



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division, Eureka Field Office
601 Startare Drive, Box 13
Eureka, CA 95501

PUBLIC NOTICE

PROJECT: Wood Creek Phase III Felt Ranch Off-Channel Rearing Habitat Project

PUBLIC NOTICE NUMBER: SPN-2008-00077

PUBLIC NOTICE DATE: October 18, 2023

COMMENTS DUE DATE: November 19, 2023

PERMIT MANAGER: Stephen Ryan

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1. **INTRODUCTION:** Northcoast Regional Land Trust (POC: Dan Ehresman (707) 822-2242), P.O. Box 398, Bayside, California 95524, through its agent, GHD, Inc. (POC: Andrea Hilton, (707) 267-2262), P.O. Box 1010, Eureka, California 95502, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to restore the historical connectivity and function of the existing freshwater wetlands on the Felt Ranch property through the creation of channels connecting lower Wood Creek to Freshwater Slough, thus enlarging the existing stream-estuary ecotone of Freshwater Creek and Humboldt Bay. 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.*), and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The Project is in the unincorporated community of Freshwater Corners approximately 2.5 miles east of Eureka in Humboldt County, California at Latitude; 40.7815129°, longitude: -124.088983°.

Project Site Description: The project encompasses 44 acres consisting of 40.7 acres of cattail-sedge dominated wetlands bisected by Myrtle Avenue. The north side of Myrtle Avenue is owned by the Northcoast Regional Land Trust (NRLT) and managed as the Freshwater Farms Reserve. The reserve has undergone prior estuary restoration as part of Wood Creek Phase I constructed in 2009 and Phase II constructed in 2016. The Phase II project extended the Freshwater Creek estuary ecotone to immediately downstream of the Myrtle Avenue-Freshwater Creek Overflow Bridge. The land

south of Myrtle Avenue is Felt Ranch, managed by The Buckeye Conservancy. The north and east edge of the project includes Freshwater Slough and Freshwater Creek, part of the larger Humboldt Bay tributary complex. On the western side of the project is Wood Creek, a small stream that historically connected to the Felt Ranch but is now blocked by a narrow culvert under Myrtle Avenue. Felt Ranch Ditch flows primarily west to east and connects with Wood Creek just south of Myrtle Avenue. The project area also encompasses the existing County maintained Myrtle Avenue-Freshwater Creek Overflow Bridge and Felt Road, along with a small portion of a private parcel upstream of the existing Wood Creek culvert crossing under Wood Gulch Road.

Project Description: As shown in the attached drawings, the applicant proposes to construct a 3,815-foot-long main channel and four secondary channels that would tie into the Felt Slough channels. The Felt Ranch Ditch would be filled for a length of approximately 1,200 feet with the existing spoil piles to create artificial berms along both sides of the ditch. Removing the berms and filling this section of ditch would restore the natural hydrology of the floodplain and routing of overbank flows. Wood Creek would be rerouted and divided into two reaches. Planting of native riparian vegetation would occur along Wood Creek, and hummocks would be planted along the edge of the Felt Slough channels; large wood features would be placed in the slough channels to serve as cover structures for fish.

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 estuary restoration.

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 historical connectivity and function of the existing freshwater wetlands on the Felt Ranch property to the tidal channels of lower Wood Creek and Freshwater Slough, thus dramatically enlarging the existing stream-estuary ecotone of Freshwater Creek and Humboldt Bay.

Project Impacts: Permanent impacts would occur from the conversion of 4.4 acres of freshwater wetlands to tidal channels from excavation and redistribution of 23,680 cubic yards of soil, and the rerouting of 144 linear feet of Wood Creek.

Proposed Mitigation: The applicant has proposed avoidance and minimization measures in the design of the proposed project that include: construction, fish relocation, and dewatering activities would only be from June 15 to October 15; locating staging areas within upland areas; fencing off aquatic resources; providing training for contractors; providing on-site biological monitors; and implementation of erosion control BMPs.

Project Alternatives: USACE has not endorsed an 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 obtained water quality certification for the project from the North Coast Regional Water Quality Control Board titled: *Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide Order WQ 2022-0048-DWQ*, dated August 23, 2023.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403, 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 California Coastal Commission to comply with this requirement. The Commission determined that the proposed project complies with the provisions of CD-0006-22, the general consistency determination concurred with by the Commission in December 2022 for habitat improvement projects in the coastal zone of northern and central California (Del Norte through San Luis Obispo County), and which is designed to primarily benefit threatened and endangered salmonid species. The proposed project falls within the "Improvements to stream crossings and fish passage," "Riparian restoration and protection," and "Restoration and enhancement of off-channel and side-channel habitat," "Floodplain restoration," and "Restoration and enhancement of tidal, subtidal, and freshwater wetlands" project categories in CD-0006-22.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, North Coast District Office, 710 E Street, Suite 200, Eureka, California 95501, by the close of the comment period.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project: California Environmental Quality Act (CEQA)-Initial Study, Proposed Mitigated Negative Declaration, with the Humboldt County Department of Public Works as the lead agency or utilization of the new CEQA Statutory Exemption for Restoration Project (SERP); Lake and Streambed Alteration Agreement from the California Department of Fish and Wildlife for disturbance to Wood Creek; Coastal Development Permit, consolidated to the California Coastal Commission;

County of Humboldt Conditional Use Permit and Grading Permit.

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 or 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 finalized consultation with the USFWS and the NMFS pursuant to Section 7(a) of the Endangered Species Act to address project related impacts to Coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*O. tshawytscha*), and steelhead trout (*O. mykiss*), listed as federally threatened by NMFS, and tidewater goby (*Eucyclogobius newberryi*) listed as federally endangered by the USFWS. Designated Critical Habitat for Coho salmon, Chinook salmon, and steelhead trout encompasses Freshwater Slough downstream of Wood Creek. Wood Creek is a small tributary to Freshwater Slough, which hosts the largest Coho salmon

population in the Humboldt Bay watershed. No work is proposed within Tidewater Goby designated critical habitat, which is limited to Freshwater Slough upstream of the project. Work proposed within the Wood Creek channel complex could result in a short-term increase in turbidity. The USFWS and NMFS have provided ESA coverage using Programmatic Biological Opinions (PBO's); USFWS PBO File Number: 2022_0005149-S7, and NOAA-NMFS Restoration Center PBO, Reference: WCRO-2021-02830.

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 Groundfish FMP*, the *Coastal Pelagics FMP*, or the *Pacific Coast Salmon FMP*. To address project related impacts to EFH, USACE has conducted consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act, to address project related impacts to EFH for various life stages of fish species managed with the Pacific Groundfish Fishery Management Plan, the Coastal Pelagics Fishery Management Plan, and the Pacific Coast Salmon Fishery Management Plan. USACE has made a determination that the proposed activities would result in a temporary increase in turbidity, impacting Pacific Coast Salmon, Coastal Pelagic, and Pacific Coast Groundfish EFH; however, the project would result in long-term enhancement of essential fish habitat. These impacts are analyzed and addressed in the NOAA Restoration Center Programmatic Biological Opinion.

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 initiated consultation with the State Historic Preservation Officer and 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. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources would 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 Stephen Ryan, San Francisco District, Regulatory Division, Eureka Field Office, 601 Startare Drive, Box 13, Eureka, California 95501; 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: <http://www.spn.usace.army.mil/Missions/Regulatory>.