



US Army Corps
of Engineers®
San Francisco District

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

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Routine Creek and Channel Maintenance Project
City of Burlingame, San Mateo County

PUBLIC NOTICE NUMBER: 2017-00193S
PUBLIC NOTICE DATE: October 4, 2021
COMMENTS DUE DATE: November 3, 2021

PERMIT MANAGER: Jenna Rais

TELEPHONE: 415-503-6808

E-MAIL: Jenna.S.Rais@usace.army.mil

1. **INTRODUCTION:** The City of Burlingame (POC: Martin Quan and (650) 558-7245), 501 Primrose Road, Burlingame, California 94010, through its agent, WRA, Inc. (POC: Ellie Knecht and (510) 296-0537), 4225 Hollis Street, Emeryville, California 94608, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to conduct periodic routine maintenance to include sediment removal within stream channels and culverts, concrete channel repair, leaf litter and debris removal, vegetation trimming/removal, in-kind culvert repair and replacement, and dewatering associated with these activities, as needed, located in the City of Burlingame, San Mateo 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 RGP maintenance activities would occur in both the City of Burlingame and the City of Millbrae in the channelized portions of the following creeks: El Portal/Trousdale Channel, Mills Creek, Easton Creek, Sanchez Creek, and Burlingame Creek. The areas that would be covered by the routine creek and channel maintenance are illustrated in the attached maps (Figures 1 to 6).

Project Site Description: The maintenance project areas include portions of the five creeks that are channelized and they are part of the municipal stormwater

management system in the City of Burlingame and function as flood control systems. The waterways originate on the eastern slope of the Buri Buri Ridge, on the east side of Interstate 280, and flow northeasterly through the City of Burlingame until they reach the San Francisco Bay. The early development patterns in the level areas along San Francisco Bay resulted in the channelization of the creeks, therefore allowing for development to encroach on creek banks. Additional development in the upper watershed portions outside of the City jurisdiction has added higher volume and more rapid runoff to the stormwater system. Storm flows are conveyed to the channelized creeks through below ground drainage systems. Ongoing maintenance is necessary to accommodate the existing stormwater flows, to avoid exceeding channel capacities, and to prevent flooding. Additionally, privately owned parcels along these portions of the creeks, often extend to the centerline of the channelized creeks, providing an access challenge for conducting maintenance.

Project Description: As shown in the attached drawings, the applicant proposes to continue routine maintenance over a 5-year period to alleviate problems associated with sediment, vegetation, and debris deposition, restricted hydrological flows, infrastructure maintenance, and any associated potential flooding. The maintenance activities would include: sediment removal within channels and culverts; concrete channel repair; leaf litter and debris removal; vegetation trimming/removal; culvert repair and replacement within existing culvert footprints; and, dewatering associated with these activities, as needed. The temporary staging areas for each portion of these work activities would be

approximately 1,500 square feet as depicted in Figures 2 – 6, Part 4.

The City would use a combination of mechanized equipment and hand tools for sediment removal in creeks and culverts; for repairing areas of cracked and degrading concrete in existing concrete-lined channel reaches; and, to remove trash, debris, non-living vegetation, and fallen trees and branches that could inhibit flows or damage structures along the creeks. The City would use hand tools or mowers for removal and trimming of vegetation above the top of creek banks. The City would use mechanized equipment to repair and replace existing culverts “in-kind,” meaning within the same footprint. The City would work when the channels are naturally dry, to the extent feasible. If dewatering would be necessary, cofferdams would be created using inflatable systems or sand and gravel bags sealed with plastic sheeting. The type of cofferdams used would depend on the location of work and the contractor completing the work.

The City has estimated that the concrete repair work would require 700 cubic yards of fill “in-kind” within jurisdictional waters, and along 5,900 linear feet of stream within 0.3 acre. The culvert repair and replacement would require the placement of 100 cubic yards of fill “in-kind” within jurisdictional waters, and along 500 linear feet of stream within 0.1 acre. Additionally, the concrete repair estimates excavation of 700 cubic yards of material, and the culvert repair would require excavation of 100 cubic yards of material. Sediment excavation/removal estimates are 2,700 cubic yards of material, along 7,600 linear feet of stream within 1.3 acre.

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 provide maintenance of existing channelized creeks for flood management.

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 prevent flooding by maintaining flow capacity within channelized creeks that are maintained by the City of Burlingame to ensure proper functioning of the City of Burlingame’s stormwater management system.

Project Impacts: The estimated volume of fill material to be discharged into jurisdictional waters would be 700 cubic yards of fill for concrete repair, and 100 cubic yards of fill for culvert repair and replacement. It is estimated that there would be no net increase in total surface area or volume of material within jurisdictional waters. Repair and maintenance work that would require discharges of fill would be “in-kind”.

Proposed Mitigation: The project would avoid and minimize impacts to jurisdictional waters by limiting the size and scope of each activity, and by conducting maintenance and repairs “in-kind” and therefore no net increase of fill to jurisdictional waters would occur. Wetland impacts would be minimized by excavating sediment from the low-flow channels, almost entirely below the marsh plain. The use of construction Best Management Practices (BMPs) would be incorporated into the construction specifications and implemented as part of project construction, and would include all terms and conditions identified in project permits. The project activities would also include avoidance and minimization measures as described in the Regional General Permit and Water Quality Certification Application Package in Section 5.0. Compensatory mitigation would not be required since all impacts to jurisdictional wetlands and waters would be temporary and would return the maintained creek channels to their original design and function.

Project Alternatives: USACE has not endorsed the submitted alternatives analysis at this time. USACE will conduct an independent review of the project alternatives prior to reaching a final permit decision.

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 is hereby notified that, unless USACE is provided documentation indicating a complete application for water quality certification has been submitted to the RWQCB within 30 days of this Public Notice date, the District Engineer may consider the Department of the Army permit application to be withdrawn. 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.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 375 Beale St., Suite 510, San Francisco, CA 94105 by the close of the comment period.

Other Local Approvals: The applicant has obtained the following additional governmental authorizations for the project: A Lake and Streambed Alteration Agreement issued by the California Department of Fish and Wildlife. The applicant has applied for the following additional governmental authorizations for the project: a Section 401 Water Quality Certification to be issued by the San Francisco Bay Regional Water Quality Control Board.

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 their critical habitat are present at the project location or in its vicinity and may be affected by the implementation of individual projects:

- Central California Coast steelhead (*Oncorhynchus mykiss*)
- Green sturgeon (*Acipenser medirostris*)
- Longfin smelt (*Spirinchus thaleichthys*)
- California red-legged frog (*Rana draytonii*)
- San Francisco garter snake (*Thamnophis sirtalis tetrataenia*)

To address project related impacts to these species and designated critical habitat, USACE will initiate informal consultation with USFWS and NMFS, 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*, the *Coastal Pelagics FMP*, or 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. 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. 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. EFH for species managed under the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, or the *Pacific Coast Salmon FMP* is present in the project area. 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. 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. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are present in the permit area and that such resources may be adversely affected by the project. The agent submitted a cultural report that identifies archaeological resources within project APES. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. 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 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. USACE is preparing an analysis that considers alternatives to the proposed RGP; however, the preliminary alternatives analysis indicates that because the proposed permitting program is built on USACE's nationwide permitting framework, it is likely the least environmentally damaging practicable alternative.

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 Jenna Rais, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor,

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: <https://www.spn.usace.army.mil/Missions/Regulatory>.