



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: City of Livermore Stream Maintenance Program

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COMMENTS DUE DATE: 23-June-2016

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1. **INTRODUCTION:** The City of Livermore (POC: Pamela Lung, 925-960-4538), 1052 South Livermore Avenue, Livermore, California 94550, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit for routine stream maintenance activities within the City of Livermore, Alameda 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.*), and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The proposed work would occur on waterways within the City of Livermore, plus unincorporated areas owned by the City of Livermore near Doolan Canyon, the area between Portola Avenue and Interstate 580, and Sycamore Grove Park. The SMP Area covers the channel reaches of Collier Canyon Creek, Arroyo Las Positas Tributary, Arroyo Las Positas, Altamont Creek, Realigned Arroyo Las Positas, Arroyo Seco, Arroyo Mocho, Arroyo Del Valle, Granada Channel, Cottonwood Creek, Ravenswood Drainage, and the Bear Creek basins, as well as a 75-foot buffer on either side of the channel reaches. Please see map of the SMP Area (Figure 1).

Project Site Description: The waterways covered within the proposal comprise a total of 42.8 miles of stream and consist of two main stream types: natural creeks and engineered/modified channels. Natural creeks may require maintenance for flow conveyance and to reduce flooding hazard. Engineered channels typically were built with a trapezoidal bed and require maintenance of access roads

and associated structures such as culverts and outfalls. Modified channels are similar to natural creeks but have been altered either through channel repositioning, grading, or vegetation removal.

Project Description: The applicant proposes a Stream Maintenance Program (SMP) to cover three primary activities: sediment management, vegetation management, and bank stabilization. Sediment management is the removal of excess sediment from structures such as culverts to maintain water flow conveyance. Vegetation management is the trimming and removal of problematic vegetation in creeks and channels to maintain flow conveyance capacity, establish a canopy of riparian trees, and control invasive weeds. Bank stabilization is the repair and stabilization of eroded stream banks. Transportation and disposal of sediment and vegetation would also occur as part of the SMP. Additionally, the SMP also involves smaller and infrequent activities such as bridge maintenance, culvert improvements, access road and trail maintenance, and debris removal. However, activities not covered by the SMP include stream maintenance activities outside of the SMP project area, new culverts, bridge replacement, capital improvement projects, emergency activities, and the Springtown Golf Course Water Diversion. The number of sediment removal and bank stabilization activities in a given year would depend largely on the recent weather and hydrologic conditions. A SMP Manual has been developed to provide guiding policies and specific direction on approach for the implementation of maintenance activities.

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 the risk of flooding within the City of Livermore.

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 adequate flood protection and conveyance capacity for creeks and channels in the City of Livermore while complying with all relevant environmental regulations and protecting and enhancing natural resources.

Project Impacts: Impacts from the project would result mostly from sediment removal, bank stabilization, and vegetation management. Please see the attached tables listing the types of potential impacts and the projected area of impacts at each of the SMP Area's waterways. Unavoidable impacts of similar magnitude are also projected over the life of the permit.

Proposed Mitigation: The City of Livermore's SMP mitigation approach was developed based on the recently-permitted Sonoma County Water Agency SMP and the East Alameda County Conservation Strategy (EACCS). Permanent impacts to waters of the U.S. are generally anticipated only at locations where new hardscape would be installed and would be mitigated at a 1.5:1 ratio. Temporary impacts would be mitigated at a 1.1:1 ratio using a three-tiered system, with mitigation first sought on-site (Tier 1) and then as in-kind mitigation at other SMP Area reaches (Tier 2). Tier 3 would be off-site mitigation to address temporal loss and would occur regardless of the location of Tiers 1 and 2 mitigation. Examples of mitigation for temporary impacts include native riparian plant revegetation, large woody debris installation, invasive plant removal, bioengineering/ erosion control, and watershed-based sediment or other containment reduction.

Project Alternatives: Evaluation of this proposed activity's impacts includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). An evaluation has been made by this office under the guidelines and it was determined that the proposed project is water dependent.

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, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, 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.

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.

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 federally-listed species and designated critical habitat is present at the project location or in its vicinity, and may be affected by project implementation. Federally-listed species that have potential to be found in the project area include: California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), Callippe silverspot butterfly (*Speyeria callippe callippe*), San Joaquin kit fox (*Vulpes macrotis mutica*), and palmate-bracted bird's-beak (*Cordylanthus palmatus*). To address project related impacts to these species and designated critical habitat, USACE has initiated formal consultation with USFWS 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 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, 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. As the Federal lead agency for this undertaking, USACE 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, to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, USACE has made a *preliminary* determination that historic and archeological sites have the potential to occur in the program area. However, with the implementation of program best management practices, no adverse effects are expected to result from the implementation of the program activities. 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 lowers 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.

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 Daniel Breen, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-13978; 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 *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/regulatory/>.