



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: Walnut Creek and Grayson Creek Desilting Project

PUBLIC NOTICE NUMBER: SPN-2020-00385S

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COMMENTS DUE DATE: February 5, 2022

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1. **INTRODUCTION:** The Contra Costa County Public Works Department (POC: Emma Burckert, 925-313-2161), 255 Glacier Drive, Martinez, California 94553-4825, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to install temporary access ramps within Section 404 jurisdictional waters in order to remove approximately 123,800 cubic yards of sediment from Walnut Creek and 42,500 cubic yards of sediment from Grayson Creek. 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.*).

2. PROPOSED PROJECT:

Project Site Location: The entire project is located within Contra Costa County, California (Walnut Creek USGS 1:24K quadrangle, Township 2N, Range 1W, center latitude 37.988°, center longitude -122.060°). The proposed project area within Grayson Creek extends from Imhoff Drive in the unincorporated community of Vine Hill, south to Chilpancingo Parkway in the City of Pleasant Hill. The proposed project area within Walnut Creek extends from 0.3 mile north of Concord Avenue to 0.5 mile south of Concord Avenue in the City of Concord.

Project Site Description: Walnut Creek and Grayson Creek within the project area are earthen channels constructed by USACE and designed to carry stormwater. Sediment accumulates within these reaches, reducing the hydraulic capacity of both creeks, so the County conducts a desilting operation as needed approximately once every 15 years. The last desilting operation was conducted in 2006. During these operations, accumulated sediment is removed from both channels to restore the channels to as-built dimensions. In some areas, the accumulated sediment

has formed instream wetlands, which would be converted to other waters due to the desilting operation. In other areas, the accumulated sediment has formed upland, which would be converted to wetlands and other waters. Aquatic resources created during the desilting process eventually revert to ruderal upland as sediment accumulates over the subsequent years before the next desilting operation.

Project Description: As shown in the attached drawings, the applicant proposes to use sediment excavated from the creeks to construct approximately 14 access ramps. These access ramps would be created by using a long arm excavator based outside of the creek and would allow heavy equipment to enter the creek to excavate and remove accumulated sediment. Each access ramp would require approximately 340 cubic yards of sediment and would be approximately 15 feet wide and 170 feet long. These access ramps would be removed by an excavator based outside of the creek at the end of the project. All sediment would be disposed of at an approved disposal site outside of waters of the U.S. The applicant anticipates disposing of sediment excavated from Walnut Creek at Marathon Refinery. If Marathon cannot take the material, it will be properly disposed of outside of waters of the U.S.

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 maintain the capacity of stormwater facilities.

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 restore the flow capacity of Walnut Creek and Grayson Creek to prevent the creeks from overtopping their banks during a 100-year storm (1% chance of occurring annually).

Project Impacts: The proposed sediment removal would impact wetlands that have formed on the sediment bars (12.906 acre of seasonal wetland and 0.022 acre of freshwater marsh would be converted to other waters). The temporary access ramps would discharge approximately 5,100 cubic yards of sediment into 0.727 acre of tributary. In addition, 10 of the proposed access ramps would impact wetland waters of the U.S. (approximately 0.129 acre total). In addition, two temporary, 22-foot-wide, haul routes for heavy equipment would be constructed within the creeks by grading and/or removing existing sediment using front-end loaders. The project is anticipated to have only minimal impacts to the wetted channel and downstream water quality because a two-foot berm would be left in place between the excavated areas of the sediment bars and the flowing water. Prior to the onset of seasonal rains, a long arm excavator would breach these berms to reduce the risk of stranding fish in the creek. After desilting, all project sites would be reseeded with a native plant mixture.

Proposed Mitigation: The wetted channel would be avoided during sediment removal with a two-foot berm of sediment being left in the stream channel. No water diversion or dewatering will be necessary because the work would be done during the dry season when flows are low. As sediment accumulates in these creeks, open water is converted to wetland habitat, which then transitions into upland habitat. Sediment removal would convert both upland and wetland habitat to open water, after which, accumulating sediment would cause wetland and upland habitat to reform over the next approximately 15 years. The applicant therefore believes mitigation should not be required.

Project Alternatives: The applicant has analyzed four alternatives: 1) no action, 2) raise the levees and build floodwalls, 3) remove sediment from the entire floodplain indiscriminately, and 4) selectively remove sediment from areas that are most valuable to hydraulic capacity and have the least impact to environmentally sensitive areas (the applicant's preferred alternative). The applicant has determined that alternatives 1 and 2 are not feasible and that alternative 3 would have a greater impact on wetland habitat than the preferred alternative. 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 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. The project does not occur in the coastal zone, and a *preliminary* review by USACE indicates the project is not likely to affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by the San Francisco Bay Conservation and Development Commission.

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.

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 and a State water quality certification from the 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 are present at the project location or in its vicinity and may be affected by project implementation. Steelhead (*Oncorhynchus mykiss*, Central California Coast and California Central Valley DPS) and North American green sturgeon (*Acipenser medirostris*) may occur, but are unlikely to occur within the project area and downstream in Walnut Creek. The Corps has determined that the proposed project may affect but is not likely to adversely affect steelhead and North American green sturgeon. To address project related impacts to these species, USACE will initiate informal consultation with 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. 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. The USACE has determined that the project area does not contain any of the habitat areas of particular concern listed in the Pacific Coast Salmon FMP. Given the lack of connectivity to spawning habitat, Walnut Creek and Grayson Creek also do not provide migration corridors, as described in Appendix A of the Pacific Coast Salmon FMP; however, essential fish habitat (Pacific Coast Salmon and Pacific Coast Groundfish FMP) does occur downstream of the project sites. The proposed project could result in temporary increased turbidity downstream

of the project sites. 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 present adjacent to the permit area, but that the proposed project would have no

effect on 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)). 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 submitted an analysis of project alternatives which is being reviewed by USACE.

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 Sarah Firestone, 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>.