



**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: East Bay Regional Park District Routine Maintenance and Restoration Program
Regional General Permit 15 Reauthorization**

PUBLIC NOTICE NUMBER: 2003-289020S
PUBLIC NOTICE DATE: December 16, 2022
COMMENTS DUE DATE: January 16, 2023

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1. INTRODUCTION: The East Bay Regional Park District (District) (POC: Rebecca Tuden, (510) 544-2353), 2950 Peralta Oaks Court, Oakland, California 94605, through its agent, (POC: Josh Phillips, (510) 544-2354)), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for reauthorization of their U.S. Army, Corps of Engineers (Corps) Regional General Permit (RGP) 15 which allows for routine maintenance activities and certain restoration activities within District-managed lands within Alameda and Contra Costa Counties. RGP 15 was first issued in 1998, and subsequently renewed in 2005, 2011, and 2018. This reauthorization would permit activities for five construction seasons from fall of 2023 through fall of 2028. The proposed renewal of RGP 15 would continue to authorize the implementation of routine maintenance and restoration activities on the East Bay Regional Park District-managed lands. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. Section 403).

2. PROPOSED PROJECT:

Project Site Location: Project actions would occur throughout the District lands within Contra Costa and Alameda Counties, and would occur in several watersheds, including: Alameda, Alhambra, Claremont, Garrity, Rheem, Kirker, Marsh, Mount Diablo, Pinole, San Pablo, San Leandro, San Lorenzo, Walnut and Wildcat Creeks and San Francisco Bay, San Pablo Bay, and Suisun Bay, see attached Figure 1, Vicinity Map.

Project Site Description: Reauthorization of the RGP 15 permit would continue to cover maintenance and restoration activities on public lands managed by the District. The District manages seventy-three regional parks, recreation areas, wilderness lands, shorelines, and preserves that encompass approximately 125,000 acres and 1,250 miles of trails within a 1,700 square mile area in Alameda and Contra Costa Counties, California. District lands are protected and operated as natural parklands and are comprised of a diverse range of habitat types, including parklands along the shorelines of San Francisco, San Pablo and Suisun Bays and the Delta region, as well as inland areas of the coastal and transverse ranges of the East Bay counties. Waters of the U.S. occur throughout these parklands, including Section 10 Bay waters, tidal and freshwater wetlands, perennial and intermittent streams, as well as lakes and ponds.

Project Description: The reauthorization of RGP 15 would authorize minor fill discharges into waters of the U.S. for fifteen specific routine maintenance activities and three categories of restoration projects. Covered routine maintenance activities include replacement of culverts, replacement and upgrade of culverts with new head and tail walls, installation of new culverts with new head/tail walls, installation of culvert energy dissipaters, installation of articulated armored stream ford crossings, maintenance of existing articulated fords, installation of natural rock fords, vegetation and debris removal from streams and drainages, bank stabilization, removal of sediment/debris from existing culverts, maintenance of clear span bridges, installation of clear-span bridges, repair and maintenance of existing spring boxes, installation of new spring boxes, routine dredging of silt basins, ponds and lakes;

maintenance of existing shoreline facilities, docks, fishing piers, boat launches, marsh board walks and overlooks; removal of hazardous man-made structures and vessels from various waterbodies; re-construction of earthen pond dams and spillways; and stream, pond, and tidal wetland restoration. These specific activity types have been described in detail (Enclosure A). The number of projects performed under RGP 15 would vary by year. Since 2011, 187 projects have been completed, of those, 150 were completed in the last five years. Routine maintenance activities involving stream, creeks, lakes, wetlands, bay shorelines or ponds would be annually identified in the field by park operations staff and/or District management who are intimately familiar with their park's infrastructure.

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 activities. The basic purpose of the RGP 15 is to perform maintenance and restoration activities to preserve the function and quality of structures and amenities on District parklands.

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 purpose of RGP 15 is to provide a more efficient permitting mechanism for minimal-impact maintenance and restoration activities routinely performed by the District to preserve the function and quality of structures and amenities on District parklands.

Project Impacts: Temporary and permanent fill discharges into wetlands and other waters of the U.S. may result from program activities, though these impacts would be minimal. The RGP 15 includes a range of anticipated impacts (temporary and permanent) for each five-year period. Over the last five years since the RGP was reauthorized in 2018, a total of 0.26 acre of fill discharge occurred within waters of the U.S., which is close to the minimum anticipated amount of permanent impact. The attached Table 1 provides a summary of project activities, by year and by type, with the associated temporary and permanent impacts for the period 2018 through 2022.

Proposed Mitigation: The District has developed avoidance and minimization measures in coordination with agencies and the U.S. Fish and Wildlife Service (USFWS) that are implemented, as appropriate, in all project activities to ensure minimal impacts to the aquatic environment. These measures include limiting the annual maintenance activities to a minimal area of impact where existing infrastructure or facilities are failing and during construction, best management practices (BMPs) and conservation measures for species protection are fully implemented. No compensatory mitigation is required as the unavoidable impacts from the proposed projects are substantially below the minimum 0.1 acre of permanent impact that would require compensatory mitigation. On average, annual project activities over the last five years have resulted in permanent fill discharge into 0.06 acre of waters of the U.S. annually and resulted in no permanent loss of wetlands.

Project Alternatives: The maintenance projects to be conducted under the terms of the Regional General Permit are considered to be minimal. The Federal Register states that "where a category of 404 discharges is so minimal in its effects that it has been placed under a general permit, there is no need to perform a case-by-case alternatives analysis" (40 CFR 230.2). Therefore, no alternatives analysis will be required for the individual designs of specific projects authorized under the Regional General Permit.

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. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant has obtained a Consistency Determination from the San Francisco Bay Conservation and Development Commission to comply with this requirement (M1985.083.08).

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 authorization for the project: California Department of Fish and Wildlife Lake and Streambed Alteration Agreement (RMA 1600-2016-0269-R3).

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. Alameda whipsnake (*Masticophis lateralis*), California Red-Legged Frog (*Rana draytonii*) and critical habitat, California Tiger Salamander (*Ambystoma californiense*), Callippe Silverspot Butterfly (*Speyeria callippe callippe*), San Joaquin Kit Fox (*Vulpes macrotus mutica*), Ridgway's Rail (California Clapper Rail, *Rallus obsoletus obsoletus*), Salt Marsh Harvest Mouse (*Reithrodontomys raviventris*), Longhorn Fairy Shrimp (*Branchinecta longiantenna*) and critical habitat, Vernal Pool Fairy Shrimp (*Branchinecta lynchi*) and critical habitat, Vernal Pool Tadpole Shrimp (*Lepidurus packardi*), Giant Garter Snake (*Thamnophis gigas*), California Least Tern (*Sternula antillarum browni*), Western Snowy Plover (*Charadrius alexandrinus nivosus*) and critical habitat, Delta Smelt (*Hypomesus transpacificus*) and critical habitat, Pallid Manzanita (*Arctostaphylos pallida*), Foothill yellow-legged frog (*Rana boylei*), Sacramento River winter-run Chinook Salmon (*Oncorhynchus tshawytscha*), Central California Coast steelhead (*O. mykiss*), North American green sturgeon, southern DPS (*Acipenser medirostris*) and critical habitat for these species.

These species could potentially occur at various proposed project sites within the District parklands. During the most recent reauthorization of the RGP 15 in 2018, the USFWS issued a Biological Opinion (dated February 22, 2018) with conservation measures, terms and conditions to protect listed species in the project area. As part of this proposed reauthorization of the RGP 15, USACE will initiate formal consultation with USFWS which will include updated species information, and environmental baseline information, 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.

The proposed activities associated with EBRPD's routine maintenance activities appear to be covered under the U.S. Army Corps of Engineers Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California (NLAA) consultation with U.S. Fish and Wildlife Service and National Marine Fisheries Service (dated August 22, 2018). Proposed projects that do not fit the NLAA will require a separate Section 7 authorization before work may be performed on those sit

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. 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. 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 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 made a *preliminary* determination that historic or archaeological resources are present in EBRPD lands, and that such resources may be affected by the maintenance activities. The East Bay Regional Park District contains potentially important archeological sites. The proposed list of projects to be performed each year under the Regional General Permit will be evaluated by Corps archeologists. Any projects which may adversely affect cultural resources shall be

referred to the State Historic Preservation Office, for review, before work may be performed at that site. 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, because the structures that EBRPD proposes to maintain are already within waters of the U.S., therefore their maintenance must occur within waters of the U.S. This conclusion lowers 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.

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, 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>.