



PUBLIC NOTICE

**U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT**

BUILDING STRONG®

APPLICATION FOR PERMIT RMV Riding Park Recurrent Maintenance Dredging

Public Notice/Application Number: SPL-2019-00065-ERS

Project: RMV Riding Park Recurrent Maintenance Dredging

Comment Period: February 15, 2019 through March 17, 2019

Project Manager: Eric Sweeney; 760-602-4837; Eric.R.Sweeney@usace.army.mil

Applicant

Joe Parco

City of San Juan Capistrano

32400 Paseo Adelanto

San Juan Capistrano, California 92675

(949) 443-6353

Location

The proposed project would be located within the city of San Juan Capistrano, Orange County, CA at approximately 33.5154, -117.6242 (Exhibit 1).

Activity

The proposed project would involve sediment removal within the main stormwater channel that passes through RMV Riding Park for the purpose of ensuring adequate flood capacity of the channel (Exhibit 2). Maintenance would be authorized on a recurrent, as-needed basis. Please see page 7 of this Public Notice for more information.

Interested parties are hereby notified that an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawings. We invite you to review today's Public Notice and provide views on the proposed work. By providing substantive, site-specific comments to the U.S. Army Corps of Engineers (Corps) Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under section 404 of the Clean Water Act. Comments should be mailed to:

Department of the Army
U.S. Army Corps of Engineers, Los Angeles District

Regulatory Division, Attn: Eric Sweeney
Carlsbad Field Office
5900 La Place Court, Suite 100
Carlsbad, California 92008

Alternatively, comments can be sent electronically to: Eric.R.Sweeney@usace.army.mil.

The mission of the Corps Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible, and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable waters and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the U.S. Environmental Protection Agency (U.S. Environmental Protection Agency (USEPA)) Guidelines (40 C.F.R. part 230) as required by section 404(b)(1) of the Clean Water Act.

The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination: A preliminary determination has been made that an EIS is not required for the proposed work.

Water Quality: Under Section 401 of the Clean Water Act, the applicant is required to obtain a Water Quality Certification (WQC) from the San Diego Regional Water Quality Control Board (RWQCB). Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps prior to permit issuance. The applicant is currently pending issuance of the WQC by the RWQCB.

Coastal Zone Management: The applicant has certified that the proposed activity would comply with and would be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires an applicant to obtain concurrence from the California Coastal Commission (CCC) that the project is consistent with the State's Coastal Zone Management Plan prior to issuance of a Corps permit. The proposed project is not located within the California Coastal Commission's coastal zone. There is no evidence or indication from the California Coastal Commission that the project is inconsistent with their CZM plan.

Essential Fish Habitat: The Magnuson-Stevens Fisheries Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires Federal agencies to consult with the National Marine Fisheries Service (NMFS) on activities that may adversely affect Essential Fish Habitat (EFH). The objective of the EFH assessment is to describe potential adverse effects to designated EFH for federally managed fisheries species within the proposed action area. There is no EFH present within the project area.

Cultural Resources: The Corps did not identify any historic properties listed in the National Register of Historic Places (NRHP) within the project vicinity based on a query of known NRHP-listed properties. Furthermore, the proposed project would not disturb any previously undisturbed (native) soils. All excavation conducted as part of the proposed sediment removal would occur above the preexisting baseline elevation of the stormwater channel.

Preliminary application of Section 106 Criteria for Identification and Evaluation of Historic Properties (36 CFR 800.4[d]) indicates a finding of "no potential to cause effects" for the undertaking on resources listed on or eligible to be listed on the National Register of Historic Places pursuant to Section 106 of the National Historic Preservation Act.

Endangered Species: The Corps has reviewed California Natural Diversity Database and Carlsbad

Fish and Wildlife Office species presence data. Neither of these data sources identified any presence of federally listed species within the proposed project area. The project area does not contain designated critical habitat for any federally listed species.

Additionally, no vegetation would be removed as a result of maintenance activities and maintenance would only occur outside the nesting season (March 1st to September 30th), further limiting potential effects of the proposed project of federally listed species. Note that the seasonality restriction (i.e., no work authorized between March 1st and September 30th) would be incorporated into the permit as a binding special condition (see below).

Based on available species data and the avoidance/minimization measures identified above, the Corps has preliminarily determined that the project would have “no effect” on federally listed species or designated critical habitat. However, the applicant is in the process of completing a biological survey of the study area, which will further inform the Corps’ effects determination under Section 7 of the Endangered Species Act. If, upon receiving the biological survey, the Corps determines that the project may have adverse effects on any federally listed species, the Corps will initiate streamlined Section 7 consultation with the U.S. Fish and Wildlife Service to verify that the project is covered under the Southern Subregion Habitat Conservation Plan.

Public Hearing: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material into a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). **There are no special aquatic sites within the proposed project area. Therefore, establishment of a basic project purpose is not necessary.**

Overall Project Purpose: The overall project purpose serves as the basis for the Corps' 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, and which allows a reasonable range of alternatives to be analyzed. **The overall project purpose for the proposed project is to ensure adequate flood risk management within RMV Riding Park.**

Additional Project Information

Baseline Information: The proposed project would be located in the San Juan Creek Watershed within a stormwater channel that drains directly into San Juan Creek. The applicant has indicated that high sedimentation rates within the channel are the result of recent construction of the La Pata Road Widening Project, which denuded the nearby hillside thereby causing high sediment loads to enter the channel following rain events.

Project Description: The proposed project would conduct recurring, as-needed sediment removal within the main stormwater channel that passes through RMV Riding Park to prevent potential flooding of the park. Each maintenance event would remove a maximum of 400 cubic yards of sediment along 1,600 linear feet of channel. The applicant would use standard rubber tired excavators and bobcats and removed sediment would be placed in dump trucks and transported off-site for disposal at a nearby landfill. The applicant has requested that the proposed work be authorized for a 10-year period.

Work would only be conducted during dry conditions in which there is no water flowing through the channel. Additionally, no vegetation would be removed as a result of maintenance activities and maintenance would only occur outside the nesting season (March 1st to September 30th).

Proposed Mitigation: The proposed mitigation may change as a result of comments received in response to this Public Notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence (avoidance/minimization/compensation), as applied to the proposed project is summarized below:

Avoidance: Excavated sediment would be placed outside of WoUS to the maximum extent practicable.

Minimization: Maintenance activities would include only the minimum amount of work necessary to alleviate the maintenance need (e.g. flood control) and would not exceed the baseline elevation of the channel.

Compensation: No compensatory mitigation has been proposed by the applicant. All impacts to WoUS would be temporary in nature. No vegetation would be impacted by the proposed activities.

Proposed Special Conditions

The following list is comprised of proposed Permit Special Conditions, which are required of similar types of projects:

1. **401 Certification:** This permit is contingent upon the issuance of a Section 401 Water Quality Certification (WQC) from the San Diego Regional Water Quality Control Board (RWQCB). The Permittee shall abide by the terms and conditions of the Clean Water Act Section 401 WQC. The Permittee shall submit the Section 401 WQC to the Corps Regulatory Division (preferably via email) within two weeks of receipt from the issuing state agency. The Permittee shall not proceed with construction until receiving an email or other written notification from Corps Regulatory Division acknowledging the Clean Water Act 401 WQC has been received, reviewed, and determined to be acceptable. If the RWQCB fails to act on a request for certification within 60 days after receipt of a complete application, please notify the Corps so we may consider whether a waiver of water quality certification is warranted pursuant to 33 CFR 325.2(b)(1)(ii).
2. **Authorized Work:** Sediment removal activities authorized by this permit must be the minimum necessary to alleviate the maintenance need and shall not exceed the baseline elevation of the stormwater channel.

3. **Seasonal Restrictions:** This permit does not authorize maintenance activities during the nesting bird breeding season (March 1st to September 30th of each year).
4. **Reporting:** Within 45 calendar days of completion of each maintenance event in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a post-project implementation memorandum including the following information:
 - A) Date(s) work within waters of the U.S. was initiated and completed;
 - B) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions taken or proposed to achieve compliance);
 - C) Color photographs (including map of photopoints) taken at the project site before and after construction for those aspects directly associated with permanent impacts to waters of the U.S. such that the extent of authorized fills can be verified;
 - D) One copy of "as built" drawings for the entire project. Electronic submittal (Adobe PDF format) is preferred. All sheets must be signed, dated, and to-scale. If submitting paper copies, sheets must be no larger than 11 x 17 inches; and
 - E) Signed Certification of Compliance (attached as part of this permit package).
5. **Historic Properties:** Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff and Corps' Regulatory Staff within 24 hours (Danielle Storey at 213-452-3855 or Meg McDonald at 213-452-3849; and Eric Sweeney at 760-602-4837). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

For additional information, please contact Eric Sweeney at 760-602-4837 or via email at Eric.R.Sweeney@usace.army.mil. This Public Notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the Nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
Carlsbad Field Office
5900 La Place Court, Suite 100
Carlsbad, California 92008
<http://www.spl.usace.army.mil/missions/regulatory>

Exhibit 1:



Exhibit 2:

