbed area would take five years to recover. This acreage yielded the required 71 acres of mitigation.

Project Alternatives: Impacts could be avoided to waters of the U.S. if the material for levee repairs was taken from upland sources. However, the purchasing and transporting this material would result in a very high cost, which would be impracticable for the property owners.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued.

The applicant received water quality certification from the San Francisco Bay Region Regional Water Quality Control Board (RWQCB) for this work, when the permit was originally issued. For the last extension of this permit, the RWQCB stated that the certification was still valid. The Corps will need to coordinate with the RWQCB to see if this certification will remain valid for this reauthorization. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issue that may be associated with this project should write 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 of this Public Notice.

Coastal Zone Management: Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project is consistent with the State's Coastal Zone Management Program, if applicable. The San Francisco Bay Conservation and Development Commission acted on the original Regional Permit and has stated that their permits remain effective for any reauthorization. Coastal development issues should be directed to the San Francisco Bay Conservation and Development Commission (BCDC), 50 California Street, Suite 2600, San Francisco, California 94111.

Other Local Approvals: RGP-06 is administered by

the Southern Sonoma Resource Conservation District, and any levee maintenance work must be approved by the SSRCD prior to any work being performed by a property owner under this RGP.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA):

The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 *et seq.*), the Council on Environmental Quality's Regulations (40 C.F.R. Parts 1500-1508), and the Corps' Regulations (33 C.F.R. Part 230 and Part 325, Appendix B). Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197.

Endangered Species Act of 1973 (ESA): The Corps consulted with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) during the previous permit action as required by Section 7 of the Endangered Species Act of 1973. Consultation included the salt marsh harvest mouse (*Reithrodontomys raviventris halicoetes*), California clapper rail (*Rallus longirostris halicoetes*), the Sacramento splittail (*Pogonichthys macrolepidotus*), and the green sturgeon (*Acerpenser medirostris*). The USFWS and NMFS determined that project activities would not adversely affect these species when reasonable and prudent measures were incorporated into the project.

Magnuson-Stevens Fisheries Conservation and Management Act: The NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. The work covered by this permit shall not impact EFH.

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 of 1966 (NHPA):

Based on a review of survey data on file with various City, State and Federal agencies, no historic or archeological resources are known to occur in the project vicinity. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

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)). Since the project does not entail the discharge of dredged or fill material into waters of the United States, application of the Guidelines will not be required.

4. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline 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.

5. CONSIDERATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

6. SUBMISSION OF COMMENTS: Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Bryan Matsumoto of our office at telephone 415-977-6786 or E-mail: Bryan.T.Matsumoto@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.