US Army Corps of Engineers ®
San Francisco District

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

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE ANNOUNCING THE REISSUANCE OF THE NATIONWIDE PERMITS AND THE SAN FRANCISCO DISTRICT REGIONAL CONDITIONS

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On February 21, 2012, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* announcing the reissuance of all existing nationwide permits (NWPs), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, three new general conditions, and three new definitions. The NWPs will be effective on March 19, 2012 and will expire on March 18, 2017.

With the publication of this *Federal Register* notice, Corps districts began finalizing their regional conditions for the new and reissued NWPs. Regional conditions provide additional protection for the aquatic environment, and will help ensure that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within the San Francisco District. The final San Francisco District regional conditions are provided below.

The publication of this *Federal Register* notice also begins the 60-day period for states, Indian Tribes, and the Environmental Protection Agency (EPA) to complete their water quality certification (WQC) process for the NWPs. The 60-day period for WQC will end on April 20, 2012. This *Federal Register* notice also begins the 90-day period for coastal states to complete their Coastal Zone Management Act (CZMA) consistency determination processes. The 90-day period for CZMA consistency determinations will end on May 21, 2012.

While the states, Indian Tribes, and EPA complete their WQC processes, the use of a NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual water quality certification or a case-specific WQC waiver. Likewise, while coastal states complete their CZMA consistency determination processes, the use of an NWP to authorize an activity within, or outside, a state's coastal zone that will affect land or water uses or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence. Once these determinations are finalized an additional public notice will be issued.

The February 21, 2012, *Federal Register* notice is available for viewing on the Internet at http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx . As an alternate, Internet users can access the *Federal Register* through the U.S. Government Printing Office at http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR .

The Corps has also issued final decision documents for the new and reissued NWPs. These documents are also available on the Internet at http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx and Corps district offices. Furthermore, the NWP decision documents will be supplemented by Division Engineers to address decisions concerning the addition of regional conditions to the NWPs.

Enclosure 1: Draft San Francisco District Regional Conditions

A. General Regional Conditions that apply to all NWPs in the Sacramento, San Francisco, and Los Angeles Districts:

1. When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, San Francisco District (Corps) in accordance with General Condition 31 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:

a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for activities located within the boundaries of the Los Angeles District shall comply with the September 15, 2010 Special Public Notice: *Map and Drawing Standards for the Los Angeles District Regulatory Division*, (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the activities site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart b of this Regional Condition.

2. The permittee shall submit a PCN, in accordance with General Condition 31, For all activities located in areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007, 72 C.F.R. 11,092, in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: http://www.swr.noaa.gov/efh.htm.

3. For activities in which the Corps designates another Federal agency as the lead for compliance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended, 16 U.S.C. §§ 1531-1544, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH), 16 U.S.C. § 1855(b)(4)(B) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended , 16 U.S.C. §§ 470-470h, the lead Federal agency shall provide all relevant documentation to the appropriate Corps demonstrating any previous consultation efforts, as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.

4. For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed unless determined to be impracticable by the Corps.

5. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

6. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51 and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:

    a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;

    b. An analysis of the proposed impacts to the waterbody, in accordance with General Condition 31;

    c. Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and

    d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be offset, in accordance with 33 CFR 332.

B. General Regional Conditions that apply to all NWPs in the San Francisco District:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **San Francisco Bay diked baylands** (see figure 1) (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)). The notification shall explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable (see General Condition 23).

2. Notification to the Corps (in accordance with General Condition No. 31) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **Santa Rosa Plain** (see figure 2). The notification will explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable in accordance with General Condition No. 23.

3. Notification to the Corps (in accordance with General Condition No. 31), including a compensatory mitigation plan, habitat assessment, and extent of proposed-project impacts

to Eelgrass Beds are required for any activity permitted by NWP if it will take place within or adjacent to **Eelgrass Beds**.

C. Regional Conditions that apply to specific NWPs in the San Francisco District:

3. MAINTENANCE:

1. To the extent practicable, excavation equipment shall work from an upland site (e.g., from the top of the bank, the road bed of the bridge, or culverted road crossing) to minimize adding fill into waters of the U.S. If it is not practicable to work from an upland site, or if working from the upland site would cause more environmental damage than working in the stream channel, the excavation equipment can be located within the stream channel but it must minimize disturbance to the channel (other than the removal of accumulated sediments or debris). As part of the notification to the Corps (in accordance with General Condition No. 31), an explanation as to the need to place excavation equipment in waters of the U.S. is required, as well as a statement of any additional necessary fill (e.g., cofferdams, access road, fill below the OHW mark for a staging area, etc.).

2. If the activity is proposed in a special aquatic site, the notification to the Corps (in accordance with General Condition No. 31) shall include an explanation of why the special aquatic site cannot be avoided, and the measures to be taken to minimize impacts to the special aquatic site.

11. TEMPORARY RECREATIONAL STRUCTURES:

1. Notification to the Corps (in accordance with General Condition No. 31) is required if any temporary structures are proposed in wetlands or vegetated shallow water areas (e.g. in eelgrass beds). The notification shall include the type of habitat and areal extent affected by the structures.

12. UTILITY LINE ACTIVITIES:

1. Excess material removed from a trench, associated with utility line construction, shall be disposed of at an upland site away from any wetlands or other waters of the U.S. so as to prevent this material from being washed into aquatic areas.

2. This NWP permit does not authorize the construction of substation facilities. Utility line substations can usually be constructed in uplands.

13. BANK STABILIZATION:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for all activities stabilizing greater than 300 linear feet of channel. Where the removal of wetland vegetation (including riparian wetland trees, shrubs and other plants) or submerged, rooted, aquatic plants over a cumulative area greater than 1/10 acre or 300 linear feet is proposed, the Corps shall be notified (in accordance with General Condition No. 31). The notification shall include the type of vegetation and extent (e.g., areal dimension or number of trees) of the proposed removal. The notification shall also address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.

2. This permit allows excavating a toe trench in waters of the U.S., and, if necessary, to use the material for backfill behind the stabilizing structure. Excess material is to be disposed of in a manner that will have only minimal impacts to the aquatic environment. The notification to the Corps (in accordance with General Condition No. 31) shall include location of the disposal site.

3. For man-made banks, roads, or levees damaged by storms or high flows, the one cubic yard per running foot limit is counted only for that additional fill which encroaches (extends) beyond the pre-flood or pre-storm shoreline condition of the waterway. It is not counted for

the fill that would be placed to reconstruct the original dimensions of the eroded, man-made shoreline.

4. For natural berms and banks, the one cubic yard per running foot limit applies to any added armoring.

5. To the maximum extent practicable, any new or additional bank stabilization must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable.

14. LINEAR TRANSPORATION PROJECTS:

1. Notification to the Corps (in accordance with General Condition No. 30) is required for all projects filling greater than 300 linear feet of channel. For projects involving greater than 300 linear feet of bank stabilization, the project proponent shall address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.

2. This permit does not authorize construction of new airport runways and taxiways.

3. If this NWP has been used to authorize previous project segments within the same linear transportation project, justification must be provided demonstrating that the cumulative impacts of the proposed and previously authorized project segments do not result in more than minimal impacts to the aquatic system.

4. To the maximum extent practicable, any new or additional bank stabilization required for the crossing must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable. Bottomless and embedded culverts are encouraged over traditional culvert stream crossings.

23. APPROVED CATEGORICAL EXCLUSIONS:

1. Use of this NWP requires notification to the Corps (in accordance with General Condition No. 31). The notification shall include the following:

   a. A copy of the Federal Categorical Exclusion (Cat/Ex) document signed by the appropriate federal agency. If the Cat/Ex is signed by a state or local agency representative instead of by a federal agency representative, then copies of all documentation authorizing alternative agency signature shall be provided.

   b. Written description of Corps authority (e.g., Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act.);

   c. a list of conditions described in the Cat/Ex and/or attachments outlining measures that must be taken prior to, during, or after project construction to minimize impacts to the aquatic environment;

   d. a copy of the jurisdictional delineation performed by qualified specialists showing the project limits and the location (delineated boundaries) of Corps jurisdiction within the overall project limits;

   e. map(s) showing the locations of potentially permanent and temporary project impacts to areas within Corps jurisdiction;

f. a clear and concise description of all project impacts including, but not necessarily limited to:
   1. quantification and description of permanent project impacts to areas within Corps jurisdiction,
   2. quantification and description of temporary impacts to areas within Corps jurisdiction, and
   3. linear extent of Corps jurisdiction affected by the project;

g. a general description of activities covered by the Cat/Ex that do not require Corps authorization but are connected or related to the activities in Corps jurisdiction;

h. a complete description of any proposed mitigation and/or restoration including, but not necessarily limited to, locations of any proposed planting, short- and long-term maintenance, proposed monitoring, success criteria and contingency plans;

i. written justification of how the project complies with the Nationwide Permit Program including less than minimal impact to the aquatic environment and compliance with the General Conditions.

j. For Federal Highway Administration (FHWA) Cat/Ex projects, the notification should describe how activities described in the Cat/Ex meet the description of the Cat/Ex project published in the August 28,1987 Federal Register part 771.117 (a)(b)(c) and (d) (Volume 52, No. 167) or any updated version published in the Federal Register.

2. Only activities specifically described in the Cat/Ex project description will be covered by the NWP 23 authorization. If other activities not described in the Cat/Ex project description will be performed (e.g., dewatering, slope protection, etc.), these activities must receive separate NWP authorizations.

3. Notification to the Corps (in accordance with General Condition 31) must include a copy of the signed Cat/Ex document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act (ESA), Essential Fish Habitat (EFH) under the Magnussen-Stevens Act, and Section 106 of the National Historic Preservation Act.

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

1. Notification to the Corps (in accordance with General Condition 31) must include documentation of a review of project impacts to demonstrate that at the conclusion of the work that the project would result in a net increase in aquatic function. Additionally, the documentation must include a review of project impacts on adjacent properties or structures and must also discuss cumulative impacts associated with the project.

29. Residential Developments:

1. When discharge of fill results in the replacement of wetlands or waters of the U.S. with impervious surfaces, to ensure that the authorized activity does not result in more than minimal degradation of water quality (in accordance with General Condition 25), the residential development shall incorporate low impact development concepts (e.g. native landscaping, bioretention and infiltration techniques, and constructed green spaces) to the extent practicable. A description of the low impact development concepts proposed in the project shall be included with the permit application. More information including low impact development concepts and definitions is available at the following website: http://www.epa.gov/owow/NPS/lid/.

2. Use of this NWP is prohibited within the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map (see figure 1) below the 5-foot

contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)).

33. TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING:

1. Access roads shall be designed to be the minimum width necessary and shall be designed to minimize changes to the hydraulic flow characteristics of the stream and degradation of water quality (in accordance with General Conditions 9 and 25). The following Best Management Practices (BMPs) shall be followed to the maximum extent practicable to ensure that flow and circulation patterns of waters are not impaired and adverse effects on the aquatic environment will be kept to a minimum:

   a. The road shall be properly stabilized and maintained during and following construction to prevent erosion.

   b. Construction of the road fill shall occur in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself.

2. Vegetative disturbance in the waters of the U.S. shall be kept to a minimum.

3. Borrow material shall be taken from upland sources whenever feasible.

4. Stream channelization is not authorized by this NWP.

35. MAINTENANCE DREDGING OF EXISTING BASINS:

1. Use of this NWP will require notification to the Corps (in accordance with General Condition No. 31). The notification information should be provided on the Consolidated Dredging-Dredged Material Reuse/Disposal Application. This application and instructions for its completion can be found on our web site at: http://www.spn.usace.army.mil/conops/applications.html. The information must include the location of the proposed upland disposal site. A jurisdictional delineation of the proposed upland disposal site prepared in accordance with the current method required by the Corps may also be required.

2. The U.S. Coast Guard will be notified by the permittee at least 14 days before dredging commences if the activity occurs in navigable waters of the U.S. (Section 10 waters).

3. The permittee will be required to provide the following information to the Corps:
   a. Dredge Operation Plan: Submit, for approval by this office, no earlier than 60 calendar days and no later than 20 calendar days before the proposed commencement of dredging, a plan which includes the following: **Corps file number,** a copy of the dredging contract or description of the work under which the contractor will do the permitted work; name and telephone numbers of the dredging contractor's representative on site; proposed dredging start and completion dates; quantity of material to be removed; dredging design depth and typical cross section including overdepth; and date of last dredging episode and design depth. The Dredge Operational Plan shall also provide the following information: The controls being established to insure that dredging operations occur within the limits defined by the basin or channel dimensions and typical channel section.

   b. Pre-Dredge Survey: Submit no earlier than 60 calendar days and no later than 20 calendar days before commencement of dredging, a survey with accuracy to one-tenth foot that delineates and labels the following: areas to be dredged with overdepth allowances; existing depths; estimated quantities to be dredged to the design depth; and

estimated quantities for overdepth dredging. **All surveys shall be signed by the permittee to certify their accuracy. Please include the Corps file number.**

c. Solid Debris Management Plan: Submit no earlier than 60 calendar days and no later than 20 calendar days before commencement of work, a plan which describes measures to ensure that solid debris generated during any dredging operation is retained and properly disposed in areas not under Corps jurisdiction. **At a minimum, the plan shall include the following: source and expected type of debris; debris retrieval method; Corps file number; disposal method and site; schedule of disposal operations; and debris containment method to be used, if floatable debris is involved. (Please note that failure to provide all of the information requested in a, b, and c above may result in delays to your project. When your Dredge Operation Plan has been approved, you will receive a written authorization to commence with your project.)**

d. Post-Dredge Survey: Submit, **within 30 days of the last disposal activity** ("last" is defined as that activity after which no further activity occurs for 15 calendar days), a survey with accuracy to one-tenth foot that delineates and labels the areas dredged and provides the dredged depths. **Also, include the Corps file number, actual dates of dredging commencement and completion, actual quantities dredged for the project to the design depth, and actual quantities of overdepth.** The permittee shall substantiate the total quantity dredged by including calculations used to determine the volume difference (in cubic yards) between the Pre- and Post-Dredge Surveys and **explain any variation in quantities greater than 15% beyond estimated quantities or dredging deeper than is permitted (design plus overdepth allowance)**. **All surveys shall be accomplished by a licensed surveyor and signed by the permittee to certify their accuracy.** A copy of the post dredge survey should be sent to the National Ocean Service for chart updating:

NOAA/National Ocean Service,
Nautical Data Branch
N/CS26, SSMC3, Room 7230
1315 East-West Highway
Silver Spring, Maryland 20910-3282.

e. **The permittee or dredge contractor shall inform this office when: 1) a dredge episode actually commences, 2) when dredging is suspended (suspension is when the dredge contractor leaves the dredge site for more than 48 hours for reasons other than equipment maintenance), 3) when dredging is restarted, and 4) when dredging is complete. Each notification should include the Corps file number.** Details for submitting these notifications will be provided in the verification letter (to whom and how).

39. Commercial and Institutional Developments:

1. When discharge of fill results in the replacement of wetlands or waters of the U.S. with impervious surfaces, to ensure that the authorized activity does not result in more than minimal degradation of water quality (in accordance with General Condition 25), the commercial and institutional development shall incorporate low impact development concepts (e.g. native landscaping, bioretention and infiltration techniques, and constructed green spaces) to the extent practicable. A description of the low impact development concepts proposed in the project shall be included with the permit application. More information including low impact development concepts and definitions is available at the following website: http://www.epa.gov/owow/NPS/lid/.

2. Use of this NWP is prohibited within the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map (see figure 1) below the 5-foot

contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)).

40. AGRICULTURAL ACTIVITIES:

1. This NWP does not authorize discharge of fill into the channel of a perennial or intermittent watercourse that could impede high flows. This limitation does not apply to watercourses that flow only when there is an irregular, extraordinary flood event.

41. RESHAPING EXISTING DRAINAGE DITCHES:

1. Compensatory mitigation may be required if the Corps determines there will be a detrimental impact to aquatic habitat.

2. Notification to the Corps (in accordance with General Condition 31) is required if the applicant proposes to re-grade, discharge, install channel lining, or redeposit fill material.

3. The notification to the Corps (in accordance with General Condition 31) shall include an explanation of the project's benefit to water quality and a statement demonstrating the need for the project.

42. RECREATIONAL FACILITIES:

1. If buildings are proposed to be built in waters of the United States, including wetlands, the applicant must demonstrate that there is no on-site practicable alternative that is less environmentally damaging as defined by the Section 404(b)(1) guidelines.

Figure 1: Map of Diked Baylands

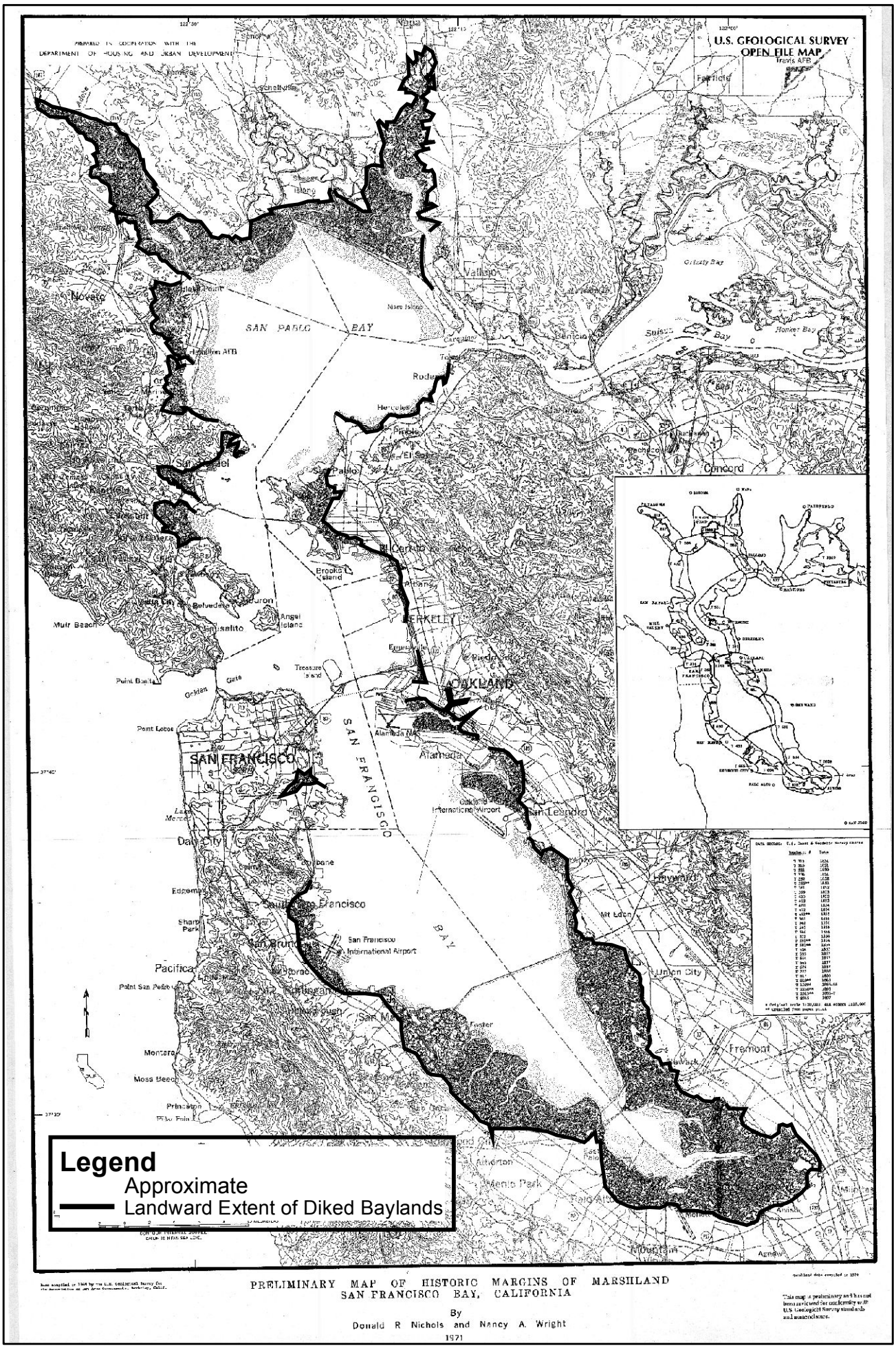
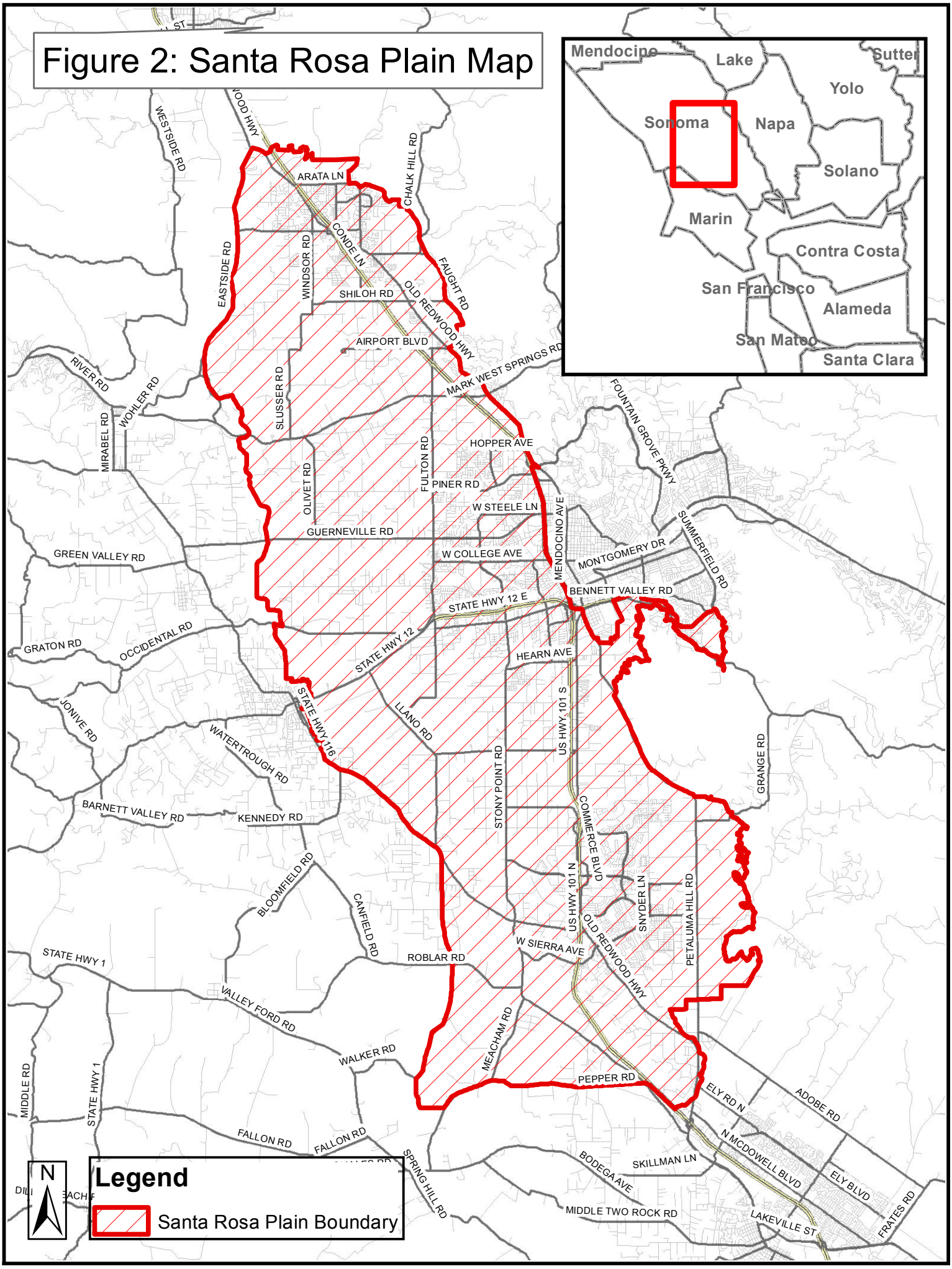
Figure 2: Santa Rosa Plain Map