



US Army Corps
of Engineers®
San Francisco District

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

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Cooley Ranch Vineyard
Unauthorized Activity/Permit Modification

PUBLIC NOTICE NUMBER: SPN-28490N

PUBLIC NOTICE DATE: February 1, 2016

COMMENTS DUE DATE: March 1, 2016

PERMIT MANAGER: Katerina Galacatos

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1. **INTRODUCTION:** Klein Foods, Inc., (POC: Mr. Douglas McIlroy), P.O. Box 6010, Healdsburg, CA 95448, through its agent, Huffman-Broadway Group, Inc. (HBG) (POC: Robert Perrera, telephone 415 385-4106), 828 Mission Avenue, San Rafael, CA 94901, has requested the U.S. Army Corps of Engineers (USACE), San Francisco District, modify an existing Department of the Army (DA) Permit to construct twelve vineyards and associated features including reservoirs, road crossings, water diversion facilities, and pipelines in jurisdictional waters of the United States (US). This DA permit modification 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 site, known as Cooley Ranch Vineyard Project, lies approximately 5 miles west of the City of Cloverdale and approximately 0.5 miles north of Lake Sonoma in Sonoma County, California. The project is within the boundary of the USGS Bigfoot Mountain and Cloverdale 7.5-minute quadrangle in Sections 7, 16, 17, 18, 19, and 20, Township 11N, Range 11W; and Section 24, Township 11N, Range 12W Mount Diablo Base Meridian. The coordinates of the approximate center of the project area are latitude 38.798611° North and longitude -123.102778° West (Figure 1).

Project Site Description: The project site is located on Cooley Ranch, a 19,000-acre active ranch in the coastal mountains of the northern California Coast Range, within the HUC 10 Dry Creek watershed which is part of the larger HUC 8 Russian Watershed. Ranching activities include cattle grazing, hunting, vineyards and open space preserves.

In addition there are several single-family homes associated with seasonal ranching activities with permanent residents. Elevations range from approximately 800 feet to approximately 2,041 feet above mean sea level at Sky High Mountain. Characteristic vegetation communities occurring in the vicinity include ruderal grassland, valley and foothill grassland, oak woodland, riparian forest, and redwood forest. Aquatic habitats in the vicinity include intermittent drainages, perennial streams, and seasonal and perennial wetland seeps. Dry Creek traverses the ranch property and discharges into Sonoma Lake. The climate of the area is temperate with abundant fog. The average maximum annual temperature is 74 degrees Fahrenheit and the average minimum annual temperature is 47 degrees Fahrenheit. Average precipitation for the area is approximately 44 inches per year.

Project Description: The original USACE DA permit dated July 1, 2010, authorized the construction of 136.7 acres of vineyards within a 280-acre project site which included the following associated features: six reservoirs; six point of diversion (POD) facilities constructed within jurisdictional streams; six pipelines to connect PODs to reservoirs; and eleven stream crossings. Stream crossings will be soil and rock embankments pierced mostly by single corrugated metal culverts up to 50 feet long, half-buried in the streambed, with diameters ranging between 24 and 60 inches.

The final "as-built" project as shown in Figures 2-14 differs from the plans referenced in the July 1, 2010 DA permit. Construction of the project was largely completed in late 2010 and 2011. However, construction began before the DA permit was issued and resulted in the unauthorized discharge of fill into waters of the U.S. The project, as-

built, includes 201.1 acres of vineyards, four reservoirs, three POD facilities, three pipelines to connect diversion facilities to water storage facilities, and a total of thirteen stream crossings of which seven were authorized by the original permit and six unauthorized. Additionally, the permittee has proposed installing a flow measurement weir just above POD 6 to comply with conditions of its California Department of Fish and Wildlife Lake or Streambed Alteration Agreement.

Project Impacts: Total permanent impacts authorized by the existing permit equal 2.11 acres of wetlands; 4,610 linear feet of stream (0.31 acre); and total temporary impacts of 420 linear feet of stream (0.09 acre).

Under the as-built plans, the number of reservoirs and pipelines were reduced from six to four resulting in permanent impacts to 1.60 acres of wetlands and 270 linear feet of stream (0.02 acres). Stream crossings increased from 12 to 13 resulting in permanent impacts to 650 linear feet of stream (0.09 acres); PODs were reduced from six to three resulting in temporary impacts to 210 linear feet of streams (0.05 acres). The as-built vineyard configuration permanently impacted 600 linear feet of an intermittent stream (0.02 acres). In addition, installation of the flow measurement weir just upstream of POD 6 would impact one linear foot of stream. Although the flow measurement weir design allows for the wooden planks to be removed, it is likely the planks will stay in place except when maintenance is required. Total permanent impacts as a result of the “as-built” plans equal 1.60 acres of wetlands and 1,521 linear feet of stream (0.19 acre). Temporary impacts to 210 linear feet of stream (0.06 acre).

Compared to the authorized project, the final as-built configuration shown in the attached plans reduces impacts to wetlands by 0.51 acres and streams by 3,089 linear feet (0.12 acres). It also lessens the number of trees removed by 172 or 96%.

Although the “as-built” design reduces impacts to wetlands and streams relative to the originally authorized plans, the original wetland mitigation plan did not successfully meet all the performance standards and the stream enhancement plan was not fully implemented prior to or concurrent with project construction. This resulted in a temporal loss of aquatic function over an approximately four-year period.

Proposed Wetland Mitigation: Implementation of the project resulted in permanent impacts to 1.60 acres of wetland. Based on USACE guidance regarding work done

without a DA permit authorization, the permittee was required to restore or establish 7.20 acres (4.5:1 ratio) of wetlands, in-kind (wetland seeps) on-site, to offset permanent and temporal losses of aquatic functions. After the permittee conducted an extensive assessment of potential mitigation sites within the 19,000-acre Cooley Ranch, USACE concurred with the permittee’s finding that on-site mitigation was not practicable due to the relatively large acreage of wetlands required to offset impacts, inappropriate soils, steep topography and/or lack of a good hydrologic source. The permittee then conducted an assessment of properties off-site that were legally controlled and/or available for potential wetland mitigation areas. Due to the relatively large acreage of wetlands required to offset impacts, the permittee was unable to locate a parcel/s of sufficient size with appropriate soils, topography and/or a sufficient hydrologic source that were not completely surrounded by existing vineyards or other commercial or residential development. Consequently, USACE concurred that off-site mitigation within close proximity to the project site was not practicable. The third option was to purchase wetland creation credits at an approved wetland mitigation bank near the project site. The nearest available wetland mitigation banks were located within the Santa Rosa Plain area. To offset permanent and temporal loss of aquatic function resulting from project impacts to 1.60 acres of wetland seeps, and taking into account the distance from the project site (35 miles) and out-of-kind compared to in-kind mitigation, USACE required the permittee to purchase 12 acres of wetland creation credits (7.5:1 ratio). On December 24, 2013 the permittee purchased 0.45 acres of wetland creation credits from Horn Mitigation Bank and 11.55 acres of wetland creation credits from the Carinalli Nature Preserve, LLC.

Proposed Stream Mitigation: Implementation of the “as-built” project resulted in approximately 1,521 linear feet of permanent impacts to seasonal streams. The permittee proposes to preserve and enhance a minimum of 8,571 linear feet (5.6:1 ratio) of stream course to offset permanent and temporal loss of aquatic function resulting from project impacts to streams as described in the *Supplementary Mitigation, Monitoring and Reporting Plan for the Cooley Ranch Project*, dated February 2015. Enhancement activities include:

- Installation of fencing for stream enhancement areas, located within vineyard tracts, that exclude cattle, deer, and feral pigs from causing erosion and degrading riparian habitat and adjacent upland vegetation (already completed);

- Repairing and maintaining fencing to exclude cattle within the Snow Creek enhancement area and stream enhancement areas not within vineyard tracts;
- Temporary fencing around upland planting areas in the Snow Creek enhancement area to prevent, cattle, and pigs from damaging seedlings.
- Focused invasive plant species removal;
- Installation of native shrubs and trees within the riparian zone and upland transitional areas;
- Installation of cobble substrates at creek crossings and strategic placement of large woody debris and boulders;
- Provide long-term legal protection by designating as natural areas (partially completed).

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver is a prerequisite for the issuance of a DA 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 modified project. No Department of the Army Permit Modification Letter 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, State Water Resource Control Board, Division of Water Rights, 1001 I Street, Sacramento, California 95812-2000 by the close of the comment period.

Other Local Approvals: The permittee has applied for the following additional governmental authorizations for the project: Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife;

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): Proposed project modifications are within the scope of the environmental assessment conducted for the existing DA permit.

Endangered Species Act (ESA): Proposed project modifications are within the scope of the ESA informal consultation conducted with the U.S. Fish and Wildlife Service (FWS) for the existing DA permit. On July 14, 2009, the FWS concurred with USACE's determination the project is not likely to adversely affect California red-legged frog, the marbled murrelet, and the northern spotted owl.

National Historic Preservation Act (NHPA): Proposed project modifications are within the scope of the NHPA impact assessment conducted for the existing DA permit. The existing special condition 3 regarding historic, cultural, and archaeological resources will be retained. With this special condition, the proposed project modification has little or no potential to affect historic properties including traditional cultural resources.

6. PUBLIC INTEREST EVALUTION: The decision on whether to issue a DA 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 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 Katerina Galacatos, 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. 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>.