



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division, Eureka Field Office
601 Startare Drive, Box 14
Eureka, CA 95501

PUBLIC NOTICE

PROJECT: Rohner Creek Flood Control Project

PUBLIC NOTICE NUMBER: 2014-00393

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COMMENTS DUE DATE: June 29, 2015

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INTRODUCTION: The City of Fortuna (POC: Kevin Carter 707-725-7630), 621 11th Street, Fortuna, California 95540), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a 10-year Department of the Army Permit to discharge fill material into jurisdictional waters of the United States associated with correction of an ongoing flooding problem. The project would reduce flooding from Rohner Creek, incorporate seismic upgrades, and improve habitat along the target reach of Rohner Creek. The project is located within the Federal Emergency Management Agency (FEMA) floodplain and the incorporated limits of the City of Fortuna, on the east side of Highway 101, Humboldt County, California. This 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 project is located in the Rohner Creek watershed within Sections 2 and 35, Township 2 North and 3 North, Range 1 West, Humboldt Meridian (USGS Fortuna topographic quadrangle map) with coordinates of 40.5929N latitude and -124.1474W longitude.

Project Site Description: The overall watershed area at Rohner Creek's confluence with Strongs Creek is about 4.5 square miles and ranges in elevation from 25-feet to 1,600-feet. This area includes Hillside Creek, the largest tributary to Rohner Creek. The upper portion of the watershed, north of the project area, is predominately comprised of second and third-growth redwood forest, whereas the mid-portion consists of rural residential areas. The lower portion of the watershed is comprised of a mix of residential, commercial, and industrial uses. The project reach encompasses approximately 5,300 feet of the

Rohner Creek channel and 2,300 feet of the Hillside Creek channel as well as portions of the Rohner Creek floodplain. Development has encroached on the channels throughout much of the project reach. Vegetation is heavily overgrown and debris jams are common within the channel.

Project Description: As shown in the attached drawings, the applicant plans to: reduce flood frequency and duration of Rohner Creek and Hillside Creek, provide a minimum 10-year storm event conveyance in Rohner Creek between Main Street and 12th Street crossings, design and construct as funding becomes available future phases that reduce flooding up to the 100-year storm event, implement seismic improvements through new infrastructure and retrofits, and integrate stream habitat enhancements that improves salmonid access and stream function.

Phase 1 of the project is anticipated to be implemented during the instream work window (June 15-October 15). Vegetation clearing would occur during the preceding winter to avoid impacts to nesting birds. Cofferdams would be installed to isolate work areas that would be dewatered and streamflow bypassed downstream. Phases 2, 3, and 4 would be constructed at a later date subject to available funding. Phase 1 activities can be constructed without additional phases and result in conveyance of the 10-year storm. All construction would occur within the existing channel. Minor traffic control would be a component of this project when access routes are limited to private residences and for construction material import and off-haul.

The majority of the construction work would include: excavation, grading, rock slope protection (RSP) placement and channel armoring, planting, pre-cast bridge placement, and construction of retaining walls. Typical earth moving equipment would be the majority of the equipment used

including: small bulldozers, excavators, backhoes, and small cranes. Other equipment and vehicles used would include: dump trucks, concrete pump trucks, portable generator sets, and other various power and hand-tools. Best Management Practices (BMP's) and other minimization measures would be implemented to minimize project impacts to aquatic and sensitive resources.

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 reduce flooding associated with moderate rainfall events along Rohner Creek (Main Street to South 15th Street).

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 reduce flood frequency and duration of Rohner Creek and Hillside Creek, provide a minimum 10-year storm event conveyance in Rohner Creek between Main Street and 12th Street crossings, potentially reduce flooding up to the 100-year storm event, implement seismic improvements through new infrastructure and retrofits, and integrate stream habitat enhancements that improves salmonid access and stream function.

Project Impacts: Approximately 1,690 cubic yards of fill would be installed in jurisdictional waters permanently impacting about 0.75 acre of wetlands and 600 linear feet of other waters and temporarily impacting 1.3 acres of wetlands and 1,445 linear feet of other waters.

Proposed Mitigation: The proposed mitigation is located on-site. Often the impacts will be mitigated at the same location where the impacts occur. Mitigation actions will occur in tandem to each phase being built so no temporal loss to wetlands or habitats will occur over the lifetime of the four phased project. Permanent impacts to wetlands will be mitigated at a ratio of 1.95:1 through 1.45-acres of wetland establishment. About 1.75-acres of wetlands will be enhanced/ reestablished. Temporary impacts to riverine wetlands (other waters) will be mitigated at a ratio of 1.4:1 through establishment of 0.25-acre riverine wetlands and 0.65-acre reestablished for a total of 0.90 acre.

Project Alternatives: Six alternatives were evaluated including: Alternative 1B (proposed alternative)-Rohner and Lower Hillside Creek Improvements with Floodplain Swale, 100-year Flood Conveyance; Alternative 1-Rohner and Lower Hillside Creek Improvements, 10-year Flood Conveyance; Alternative 2 Rohner Creek Re-Alignment with Rohner and Lower Hillside Creek Improvements; Alternative 3-Rohner and Lower Hillside Creek Improvements with Field Bypass Culvert, 100-year Flood Conveyance; Alternative 4-Rohner and Lower Hillside Creek Improvements with Fortuna Boulevard Bypass Culvert, 100-year flood Conveyance; and Alternative 5-No Project alternative. The preferred alternative was selected by the applicant over the other alternatives because it was considered the alternative that would best address the flooding issues with the least environmental impact and most successful outcome. The no project alternative would represent a continuation of existing conditions. The Corps has not endorsed the submitted alternatives analysis at this time. The Corps will prepare its own 404(b)(1) alternatives analysis prior to reaching a final permit decision.

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 has recently submitted an application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the project. 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, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403.

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 Federal applicant

seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Determination 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 Determination or has waived its right to do so. 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.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, North Coast District Office, 710 E Street, Suite 200, Eureka, California 95501, by the close of the comment period.

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 or 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 insure 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, a biological assessment dated March 26, 2015 and prepared by GHD on behalf of the applicant, and other pertinent information, 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 may be present at the project location or in its vicinity, but that project implementation will have no effect on these species: tidewater goby (*Eucyclogobius newberryi*) and yellow-billed cuckoo (*Coccyzus americanus*). USACE has made a *preliminary* determination that the following federally-listed species and designated critical habitat are present at the project location or in its vicinity, and may be affected by project implementation: steelhead trout (*Oncorhynchus mykiss*), Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*Oncorhynchus kisutch*) and their critical habitat. To address project related impacts to these species and designated critical habitat, the Corps has initiated formal consultation with NMFS, by letter dated April 3, 2015, pursuant to Section 7(a) of the Act.

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 the applicant concerning the consultation process. 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 1996, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the National Marine Fisheries Service (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, the Corps has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area and the biological assessment dated March 26, 2015, prepared by GHD. Based on this review, the Corps has made *preliminary* determination that EFH is present at the project location or in its vicinity and that the critical elements of EFH may be adversely affected by the project; therefore, consultation was initiated on April 3, 2015. 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 the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

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. As the Federal lead agency for this undertaking, the Corps has conducted a review of latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant including information assessed by Roscoe and Associates (2015), to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, the Corps has made a 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. As the federal lead agency for this project, the Corps is responsible for determining the presence or absence of historic properties or archaeological resources, and the need to conduct consultation.

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 the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until the Corps 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 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 of the availability of a less environmentally damaging practicable alternative to the project that does not require the discharge of dredged or fill material into special aquatic sites. 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 Carol Heidsiek, San Francisco District, Regulatory Division, Eureka Field Office, 601 Startare Drive, Box 14, Eureka, California 95501; 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. 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>.