



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

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

# PUBLIC NOTICE

PROJECT: City of Pleasanton Stream and Pond Maintenance Program

PUBLIC NOTICE NUMBER: SPN-2020-00142S  
PUBLIC NOTICE DATE: February 4, 2022  
COMMENTS DUE DATE: March 4, 2022

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1. **INTRODUCTION:** The City of Pleasanton (POC: Rita Di Candia, [rdicandia@cityofpleasantonca.gov](mailto:rdicandia@cityofpleasantonca.gov)), P.O. Box 520, Pleasanton, California 94566, through its agent, WRA Inc. (POC: Élan Alford, [alford@wra-ca.com](mailto:alford@wra-ca.com)), 4225 Hollis Street, Emeryville, California 94608, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Regional General Permit (RGP) to authorize routine stream maintenance activities in stream channels and ponds managed by the City of Pleasanton in 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 (CWA) of 1972, as amended (33 U.S.C. § 1344 *et seq.*).

## 2. PROPOSED PROJECT:

**Project Site Location:** Proposed activities would occur at any of 25 locations within the City of Pleasanton (City), in natural or channelized streams or constructed detention ponds (Table 1 and Figure 1).

**Project Site Description:** The 25 locations to be maintained generally include natural and channelized creek segments, channelized drainage ditches, and/or detention ponds. There are 17 creek or channel segment features that generally convey water to the west and southwest towards Arroyo de la Laguna. In addition, there are eight detention ponds, two of which were excavated within or directly connected to adjacent stream channels. Some of the detention ponds may be non-jurisdictional if they were constructed in uplands, but jurisdictional status has not yet been confirmed by USACE. Most locations are near parks, residential areas, and other developed parts of Pleasanton, and are surrounded by a mix of development, landscaped areas, ruderal grassland, riparian, coast live oak woodland,

and coyote brush scrub. In-channel wetlands may also be present at some locations.

**Project Description:** Routine maintenance activities would include periodic removal of debris, sediment, and vegetation from seventeen stream sections and eight stormwater detention ponds to maintain their flood control and stormwater conveyance capacity. All material removed from channels and ponds would be loaded into dump trucks and hauled to the City's existing Laguna Creek soil disposal site. The City would conduct all maintenance work between April 15 and October 31 each year, and would submit an annual work plan to regulatory agencies prior to each work season for review and approval of the following work activities:

Weed Abatement in Detention Basins: A tractor equipped with a flail or rotary type mower would mow weeds in and around each basin. Each site would require one to two days to complete, depending on the size of the basin.

Silt and Rock Removal in Detention Basins: Dump trucks, backhoes, and excavators would scrape silt or washed-in rock materials from the basin floor, and off-haul sediment and debris to an upland stockpile site. Each site would require one to four days to complete.

Weed Abatement in Streams: A tracked Bobcat with a mowing attachment would mow along maintenance roads and stream bank tops, and within the channel itself. Weed abatement along steeper banks or areas unreachable by the Bobcat would be performed with gas-powered string trimmers. Small sites would require two to three hours to complete. Larger sites for which a Bobcat is required would

take four to 12 hours. This work may occur at most stream sites.

*Silt and Rock Removal in Stream:* Infrequent silt and rock removal may occasionally be needed within stream areas. Dump trucks and a backhoe or excavator would be used to remove and off-haul silt or washed in rock materials from the stream channel. Each site would require from one to three days to complete.

*Tule Removal from Streams:* Dump trucks and an excavator would be used to dig out tules (bulrush) and their roots from streambeds in order to allow flow through existing channels and culverts or other instream infrastructure. Tule removal in locations with the potential presence of the federally listed California Tiger Salamanders may use herbicide treatment instead of mechanical control in order to avoid and minimize the potential to disturb moist soils. Each site would require from one to five days to complete.

*Riparian Tree Maintenance:* Hand-powered equipment would be used to prune and trim riparian trees along the tops of stream banks, as necessary.

*Dewatering:* Sites would be dewatered when necessary to avoid work in flowing or standing water. Cofferdams or other diversion structures would be constructed from materials that are fully contained and can be completely removed from aquatic habitat, such as clean, bagged gravel or rubber bladders. Cofferdams or other diversion structures would be completely removed upon completion of a maintenance activity. Proposed dewatering plans would be included in annual work plans submitted to regulatory agencies, and would require monitoring by a qualified biologist during coffer dam installation, dewatering of the site, and coffer dam removal.

It is anticipated that many of these activities would not involve a fill discharge in jurisdictional streams, ponds, or wetlands, and would therefore not be subject to USACE jurisdiction under CWA section 404. However, some of the maintenance locations may require coffer dams for dewatering, or minor instream grading to smooth out excavated areas following sediment or tule removal (tables 1 and 3). These potential fill discharges would require USACE review and authorization under the proposed RGP. The 15 maintenance areas with potential fill discharges are shown in Figures 3-1 through 3-15.

**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 stormwater capacity of existing channels and ponds.

**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 streamline the USACE permitting process for routine, low-impact activities to maintain stormwater conveyance capacity in stream channels and detention basins in the City of Pleasanton.

**Project Impacts:** Fill impacts subject to USACE jurisdiction would be limited to temporary coffer dam placement and/or minor instream grading, which may be required at up to 15 locations annually, for total fill impacts of up to 0.15 acre.

**Proposed Mitigation:** Impacts to streams and wetlands would be avoided and minimized to the extent feasible, including conducting all work during the dry season, generally between April 15 and October 31. Work would be further restricted in earthen channels until after May 1 and in detention basins until after August 15. Because there would be no permanent fill impacts subject to USACE jurisdiction, no compensatory mitigation is proposed for CWA section 404 impacts.

### 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.*). 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. The applicant has obtained a water quality

certification for the project from the California Regional Water Quality Control Board (RWQCB).

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, by the close of the comment period.

**Other Local Approvals:** The applicant has applied for the following additional governmental authorizations for the project: Streambed Alteration Agreement from 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 may be present in the vicinity of projects authorized under this RGP, and may be affected by project implementation:

- California red-legged frog (*Rana draytonii*)
- California tiger salamander (*Ambystoma californiense*)
- Alameda whipsnake (*Masticophis lateralis euryxanthus*)

To address project related impacts to these species and designated critical habitat, USACE will initiate formal consultation with USFWS, pursuant to Section 7(a) of the ESA. Any required consultation must be concluded prior to the issuance of a Department of the Army RGP for the stream maintenance program.

**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 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 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 (SHPO) 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 NHPA 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 would initiate consultation with the SHPO for any jurisdictional activity under this RGP with the potential to affect historic properties, pursuant to Section 106 of the NHPA. Any required consultation must be concluded before an activity is authorized under the RGP. If unrecorded archaeological resources are discovered during implementation of a jurisdictional activity authorized under this RGP, those operations affecting such resources would be temporarily suspended until USACE concludes Section 106 consultation with the SHPO 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 impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. The applicant will be required 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 Greg Brown, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4<sup>th</sup> 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>.