



US Army Corps
of Engineers®
San Francisco District

Regulatory Division
450 Golden Gate Avenue
San Francisco, CA 94102

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Santa Clara Valley Water District Stream Maintenance Program

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1. **INTRODUCTION:** The Santa Clara Valley Water District (Valley Water) (POC: Jon Jankovitz, 408-440-6740, JJankovitz@valleywater.org), 5750 Almaden Expressway, San Jose, California 95118, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a three-year time extension for a Department of the Army Permit for routine stream maintenance activities in stream channels and banks managed by Valley Water in Santa Clara County, California. This Department of the Army permit time extension 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.*), and Section 10 of the Rivers and Harbors Act (RHA) of 1899, as amended (33 U.S.C. § 403 *et seq.*). The current Regional General Permit (RGP) for this work was issued by USACE on April 22, 2021, and will expire on December 31, 2023.

2. PROPOSED PROJECT:

Project Site Location: The Stream Maintenance Program (SMP) area encompasses many stream channels and banks throughout Santa Clara County, within both the Santa Clara Basin Watershed draining to San Francisco Bay and the Pajaro River Basin Watershed draining to Monterey Bay. The major waterways are the Guadalupe River, Sunnyvale East and West Channels, Permanente Creek, Stevens Creek, San Tomas Aquino Creek, Calabazas Creek, San Francisquito Creek, Coyote Creek, and Lower Penitencia Creek. Municipalities in the SMP area with channels owned or maintained by Valley Water include the Cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Morgan Hill, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale and the Towns of Los Altos Hills and Los Gatos. Please see the map of the SMP area (Figure 1).

Project Site Description: The waterways covered within the proposal comprise approximately 275 miles of channels that are managed by Valley Water for the purposes of providing citizens with a safe and reliable water supply, protecting against flooding, enhancing streams and watersheds through creek restoration and habitat protection, and maintaining open space for community recreation. The surrounding area is dominated by dense residential and commercial development. The stream channels in the program area consist of three main stream types: unmodified channels, modified channels, and modified channels with ecological value. Unmodified channels are natural creeks that are unchanged from their historic conditions but may require small areas of maintenance for culverts, outfalls, or other appurtenant features. Modified channels have been substantially altered either through channel repositioning, grading, or vegetation removal and were typically built with a trapezoidal bed that is concrete-lined or grass-lined. These modified channels require maintenance of access roads and associated structures such as culverts and outfalls. The category of modified channels with ecological value has also been altered from historic conditions, but these channels have reverted to a more natural state over time, possess natural features such as earthen beds or a closed-canopy riparian woodland, and/or are known to support threatened and endangered species.

Project Description: The proposed time extension would allow Valley Water to continue its ongoing Stream Maintenance Program (SMP), covering the primary activities of bank stabilization, sediment removal, and vegetation management, in addition to management of animal conflicts and other minor maintenance activities.

The number of sediment removal and bank stabilization

activities in a given year would depend largely on the recent weather and hydrologic conditions. In-channel work would normally be limited to the period of June 15 to October 15 of each year. Among the general exclusions from the SMP would be projects proposed to increase the flow conveyance capacity or water supply capacity of a facility beyond the designed conveyance channel capacity, maintenance work for large construction projects or capital improvement projects, and rehabilitation of large areas exceeding 0.05 acre. A SMP Manual has been developed to provide guiding policies and specific direction on approach for the implementation of stream maintenance activities.

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 reduce flood risk.

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 maintain the flow conveyance capacity of Valley Water channels and the structural and functional integrity of Valley Water facilities, while also preserving public safety, water quality, and aquatic habitat values.

Project Impacts: Impacts from the program would result mostly from bank stabilization, sediment removal, and vegetation management. In jurisdictional waters within the SMP area that are regulated by USACE under Section 404 of the CWA, all of these three major work activities involve temporary fill impacts related to construction access and dewatering of the channel. Bank stabilization projects may also entail permanent fill impacts within the channel for erosion protection. Within the subset of tidally influenced waters in the SMP area that USACE also regulates under Section 10 of the RHA, regulated impacts also include the excavation of sediment and any work involving construction equipment pertaining to sediment removal, vegetation management, or other maintenance activities.

Proposed Mitigation: The applicant has proposed two mitigation options: (1) permittee-responsible mitigation at mitigation sites approved by USACE, including on Piedmont Creek, Coyote Creek, Saratoga Creek, and Uvas

Creek; and (2) purchase of credits from a USACE-approved mitigation bank or in-lieu fee program. Mitigation for permanent impacts permitted by USACE is anticipated at locations where new hardscape material would be installed. The applicant's proposed permittee-responsible mitigation includes the removal of hardscape, the enhancement of stream habitat through activities such as laying back the banks and installing large woody debris, and the rehabilitation of stream banks impacted by encampments. Since 2019, USACE has approved six permittee-responsible mitigation projects for the SMP. Should the time extension be approved, Valley Water would continue to submit permittee-responsible mitigation projects and USACE would evaluate them on a case-by-case basis to determine whether they adequately compensate for temporary and permanent impacts from the SMP. Should USACE, along with other members of the Interagency Review Team, approve a mitigation bank or in-lieu fee program whose service area overlaps the SMP area, Valley Water would have the option to purchase mitigation credits to compensate for any temporary or permanent impacts from the SMP.

Project Alternatives: Evaluation of this proposed program's impacts includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). An evaluation has been made by this office under the guidelines and it was determined that the proposed project is dependent on location in, or proximity to, waters of the United States to achieve the basic project purpose.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity that 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 applications to the California Regional Water Quality Control Boards (RWQCB) in both the San Francisco Bay Region and Central Coast Region to extend water quality certifications for the project. No Department of the Army Permit will be issued until the applicant obtains the required certification extensions 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 90 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 either the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, or the Executive Officer, California Regional Water Quality Control Board, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401, 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 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 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 is hereby advised to apply 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, 375 Beale St, San Francisco, CA 94105, by the close of the comment period.

Other Local Approvals: The applicant has applied for the following additional governmental authorization for the project: a Lake or 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. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 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 the SMP, USACE initiated formal consultations with the USFWS and NMFS, pursuant to Section 7(a) of the ESA, in 2014. These ESA consultations resulted in the completion of two Biological Opinions that are each intended to accommodate a ten-year period of the SMP from 2014 to 2023. These biological opinions address the potential for the program to impact the following species: California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*), Ridgway's rail (*Rallus longirostris obsoletus*; formerly the California clapper rail), salt marsh harvest mouse (*Reithrodontomys raviventris*), California least tern (*Sterna antillarum browni*), Pacific coast population of western snowy plover (*Charadrius alexandrinus nivosus*), least Bell's vireo (*Vireo bellii pusillus*), California condor (*Gymnogyps californianus*), San Joaquin kit fox (*Vulpes macrotis mutica*), bay checkerspot butterfly (*Euphydryas editha bayensis*), Tiburon paintbrush (*Castilleja affinis ssp. neglecta*), Coyote ceanothus (*Ceanothus ferrisae*), Santa Clara Valley dudleya (*Dudleya setchellii*), Metcalf Canyon jewelflower (*Streptanthus albidus ssp. albidus*), Central California Coast (CCC) and South-Central California Coast (S-CCC) distinct population segments (DPS) of steelhead

(*Oncorhynchus mykiss*), and southern DPS of North American green sturgeon (*Acipenser medirostris*).

Based on this review, USACE has made a *preliminary* determination that it is necessary to re-initiate formal consultation with these agencies pursuant to Section 7(a) of the ESA. 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 USFWS and NMFS.

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 National Marine Fisheries Service (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 Salmon FMP, Coastal Pelagic FMP, and Pacific Groundfish FMP. As the Federal lead agency for the SMP, USACE initiated EFH consultation with the NMFS prior to 2014, and impacts to EFH were assessed in the 2014 Biological Opinion that is intended to accommodate a ten-year period of the SMP from 2014 to 2023.

Based on this review, USACE has made a *preliminary* determination we need to re-initiate consultation pursuant to Section 305(b)(2) of the MSFCMA for the proposed time extension. 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 NMFS.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRS 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 the required certification or permit. The project does not occur in

sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely 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 and archaeological sites have the potential to occur in the program area. However, with the implementation of program best management practices, no adverse effects are expected to result from the implementation of the program activities. 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 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 of 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 94102-3406; 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 *Current Public Notices* tab on the USACE website: <https://www.spn.usace.army.mil/Missions/Regulatory/>.