



**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: Santa Clara Valley Habitat Conservation Plan, Regional General Permit

PUBLIC NOTICE NUMBER: 2012-00302S

PUBLIC NOTICE DATE: May 5, 2014

COMMENTS DUE DATE: June 5, 2014

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1. INTRODUCTION: The City of San José, City of Morgan Hill, City of Gilroy, County of Santa Clara, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, and Santa Clara Valley Habitat Agency, collectively known as the co-Permittees (Table 1), have applied to the United States Army Corps of Engineers (USACE), San Francisco District, for a Regional General Permit (RGP), a Department of the Army Permit. The Habitat Plan RGP (HP RGP) would authorize its co-permittees to complete activities covered by the Santa Clara Valley Habitat Conservation Plan (HCP)/Natural Community Conservation Plan (NCCP; called *Habitat Plan*) that have minimal impacts on waters of the United States (the Applicants for the HP RGP are also the co-Permittees of the Habitat Plan). These activities may include urban development, in-stream capital projects, in-stream operations and maintenance projects, rural capital projects, rural operations and maintenance projects, rural development, and habitat restoration, creation, and enhancement and may result in project actions that directly or indirectly impact waters of the United States. 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.*).

Applicant	Applicant Agency	Address
Stan Ketchum	City of Gilroy	7351 Rosanna Street, Gilroy, CA, 95020
Sylvia Gallegos	County of Santa Clara	70 West Hedding Street, East Wing 11th Floor, San José, CA 95110
Beau Goldie	Santa Clara Valley Water District	5750 Almaden Expressway, San José, CA 95118
Ann Calnan	Santa Clara Valley Transportation Authority	3331 North First Street, Building B-2, San José, CA 95134
Kenneth Schreiber	Santa Clara Valley Habitat Agency	535 Alkire Avenue, Suite 100, Morgan Hill, CA 95037

2. PROPOSED PROJECT:

Project Site Location: The Habitat Plan area proposed to be covered under the HP RGP (HP RGP area) includes 460,205 acres of land located entirely within Santa Clara County (Figure 1). The HP RGP area is equal to the Habitat Plan study area, less state parks lands in Henry W. Coe and Pacheco State parks. It does not include the extended study area for burrowing owl conservation. The HP RGP area also includes almost all of the City of San José (less San Francisco Baylands habitats), all of the City of Morgan Hill, and all of the City of Gilroy. The HP RGP area is accessible from San Francisco by Highway 101 or

Applicant	Applicant Agency	Address
John Davidson	City of San José	200 East Santa Clara Street, San José, CA 95113
Andrew Crabtree	City of Morgan Hill	17575 Peak Avenue, Morgan Hill, CA 95037

Interstate 280, and from Oakland by Interstate 880. Land uses in the HP RGP Area include urban, rural residential, agriculture, public open space, and rangelands (see Figure 2). The entire proposed HP RGP area resides within the regulatory boundary of the San Francisco District of the USACE. The HP RGP area is defined as the area in which all RGP covered activities would occur, impacts would be evaluated, and RGP compensatory mitigation activities would be implemented. The boundary of the HP RGP area is based on political, ecological, and hydrologic factors. The HP RGP area includes all of the Llagas/Uvas/Pajaro watersheds within Santa Clara County and the entire Coyote Creek watershed except for the Baylands. A large portion of the Guadalupe watershed is also within the HP RGP area. The HP RGP area also encompasses small areas outside these watersheds.

Project Site Description: The Santa Clara Valley (Valley) runs the entire length of the County from north to south, bordered by the Diablo Range on the east and the Santa Cruz Mountains on the west. Salt marshes, tidal wetlands, and mostly abandoned salt ponds lie in the northern part of the County, adjacent to San Francisco Bay. The Valley is generally split into two geographic regions, the North Valley and the South Valley. The North Valley is extensively urbanized and houses approximately 90% of the County's residents. Thirteen (13) of the County's 15 cities are located in the North Valley, while the remaining two cities, Gilroy and Morgan Hill, are located in the South Valley. The South Valley remains predominantly rural, with the exception of urban centers in Gilroy and Morgan Hill. Low-density rural residential developments are scattered along the Valley floor and foothill areas.

Project Description: Activities conducted under the HP RGP would allow public and private entities to implement projects that fall under seven general categories: urban development, in-stream capital projects, in-stream operations and maintenance projects, rural capital projects, rural operations and maintenance projects, rural development, and habitat restoration, creation, and enhancement occurring in the Reserve System (lands protected as part of the conservation strategy of the Habitat Plan). These covered activities are described in greater detail below.

Urban Development

This category includes projects and activities that occur inside the planning limits of urban growth (see Figure 2) but outside of in-stream areas (streams and adjacent

riparian vegetation) and includes, but is not limited to: (1) construction, maintenance, and use of residential, commercial, industrial, and other types of urban development; (2) transportation facilities; (3) public service and cultural facilities; (4) recreational facilities and associated infrastructure; (5) public and private utilities; (6) city water delivery and storage facilities; (7) stormwater management facilities; (8) waste management facilities; (9) funeral/interment services; (10) vegetation management, including fuel reduction; and (11) hazardous material remediation for—and restoration related to—abandoned dumps (e.g., Singleton Landfill). By definition, these types of covered activities could not directly affect streams, but they may affect jurisdictional wetlands.

In-stream Capital Projects

In stream projects include those projects that affect the stream bed or bank, and/or surrounding adjacent riparian corridor. This category addresses public infrastructure activities that affect streams. In-stream capital projects include the following activities: (1) bridge construction and replacement including vehicular, train, and pedestrian bridges; (2) urban development activities that overlap with streams (e.g., water supply, wastewater management, and stormwater management); (3) levee reconstruction; (4) geomorphic rehabilitation; (5) gravel, cover, and fish passage enhancement; (6) development of trails in or through the in-stream area; (7) culvert installation or replacement; (8) dam repair and seismic retrofit; (9) implementation of the Santa Clara Valley Water District (SCVWD) Dam Instrumentation Program; (10) reconstruction, realignment, and decommissioning of SCVWD canals; and (11) restoration projects throughout the RGP area, including creek realignment and erosion management.

In-Stream Operations and Maintenance

This category includes operations and maintenance activities in the stream channel; along the stream bank; and in adjacent lands at top-of-bank within the riparian corridor, including maintenance of access roads and trails. These covered activities occur in both urban and rural areas. This category includes the following activities: (1) facility maintenance such as trail, bridge, road, and culvert repair and/or replacement in in-stream areas (including riparian areas); (2) natural resource protection such as small bank stabilization projects and removal of debris deposited during flooding; (3) operations and maintenance of flood protection facilities (e.g., dams, armored creeks, detention ponds, streams), which may include vegetation management, minor sediment removal, or bank stabilization; (4) operations, maintenance, and

replacement of existing water supply facilities (e.g., flashboard dams, inflatable dams, stream gages, percolation ponds, and diversions); (5) non-routine stream maintenance activities conducted by SCVWD (i.e., those activities not covered by SCVWD's Stream Maintenance Program) including extensive removal of vegetation in the Lower Llagas flood control channel; (6) removal of debris blockages and fish passage enhancement except in emergency situations; (7) mitigation and/or monitoring in creeks or adjacent riparian corridors; and (8) vegetation management for exotic species removal (e.g., giant reed) and native vegetation plantings.

Rural Capital Projects

This category addresses public infrastructure projects outside the cities' planning limits of urban growth and includes: (1) rural transportation projects, including bicycle and pedestrian improvements; (2) development of or upgrades to new County parks facilities; (3) renovation, replacement, and upgrades of existing facilities; (4) closures of trails, roads, and other infrastructure (such as stock ponds) in public open space excluding the Reserve System; (5) facility development, renovation, and expansion including offices, office drainage improvements, and visitor centers; water supply projects; (6) stormwater management facilities including a detention basin proposed by Morgan Hill outside of its planning limits of urban growth; (7) capital improvement projects by County of Santa Clara Parks and Recreation and the Santa Clara Valley Open Space Authority; (8) Kirby Canyon landfill development; and (9) implementation of the South County Airport Master Plan.

Rural Operation and Maintenance

Most rural operation and maintenance activities occur outside of streams, but some actions may have impacts on streams. These actions may also affect jurisdictional wetlands. Rural operations and maintenance activities include the following: (1) utility line or facility operations and maintenance; (2) facility line maintenance including vegetation and infrastructure management; (3) maintenance, repair, and rehabilitation of rural roads and road shoulders, including pothole repairs, overlays, resurfacing of existing paved areas, construction of retaining walls to stabilize adjacent embankments, vegetation removal (e.g., overhanging bushes, trees), and re-grading to maintain a functional shoulder; (4) maintenance of infrastructure associated with roads including drainage ditches, culverts, and retaining walls; (5) operations, maintenance, and fire protection of rural juvenile detention facilities, medical treatment facilities, the Santa Clara County Justice Training Center, and the

Santa Clara County Weapons Training Center; (6) operation, maintenance, and management of County parks including trail and road maintenance, facility maintenance, vegetation management around structures; (7) management of natural resources including grassland, oak woodland, and riparian natural communities; protection and enhancement of freshwater resources; erosion control; sensitive species management and monitoring outside of the Reserve System. Management may include prescribed burns, mechanical fuel removal, invasive vegetation management, manual labor, herbicide use, bullfrog management, feral pig removal, management of other exotic nuisance species, and managed grazing; (8) management and maintenance of ponds and spring boxes including temporary draining for amphibian management, dredging or clearing of debris and sediment for water management for cattle, and rehabilitation due to erosion and/or pond or box failure (does not include pond removal); (9) dam maintenance including burrow management, vegetation removal, dam repairs, and dam facility repairs; (10) removal of infrastructure (e.g., building structures, roads, trails, stock ponds) for public safety, resource protection, and park management; (11) vegetation management for exotic species removal and native vegetation plantings including the use of livestock grazing and prescribed burns; (12) trail maintenance including grading, clearing, brushing, erosion control, paving, re-paving, abandonment, and restoration; (13) surveys and monitoring to support natural resource management outside of the Reserve System; (14) enhancement and restoration projects outside of the Reserve System; (15) removal of fish barriers (such as low flow crossings) and installation of fish screens; (16) maintenance of water delivery systems, which includes maintenance of in-stream structures that have a screened pipe that pulls water from a local stream into the property; (17) activities associated with the maintenance of large facilities including golf courses, large event facilities, and sports complexes; (18) maintenance of equestrian facilities and uses including equestrian stables, equestrian centers, trails, manure management, and horse grazing activities; (19) minor remediation projects (less than 1.0 acre) for spills, illegal dumping, fuel/chemical storage, and firing ranges; (20) operations and maintenance of pump stations, operations yards, utility yards, and corporation yards including storing sediment, and truck access; (21) off-stream groundwater recharge sites and associated facilities, which may include removal of sediment and vegetation and maintenance of associated roads, diversion structures, and catwalks; (22) maintenance of water supply facilities including buildings, rain gauges, pipelines, and turnouts; and (23) implementation of SCVWD's Pipeline

Maintenance Program.

Rural Development

Rural development includes the following activities: (1) residential development consistent with the County General Plan; (2) non-residential development within unincorporated areas of the county consistent with the County General Plan and that requires a permit from the County; (3) vineyard, orchard, or other farming activity that obtains a building, grading, or development permit from the County or City; (4) residential or non-residential development within the Cities of Gilroy, Morgan Hill or San José that is outside their respective urban service area and consistent with the applicable General Plan; and (5) projects, including capital projects, implemented by co-Permittees outside the urban service area.

Conservation Strategy Implementation

Most of these activities will take place within the Reserve System assembled by the Habitat Agency, but some conservation activities may also occur outside of the Reserve System on public or private lands. All conservation actions will take place within the HP RGP area, except for the possibility that land will be acquired at the mapped boundary of the HP RGP area due to parcel boundaries that cross over the boundaries shown in Figure 1. On parcels acquired for the Reserve System that extend beyond the mapped RGP area boundary; management, restoration, and monitoring activities are covered on the entire parcel within unmapped portions of the RGP area as long as more than half of each parcel is located within the RGP area. These covered activities would occur on no more than a total of 250 acres. Specific actions include the following: (1) construction of compensatory mitigation projects including stream, wetland, and pond restoration, creation, and enhancement projects, which may include geomorphic rehabilitation of streams, expansion of existing wetlands, creation of new wetlands and ponds, planting of aquatic vegetation; (2) vegetation management; (3) relocation of covered species from impact sites and within reserves where impacts are unavoidable and relocation has a high likelihood of success; (4) demolition or removal of structures, roads, or manmade livestock ponds; (5) control of nonnative species; (6) stream maintenance for habitat purposes; (7) installation of up to 58 wells for the purpose of filling stock ponds or providing water for cattle; (8) pond maintenance; (9) surveys and monitoring for mitigation and restoration/habitat enhancement projects; (10) fire management; (11) hazardous materials remediation; (12) repair or replacement of existing facilities damaged by floods, fire, or earthquake; (13) operations related to water

delivery for ponds and other aquatic habitat; (14) water delivery for use in operations facilities.

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 authorize structures or work, including discharges of dredge or fill material in waters of the United States, including wetlands, in the HP RGP area.

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 purpose of the HP RGP is to:

- 1: Streamline permitting for projects within the HP RGP Area that have minimal impacts on waters of the United States while ensuring mitigation is implemented on a watershed scale.
- 2: Provide a comprehensive means to coordinate and standardize the mitigation and compensation requirements of the federal Endangered Species Act (ESA), California Endangered Species Act (CESA), California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), the Natural Community Conservation (NCCP) Act, and other applicable laws and regulations relating to biological and natural resources within the Study Area so that public and private actions would be governed equally and consistently, thereby reducing delays, expenses, and regulatory duplication.
- 3: Assemble and maintain a reserve system within the Study Area that focuses on preservation and enhancement actions that provide for the protection of species, natural communities, and ecosystems on a landscape level.

Project Impacts: The proposed HP RGP would authorize up to 65 acres of permanent and 36 acres of temporary impacts on wetlands and other waters, including riparian land cover types over the 5 year term of the RGP (Tables 2 and 3). These numbers are based on one-sixth of the estimated impacts of the 50-year Habitat Plan. Individual projects would be limited in scale based on the parameters of the Corp's Nationwide Permit Program.

Proposed Mitigation: Projects implemented under HP RGP would incorporate conditions on covered activities to avoid and minimize potential impacts on wetlands and other waters, including water quality protection. For unavoidable impacts on wetlands and other waters, the co-Permittees propose a Compensatory Mitigation Program (Program) that will work in conjunction with the HP RGP and the Habitat Plan. The Program will use the Habitat Plan wetland fees to restore and create wetlands and waters to meet the compensatory mitigation obligations under CWA Section 404. The Program is consistent with the mitigation requirements outlined in the USACE 2008 *Compensatory Mitigation for Losses of Aquatic Resources: Final Rule* (33 CFR 332; 2008 Final Rule). Therefore, the Program is proposed as the compensatory mitigation vehicle for impacts to wetlands and other waters of the United States resulting from implementation of Habitat Plan covered activities.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: Applicants seeking coverage under the HP RGP must obtain State water quality certification or a waiver before they can 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.*). It is the intent of the co-Permittees to work with the San Francisco Regional Board which has jurisdiction over the Habitat Plan lands in the San Francisco Bay Watershed, and the Central Coast Regional Board which has jurisdiction over the Habitat Plan lands in the Monterey Bay Watershed, to develop a process for streamlining compliance with Clean Water Act Section 401.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region (POC: Bruce Wolfe), 1515 Clay Street, Suite 1400, Oakland, California 94612, and the Executive Officer, California Regional Water Quality Control Board, Central Coast Region (POC: Kenneth A. Harris Jr.), 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906 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.

The RGP Area does not overlap 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 San Francisco Bay Conservation and Development Commission.

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.

Other Local Approvals: By definition, applicants to the RGP would also be seeking coverage under the ESA and NCCP Act for impacts to Habitat Plan covered species. Take authorization would be granted through the HCP. Applicants will also be required to apply for a Section 1602 Lake or Streambed alteration agreement for projects that propose to modify streams through the California Department of Fish and Wildlife.

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 USC § 1531 *et seq.*), requires Federal agencies to consult with either the United States 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. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from USFWS and NMFS concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

USACE will consult with USFWS to ensure the issuance of the RGP will not conflict with the ESA. As the RGP is based on the Habitat Plan and a permit recently issued by USFWS, concurrence is expected. The following birds, mammals, amphibians, reptiles, invertebrates, and plants are covered by the Habitat Plan: western burrowing owl (*Athene cunicularia*), least Bell's vireo (*Vireo bellii pusillus*), tricolored blackbird (*Agelaius tricolor*), San Joaquin kit fox (*Vulpes macrotis mutica*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), foothill yellow-legged frog (*Rana boylei*), western pond turtle (*Actinemys marmorata*), Bay checkerspot butterfly (*Euphydryas editha bayensis*), Tiburon Indian paintbrush (*Castilleja neglecta*), Coyote ceanothus (*Ceanothus ferrisiae*), Mount Hamilton thistle (*Cirsium fontinale* var. *campylon*), Santa Clara Valley dudleya (*Dudleya setchellii*), fragrant fritillary (*Fritillaria liliacea*), Loma Prieta hoita (*Hoita strobilina*), smooth lessingia (*Lessingia micradenia* var. *glabrata*), Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), and most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*).

USACE will also consult with NMFS to obtain concurrence that the RGP covered activities will not likely adversely affect the following federally listed fish species: Central California Coast steelhead DPS (*Oncorhynchus mykiss*) and South Central California Coast steelhead DPS (*Oncorhynchus mykiss*).

Magnuson-Stevens Fishery Conservation and

Management Act (MSFCMA): Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (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. For most site-specific projects and activities, the loss or degradation of EFH would be relatively small and would have minimal effect on species abundance and distribution. Implementation of many projects over time may result in measurable aggregate loss of habitat area, but the extent of aggregate effects would still likely be relatively limited given that the overall objective of the Habitat Plan is to enhance and restore stream and riparian systems inside and outside of the Reserve System, providing additional benefit to native fish and other stream-dwelling species. Given these considerations, RGP project actions with expected implementation of applicable avoidance and minimization measures are not likely to result in the adverse modification of EFH. USACE will seek concurrence from NMFS of this determination during the informal consultation process.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRSA 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. Federal action agencies (USFWS for the Habitat Plan and USACE for the RGP) must comply with Section 106 of the National Historic Preservation Act (NHPA). The NHPA and the potential effects of the conservation strategy on resources subject to the NHPA are discussed in detail in the Habitat Plan Environmental Impact Report/ Environmental Impact Statement (EIR/EIS). However, the Plan's EIR/EIS may not fully evaluate all potential impacts on cultural resources beyond those actions of the Habitat Agency. Applicants requesting coverage under the HP RGP will be required to provide proof of compliance with NHPA before the USACE will authorize an activity under the proposed RGP.

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. USACE is preparing an analysis that considers alternatives to this proposed RGP; however, the preliminary alternatives analysis indicates that because the program is built on USACE's nationwide permitting process framework, it is likely the least environmentally damaging practicable alternative. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

6. PUBLIC INTEREST EVALUATION: 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 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. For an electronic version, please select the *Public Notices* tab at: <http://www.spn.usace.army.mil/Missions/Regulatory>.