



US Army Corps
of Engineers®

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

Project: USD Irvington Pump Station Holding Pond

NUMBER: 23698S DATE: 5 February 2003 RESPONSE REQUIRED BY: 7 March 2003
PROJECT MANAGER: Phelicia M. Gomes PHONE: (415) 977-8452 EMAIL: pgomes@spd.usace.army.mil

1. INTRODUCTION: Union Sanitary District (USD) (contact: Richard B. Currie, 5072 Benson Road, Union City, California, 94587, 510-477-7600) has applied to the U.S. Army Corps of Engineers (USACE) for a permit to permanently fill 0.907 acre of jurisdictional waters to construct an emergency overflow containment/holding pond at their wastewater pumping plant located at 46525 Fremont Boulevard in the City of Fremont, Alameda County, California (Figure 1). This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. PROJECT PURPOSE AND NEED: The basic purpose is wastewater overflow containment. The overall project purpose is to prevent wastewater overflow generated at USD's Fremont pumping station from reaching the San Francisco Bay or its tributaries during large storm events. The applicant states that the proposed project is needed because the existing wastewater pumping plant may not have adequate onsite capacity to contain overflow generated from storms larger than a 10-year event. Without additional facilities, overflow from the sewer system could potentially flow into Coyote Creek and eventually into the Bay causing water quality problems.

3. USACE JURISDICTION: The Corps exerts Section 404 jurisdiction over a total of 7.3 acres of brackish wetlands and other waters, determined to be waters of the U.S. within the project area (Figure 2).

4. PROJECT DESCRIPTION: USD has requested authorization to construct a holding pond adjacent to their existing pumping facility in Fremont. The pumping plant can accommodate 1.2 million

gallons per hour while running at its peak operation. When incoming flows exceed 1.2 million gallons per hour, the plant must be able to temporarily store the excess onsite until it can be pumped to a treatment plant after the peak flow recedes to lower levels. Currently, the District can store 1.8 million gallons onsite. This is roughly enough storage to hold the overflow wastewater that would be generated in case inflows exceeded pumping capacity for 1.5 hours. Calculations show this happens roughly during a 10-year storm event. The existing facilities may not be able to accommodate water generated from storm events larger than this. When a greater than 10-year storm event occurs untreated wastewater could overflow into adjacent undeveloped land and possibly into Coyote Creek. This action would violate USD's National Pollution Discharge Elimination System (NPDES) permit and cause water quality problems. To prevent this from happening in the future, the applicant has proposed additional onsite storage. As designed, the holding pond would allow USD to temporarily store an additional 2 million gallons of overflow water.

The proposed pond would be constructed using scrapers and graders to build a 6-foot high dike around the proposed 4-acre site (Figures 3 & 4). Bottom elevations would be leveled using scrapers. All fill material would be medium plasticity clays and imported sand and gravel, totaling 3,800 cubic yards of fill. The applicant plans to construct the pond during spring and summer of this year.

5. PROPOSED MITIGATION:

Avoidance: The applicant selected the 4-acre

portion of their property that contains the least and lowest quality waters of the U.S. The 4-acre pond would be constructed on a heavily disturbed portion of USD'S property. At this site, the soil is full of debris and material left from previous activities and structures since removed. High saline content and heavy disturbance prevent the establishment of any valuable habitat and/or plant communities. By selecting the proposed location, 6.4 acres of higher-quality wetlands were avoided in the western portion of USD'S property.

Minimization: USD has proposed to minimize impacts to onsite jurisdictional waters by using standard best management practices during construction of the holding pond.

Mitigation: The applicant is required to mitigate for the permanent loss of waters of the U.S. at a 1 to 1 ratio. USD has not yet formally proposed any mitigation but an approved mitigation plan will be necessary before the Corps can issue any permit. The completed mitigation plan will be available for public review at our office once submitted. Interested parties should contact the Corps for further information.

6. ALTERNATIVES ANALYSIS: Projects involving fill discharged 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 that there is a practicable alternative to the project that would have less adverse effect to the aquatic ecosystem.

The applicant has submitted an analysis of alternatives for the project to facilitate a compliance determination of the guidelines. The current proposed project is located on the portion of USD property that has the least and lowest quality wetlands; therefore, analysis of another onsite location was not required. An offsite

alternative was considered, as well as one alternative that would meet the purpose of the project with less impact to jurisdictional waters of the U.S.

The applicant considered purchasing land near the plant. Any purchased-parcel would need to receive overflow water from the plant via gravity flow; this limited the search to a quarter mile radius around the plant. All lands within a quarter mile around the plant contain jurisdictional waters and would result in similar impacts to waters of the U.S. Additionally, placing a holding pond off the plant property would prevent overflow water from easily returning to the pumping plant.

The applicant also considered building a deeper pond with equal capacity but smaller footprint. In this situation and to minimize the potential for catastrophic levee failure, the applicant would need to excavate the pond 5 to 6 feet below the ground elevation. This is not possible in this area because groundwater would be about a foot below the pond's bottom. Excavation to that depth would increase the chance of groundwater intrusion in the holding pond, reduce the capacity for overflow water and cause public health concerns due to mosquitoes. Additionally, this alternative would still impact 0.3 acre of jurisdictional waters of the U.S.

Based upon a review of the alternatives, the proposed project was determined to be the least environmentally damaging, practicable alternative.

7. COMPLIANCE WITH VARIOUS FEDERAL LAWS

National Environmental Policy Act of 1969 (NEPA): At the conclusion of the public comment period, the Corps will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190), the Council on Environmental Quality's Regulations at 40 CFR 1500-1508, and Corps Regulations at 33 CFR 230 and 325. The final NEPA analysis will normally address the direct, indirect, and cumulative

impacts that result from regulated activities within the jurisdiction of the Corps and other non-regulated activities the Corps 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.

Endangered Species Act of 1973 (ESA): The proposed project site does not contain any known federally listed species nor their designated critical habitat. USACE has made a determination that the proposed project will have no effect on endangered species.

National Historic Preservation Act of 1966 (NHPA): USACE's archaeologist will be requested to conduct a cultural resources assessment of the permit area, involving a review of published and unpublished data on file with city, state, and federal agencies. If, based on assessment results, a field investigation of the permit area is warranted, and cultural properties listed or eligible for listing on the National Register of Historic Places are identified during the inspection, USACE will coordinate with the State Historic Preservation Officer to take into account any project effects on such properties.

8. STATE APPROVALS: State water quality certification is a prerequisite for the issuance of a USACE permit to conduct any activity that may result in a fill or pollutant discharge into waters of the U.S., pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). No USACE permit will be granted until the applicant obtains the required certification. A certification may be presumed if the State fails or refuses to act on a valid request for certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is reasonable for the State 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.

The project may be subject to the jurisdictional purview of the San Francisco Bay Conservation and Development Commission. If required, the applicant must show valid compliance with the California's Coastal Zone Management Act (CZMA) prior to issuance of a permit. Coastal development issues should be directed to SF BCDC, 50 California Street, Suite 2600, San Francisco, California 94111.

9. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable effects, including cumulative effects, of the proposed activity and its intended use on the public interest. Evaluation of the probable effects that the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision will reflect the national concern for both protection and utilization of important resources. All factors that may be relevant to the proposal must be considered including the cumulative effects thereof. Those factors 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.

10. CONSIDERATION OF COMMENTS: The USACE 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 effects of this

proposed activity. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess effects on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. To make this decision, comments are used to assess effect on endangered species, historic properties, water quality, and the other environmental factors that are addressed in a final 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 of the proposed activity.

11. SUBMITTING COMMENTS: Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name, the number and the date of this notice, and should be forwarded so as to reach this office within the comment period specified on page one of this Notice. Comments should be sent to: Regulatory Branch, Attention: Phelicia Gomes. It is the Corps policy to forward any such comments, which include objections, to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this 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 address is indicated on the first page of this notice, or by contacting Phelicia Gomes of our office at telephone (415) 977 - 8452. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.