



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

PROJECT: Pankey Ranch Mining and River Restoration Project

PUBLIC NOTICE NUMBER: 2010-00212S

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COMMENTS DUE DATE: July 9, 2014

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1. INTRODUCTION: Mr. Chad Pankey, through his agent, Oasis Associates, Inc. (POC: Ms. C.M. Florence, 805-541-4509), P.O. Box 774, Santa Margarita, CA 93453, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to conduct the “Pankey Ranch Mining and River Restoration Project,” one mile north of the town of San Miguel, in unincorporated San Luis Obispo 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.*).

2. PROPOSED PROJECT:

Project Site Location: The proposed project is located on and adjacent to the Salinas River at its confluence with Vineyard and Mahoney Creeks, and parallel to U.S. Highway 101, approximately one mile north of the town of San Miguel, San Luis Obispo County, California (Figure 1).

Project Site Description: The site consists of the Salinas River and its adjacent floodplains, agricultural lands on a terrace above the Salinas River, and adjacent riparian zones.

Project Description: The project would be implemented in three phases. A description of the mining phases, including the duration, objectives, and activities associated with each phase, is provided in Table 1. Figure 2 depicts the phase locations. The proposed Salinas River and Vineyard Creek in stream mining areas are designed to extract sand and gravel at recurring intervals during a

30-year mining period while avoiding and minimizing impacts to listed species and riparian and wetland habitat. However, the proposed project would be authorized for ten years, with a review in year 5 and with additional project review for each subsequent re-authorization.

Phase 1. Phase 1 (Years 1-3) would include the restoration of approximately 6.0 acre of riparian habitat within the South Floodplain Restoration Area and the extraction of aggregate from the Salinas River In-stream Mining Area (Figure 2). Phase 1 mining/excavation would be completed during two to three successive dry season work periods (see Table 1 for work windows) depending upon market demand for aggregate materials. Phase 1 re-vegetation in the South Floodplain Restoration Area would likely occur during the rainy season (October – April) to mimic the natural timing of willow/cottonwood habitat establishment and thereby increase seedling survival rates.

Phase 2. (Years 4-9) mining and excavation work would also be completed during two successive dry season work periods (see Table 1 for work windows) between years 4 and 9, as determined by market demand and other factors. Phase 2 would include completion of grading, material extraction, and restoration activities within both the North Floodplain Restoration Area and the Vineyard Creek In-stream Mining Area (Figure 2). These project areas are linked through the creation the 5.05-acre side-channel and restored floodplain complex in the North Floodplain Restoration Area, which would create a significantly lower bed elevation at the downstream end of Vineyard Creek. The Vineyard Creek In-stream Mining Area would be graded to this lower elevation, which

would improve the sediment transport and flood conveyance capacity of Vineyard Creek at the Indian Valley Road Bridge. Phase 2 re-vegetation in the North Floodplain Restoration Area would also likely occur during the rainy season (October – April) to mimic the natural timing of willow/cottonwood habitat establishment and thereby increase seedling survival rates.

Phase 3. In the remaining years of the project (Years 10-30), material would continue to be extracted from the Salinas River and Vineyard Creek In-stream Mining Areas with a frequency driven both by the market demand for aggregate material and the rate of sediment replenishment. For the Salinas River In-stream Mining Area, pre and post-mining surveys of topographic cross-sections would be conducted by a qualified surveyor to verify that the 2-ft maximum depth requirement has not been exceeded. The final year of the project would include reclamation of all mining/operations areas and haul roads that are outside of the habitat restoration areas (which would have already been restored) in accordance with the project's forthcoming Reclamation Plan, in compliance with the Surface Mining and Reclamation Act (SMARA).

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 conduct sand and gravel mining operations on the Pankey Ranch property in San Miguel, California.

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 provide a commercially viable source of sand and gravel, while also providing long-term net benefits to listed species within the project area.

Project Impacts: The project would temporarily impact 0.34 acre of jurisdictional seasonal wetlands, and 24.95 acres of jurisdictional other waters of the U.S. over the course of the three phases. There would be no permanent loss of jurisdictional wetlands and other waters.

Proposed Mitigation: Impacts to riparian zone would be mitigated through restoration of existing riparian zone habitat within the project area. Impacts to

jurisdictional wetlands and waters of the U.S. would be mitigated through the re-vegetation of existing floodplains, the creation of the secondary side channel, and the restoration of a floodplain adjacent to the Salinas River.

Project Alternatives: An alternatives analysis has been submitted and will be analyzed in accordance with Section 404(b)(1) of the Clean Water Act.

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 is hereby notified that, unless USACE is provided documentation indicating a complete application for water quality certification has been submitted to the California Regional Water Quality Control Board (RWQCB) within 30 days of this Public Notice date, the District Engineer may consider the Department of the Army permit application to be withdrawn. 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, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401, 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 California Coastal Commission.

Other Local Approvals: The applicant will be applying for other local governmental authorizations for the project as needed.

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 the following Federally-listed species and are present at the project location or in its vicinity, and may be affected by project implementation: Steelhead, South-Central California Coast Distinct Population Segment (*Oncorhynchus mykiss*), Least Bell's vireo (*Vireo bellii pusillus*), 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. § 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. USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. 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 raises 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. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

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 94103-1398; 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 may be obtained from the applicant and/or agent, or by contacting the Regulatory Permit Manager. An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.