



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3406

PUBLIC NOTICE

PROJECT: Lower Walnut Creek Restoration Project

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COMMENTS DUE DATE: May 18, 2020

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1. **INTRODUCTION:** The Contra Costa County Flood Control District (District) (POC: Paul Detjens, (925) 313-2000), 255 Glacier Drive, Martinez, California 94553, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill material into jurisdictional waters of the United States associated with the construction of the Lower Walnut Creek Restoration Project, located in an unincorporated region of Contra Costa County near the City of Martinez, Contra Costa 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 project is located in an unincorporated region of Contra Costa County, approximately three miles east of the City of Martinez, along the southern shoreline of Suisun Bay, and from the mouth of Walnut Creek at Suisun Bay upstream along Walnut Creek and Pacheco Creek. The project is located on the Vine Hill, CA U.S. Geological Survey 7.5-minute quadrangle. The coordinates are Lat. 38.039653°N, Long. -122.097806°W for the northwest corner, and Lat. 38.016042°N, Long. -122.069531°W for the southeast corner. The project location is shown in Figure 1. The Walnut Creek watershed is the largest watershed in Contra Costa County, and one of the largest in the Bay Area, draining approximately 150 square miles.

Project Site Description: The project site is composed of historic tidal marshland, Lower Walnut Creek, and Pacheco Creek and includes tidal and non-tidal areas, but historically was nearly entirely tidal. In the 1960s, the

lowest four miles of Walnut and Pacheco Creeks became part of a U.S. Army Corps of Engineers (Corps) flood control project. Levees were constructed along the creek banks and the Walnut Creek channel was dredged to provide flood conveyance. The channel has since experienced extensive sedimentation and a wide band of tidal marsh has emerged adjacent to the open water channel. The non-tidal areas were created by fill placement and include levees, which are now used as maintenance and access roads, and interior diked wetland and upland areas. The levees prevent water from the adjacent tidal marsh from entering the diked portion of the project area except by way of some potential groundwater intrusion. Muted tidal areas are connected to tidal areas through culverts. Ponding and saturation of diked portions of the property appears mainly to be from rainfall. Vegetation communities in the project area include upland areas dominated by ruderal vegetation and non-native grassland; small patches of coastal scrub in the North Reach of the project; brackish tidal marsh areas dominated by bulrushes, cattails, common reed in the low marsh zone, bulrush, pickleweed, fat-hen and perennial pepperweed in the mid-marsh zone, and pickleweed, salt grass, alkali heath, gumplant and pepperweed in the high marsh zone; muted tidal marsh community in the North Reach and in Pacheco Creek dominated by pickleweed, fat-hen and bulrush; non-tidal marsh areas also occur in the North Reach, Pacheco Creek and South Reach and are dominated by pickleweed, salt grass, fat-hen, pepperweed, brass buttons, and rabbits foot; and a few areas of seasonal wetland that area dominated by pepperweed and stinkwort.

Project Description: The Contra Costa County Flood Control District (District) proposes to restore and enhance coastal wetlands and adjacent upland habitats along the southern shoreline of Suisun Bay and from the mouth of Walnut Creek at Suisun Bay upstream along Walnut Creek

and Pacheco Creek, along approximately 8,400 linear feet of the western bank of Lower Walnut Creek and 7,200 linear feet of Pacheco Creek. The project location is shown in Figure 1. The project would result in 93 acres of restored tidal wetland, 20 acres of restored non-tidal wetlands, 12 acres of restored tidal waters, 4 acres of restored non-tidal waters, and creation of 90 acres of transition ecotone upland areas. The project design consists of three reaches: the North Reach, the South Reach and the Pacheco Creek Reach. In addition, approximately 78 acres of existing tidal wetlands adjacent to the project site would benefit from increased tidal and habitat connectivity. Restoration activities would include breaching and lowering existing levees to restore tidal influence; grading to create channels to reconnect Walnut Creek to its adjacent habitats; grading marsh ponds; grading for general topographic diversity within the marsh; and revegetating the restored marsh areas through both passive and active approaches. The network of channels would be designed to improve drainage and habitat connectivity. The material excavated from the channels may be sidecast adjacent to the channels to create low-relief high marsh berms for more topographic and habitat diversity. Enhancement activities include invasive plant species control, and revegetation, including seasonal wetlands that are in poorly drained, low areas outside tidal influence. These areas that would be outside tidal influence after project construction would provide available opportunities for tidal marsh migration as sea level rises. Invasive plant species control, excavation and grading, and revegetation would occur in the North and South Reaches. Invasive plant species control and revegetation would occur in the Pacheco Creek Reach. In addition, construction of a new setback levee would occur in the South Reach, and levee improvements to protect existing water and wastewater infrastructure would occur in the South Reach. Please refer to figures 2 through 6 for project restoration plans and design.

Once the project has been constructed, the site would be monitored regularly for stability and ongoing trends in physical and biological processes. Maintenance and adaptive management of the site would be completed as necessary to promote the long-term trajectory of the site to provide the desired functions and services associated with the restored habitats and to prevent negative unintended consequences.

Public access amenities and trails are expected to be completed by other entities such as the John Muir Land Trust (JMLT) and East Bay Regional Park District (EBRPD) during a later phase of the project. The current

phase of the project would include construction of some of the levees and berms that would provide width and opportunity for trails and would conduct the initial grading for public amenities.

The North Reach: In general, design elevations in the North Reach would be higher relative to the tides compared to the South Reach, to preserve large areas at supratidal elevations (above the elevations of present day tidal marsh) with the expectation that these areas would gradually convert to tidal marsh habitats over time as sea levels rise. Restored tidal brackish marsh areas would be fully tidal. Tidal channels and a marsh pond would be excavated and the perimeter berm in the northeast would be breached to allow tidal connection to Suisun Bay. A mosaic of lowland terrestrial habitats would be created adjacent to the restored tidal marsh, including a mix of grasslands, seasonal wetlands, and sandy alkali playa flat. Mass grading would be performed in some of the lowland terrestrial habitat areas in order to achieve a gently sloping landscape with an average slope of 50 H:1 V or shallower. The North Reach does not contain flood protection levees; the berms and levees that exist and would be lowered for the restoration do not provide flood protection for any vulnerable infrastructure. Existing infrastructure, including the Central Contra Costa Sanitary District (CCCSD) access road and Waterfront Road, are inundated during high tide events under existing conditions, which would remain unchanged with the proposed project.

The South Reach: The South Reach would be restored by breaching and lowering the existing flood protection levees along Walnut and Pacheco Creeks to restore tidal inundation to the existing non-tidal wetlands. Three new channel networks would connect to Walnut Creek and one new network would connect to Pacheco Creek. The existing levees would be lowered to create predominantly high and mid marsh habitat, but would also include areas of terrestrial lowland grasslands and uplands. Lowland transitional and upland grassland habitat would be created along portions of the existing levees in the southeast area of the reach where adjacent existing grades are supratidal and along portions of the new setback levees.

Flood protection would be provided by a new setback levee along the western edge of the project site that would be approximately 2,300 feet long, including 1,900 feet that would be constructed on Conco's property and 400 feet that would cross the existing basin on District property. The levee slopes would vary from 3H:1V to 10H:1V on the outboard side to support upland and lowland grassland

habitat. Drainage pipes with tide gates would be installed along the length of levee to allow drainage from Conco to Lower Walnut Creek. The setback levees would support an access road for District inspections and maintenance and would allow for the potential for future public access.

Pacheco Creek Reach: The District proposes to enhance the wetlands within this reach through vegetation management, including removal of invasive species and revegetation with native species.

Utilities: The CCCSD outfall pipeline runs from south to the north through the center of the North Reach. Project restoration elements would be offset from the outfall pipeline, and the project would raise and re-align the CCCSD access road to provide continued access to the pipeline. Existing utilities in the South Reach include the Shortcut Pipeline (owned by the Bureau of Reclamation (USBR), operated and maintained by the Contra Costa Water District (CCWD)), an inactive CCWD recycled water pipeline, overhead Pacific Gas & Electric (PG&E) transmission lines and support towers, and buried petroleum products pipelines operated by Calpine and Shell Chemical Company. The project would vertically re-align the Shortcut Pipeline and the inactive recycled water pipeline within the new levee to avoid potential settlement impacts; in addition, the recycled water pipeline would be realigned horizontally to run adjacent to the SCPL though the levee, within the existing SCPL easement. To facilitate the modifications to the Shortcut Pipeline, USBR proposes to issue a MP-620 permit (Interior Region 10 California-Great Basin specific permit for the modification of federal facilities) to CCWD, which would include the realignments of the two pipelines, associated air release valve assemblies for maintenance, and reconfiguration of the access road. CCWD, on behalf of USBR, would obtain a new permanent easement, assignable to USBR, from Conco and the District within areas required for the relocated SCPL on Conco property, and would complete a land agreement with the District and Conco for the construction and joint use of the new levee on Conco's property. The new setback levee would connect to the existing levee north of the PG&E transmission lines and north of the petroleum product pipeline corridor, and there would no change to the ground surface elevations within these corridors.

Project Impacts: Restoration activities would involve discharge of fill within approximately 3.9 acres of wetland waters of the U.S., and within approximately 0.6 acres of other waters of the U.S. Temporary impacts associated

with grading would occur within approximately 15.6 acres of wetland and 2.8 acres of other waters of the U.S.

Proposed Mitigation: The project is primarily a restoration project and would result in net increases in wetlands within the project area. Therefore no compensatory mitigation has been proposed.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver thereof 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: 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. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant has applied for a Consistency Certification from the San Francisco Bay Conservation and Development Commission to comply with this requirement.

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: The applicant has applied for the following additional governmental authorizations for the project: a Lake and 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): 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. § 1500-1508, and USACE regulations at 33 C.F.R. § 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 designated critical habitat are present at the project location or in its vicinity and may be affected by project implementation: endangered Soft Bird's Beak (*Cordylanthus mollis mollis*), endangered salt marsh harvest mouse (*Reithrodontomys raviventris*), endangered Ridgway's rail (formerly California clapper rail, *Rallus longirostris obsoletus*), threatened Delta smelt (*Hypomesus transpacificus*), endangered Chinook salmon, Sacramento River winter-run ESU (*Oncorhynchus tshawytscha*), threatened chinook salmon, Central Valley spring-gun ESU (*O. tshawytscha*), threatened steelhead, Central California Coast DPS (*O. mykiss*), and threatened green sturgeon, southern DPS (*Acipenser medirostris*). Designated critical habitat for the Chinook salmon and green sturgeon is also located within the project area. To address project related impacts to these species and designated critical habitat, USACE will initiate formal and informal consultation with USFWS and NMFS, respectively, 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, Coastal Pelagics FMP, and 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 present at the project location or in its vicinity and that the critical elements of EFH may be adversely affected by project implementation for species managed under the Pacific Groundfish FMP, Coastal Pelagics FMP, and Pacific Coast FMP, based on short term impairment of water quality and increased turbidity, and disturbance and alteration of benthic habitats, which would be minimized through implementation of the

project's proposed avoidance and minimization measures. To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act. 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 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 any required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project is not likely to 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 the 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 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)). Since the project does not entail the discharge of dredged or fill material into waters of the United States, application of the Guidelines will not be required. 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 impacts to the aquatic ecosystem while not causing other major adverse environmental consequences. The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

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 in the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Frances Malamud-Roam, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor, Suite 1111, San Francisco, California 94102-3404; 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>.