



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Reissuance of Regional General Permit 11 for the
Carmel River Stream Maintenance Program

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COMMENTS DUE DATE: July 26, 2024

PERMIT MANAGER: Greg Brown

TELEPHONE: 415-503-6791

E-MAIL: gregory.g.brown@usace.army.mil

1. INTRODUCTION: The Monterey Peninsula Water Management District (MPWMD) (POC: Thomas Christensen, Thomas@mpwmd.net, P.O. Box 85, Monterey, California 93942) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for reissuance of Department of the Army Regional General Permit 11 (RGP 11) for continuing implementation of the Carmel River Stream Maintenance Program (SMP). RGP 11 would continue to be used for authorizing maintenance and restoration activities along the lower 18.6 miles of the Carmel River, from the Carmel River Lagoon upstream to the former San Clemente Dam, Monterey County, California. Reissuance of the RGP for an additional five years would allow continued annual authorization of maintenance activities subject to USACE jurisdiction. This Department of the Army permit reissuance is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972 (CWA), as amended (33 U.S.C. § 1344 et seq.), and Section 10 of the Rivers and Harbors Act of 1899 (RHA), as amended (33 U.S.C. § 403 et seq.).

2. PROPOSED PROJECT:

Project Site Location: RGP 11 would cover the lower reach of the Carmel River, from the lagoon at the river mouth (36.5368 °N, -121.9259 °W), approximately 18.6 miles upstream to the location of the former San Clemente Dam and Reservoir (36.4357 °N, -121.709 °W).

Project Site Description: The Carmel River is a central California coastal river that drains approximately 255 square miles of watershed to the Pacific Ocean. Past and present land use within the watershed is generally comprised of open space,

grazing lands, viticulture, golf courses, and residential, suburban, urban, and light industrial developments. Several large-scale restoration projects have been planned or completed along the reach covered by RGP 11, including the San Clemente Dam removal at the upstream end, restoration of the former Rancho Cañada golf course, and the Carmel River Floodplain Restoration and Environmental Enhancement Project at the downstream end.

Project Description: Reissuance of RGP 11 would continue to streamline the permit process for MPWMD and private landowners (authorized by MPWMD) for the following types of projects along the Carmel River:

Maintenance:

- installing bank stabilization erosion protection in unstable, degraded areas;
- limited removal of vegetation and woody debris from the active channel; and
- maintenance or repairs of previously completed projects (e.g. completed slope protection projects, revegetation, and wood installation).

Restoration and Fisheries Habitat Enhancement Activities:

- establishing or reestablishing riparian vegetation along stream banks and adjacent areas;
- placement of large woody debris (LWD) and boulder groups; and
- supplementing or adding cobble and spawning gravels.

The scope of work proposed under RGP 11 for bank stabilization activities would be for a maximum of

1,200 linear feet annually, and not to exceed 2,400 linear feet of stream over the 5-year term of the RGP (thru October 31, 2028). For all annual activities, a maximum of 600 linear feet of the stream could be dewatered at any one time. Selective hand clearing of vegetation and woody debris management would be limited to a cumulative maximum of 15,840 linear feet (3 miles) of stream per year. The Fisheries Habitat Enhancement Activities are restoration projects that are not associated with any bank stabilization activities. A cumulative maximum of 2,000 linear feet of Fisheries Habitat Enhancement Activities could be authorized over the 5-year term of the RGP.

In addition to MPMWD maintenance and restoration projects, MPMWD would also act as an agent for other public and private sponsored projects that qualify for authorization under this RGP. MPMWD would assume the responsibility for screening applicants, conducting pre-project evaluations, and inspecting project sites after completion to ensure compliance with the RGP.

MPMWD would continue to be responsible for the preparation of annual notification/compliance reports under this RGP. These reports would contain information on all projects proposed and/or constructed under the RGP for a given year, MPMWD evaluation forms prepared for each site, and project specific information including project descriptions, project impacts, maps, quantities and types of fill material, and compliance with the Federal Endangered Species Act. MPMWD will also provide in these reports acreages of jurisdictional waters of the United States affected by project implementation.

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 stream maintenance and flood risk management.

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 provide an efficient permitting process to minimize bank erosion and reduce flood risk to properties adjacent to the Carmel River within the SMP area, while maintaining and enhancing natural habitat and ecological and hydrological processes.

Project Impacts: The project types which may be authorized under RGP 11 could all include fill discharges subject to USACE jurisdiction under CWA section 404, and any instream work downstream of Highway 1 may also be subject to RHA section 10. The majority of projects authorized under RGP 11 have been and will likely continue to be management of vegetation and large woody debris in areas where downed trees, debris piles, and vegetation encroachment in the river channel could possibly divert high winter flows and threaten bank stability and infrastructure. In-channel vegetation management activities typically include trimming of riparian vegetation, clearing debris piles, and notching/cutting of large fallen trees in the active channel. Trees, branches, root balls, and other large woody debris (LWD, defined as greater than four inches in diameter or three feet in length) would generally be left in the river system to benefit aquatic habitat for steelhead, unless it poses a significant threat to bank stability or infrastructure (i.e. houses, roads, bridges, well, pipelines, or stream gages). LWD may be notched at 20 to 25-foot intervals or otherwise modified to reduce any potential threat. When notching LWD, the core 30 percent of the diameter of the branch/tree (or six inches, whichever is greater) would generally remain unnotched. In some cases when LWD is lodged on bridge piers or a downed tree is fully across the river, multiple full cuts may be carried out. Removal of debris and trimming/removal of vegetation in non-tidal reaches of the river would generally not be subject to USACE jurisdiction. However, placement or redistribution of LWD within the river channel would constitute a fill discharge subject to USACE authorization, with overall beneficial effects to aquatic habitat.

Proposed Mitigation: Most activities that may be authorized under this RGP would not result in loss of waters or wetlands and thus USACE would not require compensatory mitigation under CWA section 404. However, MPWMD would generally provide mitigation for impacts to riparian vegetation, as required by the Regional Water Quality Control Board or California Department of Fish and Wildlife, in the

form of riparian replanting and revegetation of native species.

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 Central Coast Regional Water Quality Control Board (RWQCB) is currently processing a Section 401 water quality certification for the proposed reissuance of RGP 11.

Water quality issues should be directed to 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 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. Any proposed project downstream of the Highway 1 bridge would require approval from the California Coastal Commission before it could be authorized under RGP 11.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, Central Coast District Office, 725 Front Street, Suite 300, Santa Cruz, California 95060-4508, by the close of the comment period.

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 previously completed section 7 consultation with the USFWS to address potential project-related impacts to the California red-legged frog (*Rana draytonii*) and/or its designated critical habitat in the Carmel River. USACE has also recently reinitiated section 7 consultation with NMFS to address potential project related impacts to steelhead (*Oncorhynchus mykiss*, south central California coast distinct population segment) and/or its designated critical habitat. Any required consultation must be concluded prior to the reissuance of RGP 11.

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 present in the Carmel River downstream of the Highway 1 bridge and may be adversely affected by projects authorized under RGP 11. USACE has initiated consultation with NMFS to address project related impacts to EFH, pursuant to Section 305(5)(b)(2) of the MSFCMA. Any required consultation must be concluded prior to the reissuance of RGP 11.

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 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 not likely to be present in the permit area, and that reissuance of RGP 11 would have no potential to cause effects to historic properties. 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 required, consultation with the State Historic Preservation Officer would be conducted for individual projects prior to authorization under this RGP. 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 not 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 less environmentally damaging practicable alternative to the project that does not require the discharge of dredged or fill material into special aquatic sites. The applicant has previously submitted an analysis of project alternatives which was reviewed by USACE, and it was determined that the existing SMP represents the least environmentally damaging practicable alternative.

6. PUBLIC INTEREST EVALUTION: The decision on whether to reissue 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, 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. 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>