



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: Regional General Permit 24 - Los Gatos Creek Watershed Maintenance Program

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COMMENTS DUE DATE: February 23, 2023

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1. **INTRODUCTION:** The San Jose Water Company (SJWC) (POC: Jared Lewis, (408) 345-1911, 110 West Taylor Street, San Jose, CA 95110) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit for the reauthorization of Regional General Permit (RGP) 24 to implement the Los Gatos Creek Watershed Maintenance Program, a long-term and ongoing SJWC program directed to identify and improve facility maintenance and land management in the upper Los Gatos Creek Watershed, located in unincorporated Santa Clara County, California. RGP 24 was first issued in 2018. This reauthorization would permit activities for 5 construction seasons from 2023 to 2028. 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 project site is located south of the Town of Los Gatos in unincorporated Santa Clara County, extending from the Trout Creek confluence with Los Gatos Creek north of Lexington Reservoir dam to the headwaters of Los Gatos Creek to the southeast (enclosure, project locations). This area includes the Los Gatos, Castle Rock Ridge, and Laurel, California, USGS 7.5-minute quadrangles. The approximate center point of the project site is located at Latitude 37.157265° N, Longitude -121.950300° W.

Project Site Description: The maintenance activities are sited within the northern portion of the central Santa Cruz Mountains, a rugged and steep range that extends from the northern end of the San Francisco Peninsula south to the Watsonville area. The dominant vegetation types in this range include northern coastal scrub and

chaparral, mixed evergreen forest, and redwood forest. Riparian areas along creeks and stream channels are typically dominated by California bay forest, coast redwood forest, or red alder forest. Aquatic and wetland communities in the project area include freshwater wetlands, man-made reservoirs, and creeks/streams. The freshwater wetlands generally occur along the margins of creeks and reservoirs. Reservoirs within the project area include Lake Elzman, Williams Reservoir, Lake Kittredge, Lake Cozzens, and Lake Ranch Reservoir. Creeks and streams include numerous named and unnamed tributaries to Los Gatos Creek. The upper Los Gatos Creek Watershed is zoned for hillside and open space land use. Besides roads and trails, the project area is largely undeveloped with and a large portion available for recreational use. Bear Creek Road and State Route 17 are the only major roads traversing the project area.

Project Description: Over a period of 5 years, the applicant proposes to conduct activities resulting in fill discharge for the maintenance of reservoirs, water intakes, and associated access roads. Sediment and debris removal is proposed at Lake Elzman and Lake Ranch Reservoir, as well as at the Ostwald Intake, Hooker Intake, Hendry Intake, Lower Cavanaugh Intake, Beardsley Creek Intake, Trout Creek Intake, and Howell Intake Facility. The maintenance and repairs of culverts and road crossings is proposed at 135 locations along the John Nicholas Trail, Cathermola Road, Sears Road, Ellege Road, Hooker Bypass Road, Hooker Intake Road, Ryland Intake Road, Beardsley Intake Road, Trout Intake Road, and Vina Drive, consisting of erosion protection treatments, inlet repositioning, culvert replacement, culvert upgrade, and new culvert installation. Updates to the maintenance manual made since the 2018 issuance include the addition of the Howell Intake facility and all culverts within SJWC jurisdiction (as the original authorization only covered a

subset of all culverts) and improved best management practices based on lessons learned over the last 5 years of the RGP (see enclosure, maintenance manual). Though various maintenance activities are also proposed at Lake Cozzens, Lake Williams, Lake Kittredge, and Aldercroft Heights County Water District Extraction Well, including vegetation management, equipment repairs and other maintenance activities occurring outside the waterways, these activities are not regulated by the Corps.

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 develop a stream-lined permitting mechanism for the SJWC to maintain the structural and functional integrity of SJWC 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 develop a stream-lined permitting mechanism for the SJWC to conduct work within jurisdictional waters that would maintain the structural and functional integrity of SJWC facilities in the upper Los Gatos Creek Watershed.

Project Impacts: In total, the Maintenance Program would result in 0.903 acre of temporary impacts on wetlands and other waters. Permanent losses would result from culvert repairs, including replacement of damaged culverts, installation of new culverts, and installation of erosion protection treatments as well as repeated sediment removal at intake structures. In total, the proposed project would result in up to 1,070 square feet (0.025 acre) of permanent impacts on wetlands and other waters.

Proposed Mitigation: To mitigate for permanent and temporary impacts to waters of the U.S., SJWC proposes to restore 0.041 acre of intermittent stream/riparian habitat at the Thompson Box mitigation site and establish 0.394 acre and enhance 0.3 acre of seasonal/permanent wetlands at the Kittredge mitigation site. See enclosure, project locations for the location of the mitigation sites.

Project Alternatives: The applicant has submitted an alternatives analysis, identifying a reduced maintenance alternative and a water supply facility maintenance only alternative as practicable. The reduced maintenance

alternative would reduce impacts to jurisdictional waters by reducing the number of sediment removal events at the Hooker Intake and limiting the number of culvert maintenance sites addressing in a given year. The water supply facility maintenance only alternative would include conducting routine maintenance at SJWC water supply facilities only. 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: 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 California Coastal Commission.

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 determination that the California red-legged frog (*Rana draytonii*) is present at the project location or in its vicinity and may be affected by project implementation. California red-legged frogs may be directly impacted through injury or mortality associated with equipment operation, vehicle traffic, and foot traffic during project activities. Also, an increase in human concentration and activity may affect seasonal movements of frogs and predation rates. Indirect adverse impacts to the red-legged frog may result from the proposed temporary and permanent disturbance to potential habitat, but the excavation of accumulated sediment and gravel at the Hooker Intake Facility may indirectly benefit red-legged frogs by creating or deepening pools. To address project related impacts to

California red-legged frog, USACE initiated formal consultation with USFWS, pursuant to Section 7(a) of the Act. A biological opinion was issued for this project on January 4, 2023 (BO number 2023-0010007).

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 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 in the permit area, and that such resources are unlikely to be adversely affected by the project. Six cultural resources were recorded in the project area, including four Maintenance Program facilities and two historic-era archaeological sites. Activities proposed near these sites do not deviate from activities that have been ongoing at the facilities over the past decades, so adverse effects are not anticipated. 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. 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. 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 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 Elise Piazza, 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>.