



PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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APPLICATION FOR PERMIT Orange County Public Works Routine Channel and Bridge Maintenance Program

Public Notice/Application No.: SPL-2012-00817-SME

Project: Orange County Public Works Routine Channel and Bridge Maintenance Program

Comment Period: July 29, 2014 through August 28, 2014

Project Manager: Stephen Estes; 213-452-3660; Stephen.M.Estes@usace.army.mil

Applicant

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Location

The proposed Orange County Public Works (OCPW) Routine Channel and Bridge Maintenance Program (Maintenance Program) would occur within flood management facilities and at bridges maintained by the County of Orange located throughout Orange County, California (Exhibits 1-12).

Activity

OCPW has applied for a Regional General Permit (RGP) to conduct routine maintenance activities within flood management facilities and at bridges located throughout the 13 watersheds of Orange County (Exhibits 1-12 and Tables 1 and 2). Maintenance activities would be performed on an as-needed basis and may include the regulated activities listed in Table 3. No permanent impacts to waters of the United States would be authorized by this RGP. The proposed maintenance activities would be expected to result in no more than minimal impacts to the aquatic environment, based on the existing conditions of the facilities and/or the lack of environmental resources. The purpose of the proposed maintenance program is to maintain the functional capacity of facilities, minimize the risk of damage, reduce flooding and erosion of adjacent roadways and properties during storm events, and perform bridge maintenance. For more information regarding the proposed OCPW Maintenance Program, please see page 3 of this Public Notice.

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 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Comments should be mailed to:

U.S. Army Corps of Engineers
Regulatory Division
Attn: Stephen Estes
915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017

Alternatively, comments can be sent electronically to Stephen.M.Estes@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 tributaries. 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, American Indian tribes, interested parties, 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 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 system 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 into waters of the United States, the evaluation of the activity will include application of the U.S. Environmental Protection Agency (EPA) 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- Section 401 of the Clean Water Act requires that any applicant for an individual section 404 permit provide proof of water quality certification to the Corps prior to permit issuance. For any proposed activity on Tribal land that is subject to Section 404 jurisdiction, applicants must obtain water quality certification from EPA. The applicant has applied for water quality certification from the California State Water Resources Control Board.

Coastal Zone Management- The proposed routine maintenance program would occur at several flood management facilities located within the coastal zone. The California Coastal Commission issued a Coastal Development Permit for the Maintenance Program on January 8, 2014. The applicant has certified that the proposed activities 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 that prior to issuing the Corps authorization for the maintenance program, the applicant must obtain concurrence from the California Coastal Commission that the maintenance program is consistent with the State's Coastal Zone Management Plan. The District Engineer hereby requests the California Coastal Commission's concurrence or non-concurrence.

Essential Fish Habitat- Preliminary determinations indicate the proposed activities may adversely affect Essential Fish Habitat (EFH). Pursuant to section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Los Angeles District hereby requests initiation of EFH consultation with the National Marine Fisheries Service (NMFS) for the proposed project. A separate letter will provide the detailed information to initiate EFH consultation via abbreviated consultation in order to comply with the MSA, pursuant to 50 C.F.R. 600.920(e)(3).

Cultural Resources- Maintenance activities conducted within waters of the United States would restore baseline/as-built conditions. No sediment excavation would be authorized beyond the designated baseline of the managed facilities. In addition, OCPW has stated that none of the bridges proposed for maintenance are eligible for the National Register of Historic Places. Pursuant to Section 106 of the National Historic Preservation Act, the Corps anticipates the implementation of the

proposed OCPW Maintenance Program will have no potential to affect historic properties. Prior to making a permitting decision, the Corps will make a determination of effect.

Endangered Species- According to an initial review conducted by OCPW, no maintenance activities would occur within facilities with federally listed species or designated critical habitat under this RGP. Sensitive facilities, such as those with riparian vegetation, may require limited maintenance activities. Additionally, OCPW has proposed a site reconnaissance/habitat assessment of each facility prior to maintenance to verify the absence of federally listed species. In addition, all maintenance activities in vegetated facilities would occur outside of the nesting season (activities in vegetated facilities would be conducted between September 15 and March 15) to the maximum extent practicable. Any activity that may affect federally listed species or designated critical habitat would not be authorized by this RGP.

In consideration of the information above, the Corps Regulatory Division has made a preliminary “no effect” determination for federally listed species. In addition, the maintenance program would not be located within designated critical habitat. Therefore, the Corps Regulatory Division has also made a “no effect” determination for critical habitat. Formal consultation under Section 7 of the Endangered Species Act (ESA) does not appear to be required at this time.

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). The basic project purpose for the proposed project is two-fold: flood risk management and bridge infrastructure maintenance. The proposed project is a non-water dependent activity in this specific instance.

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 RGP is to authorize recurring maintenance activities to restore and maintain flood risk management capabilities and existing bridge crossings managed by OCPW.

Additional Project Information

Baseline Information- The OCPW Routine Maintenance Program would be located throughout the County of Orange within the flood management facilities shown on Exhibits 1-12 and listed on Table 1 and at the bridges listed on Table 2. Proposed activities regulated by the Corps Regulatory Division are shown on Table 3 and the extent of tidal influence in coastal facilities is documented on Table 4.

OCPW is currently conducting a broad-scale jurisdictional delineation of the flood management facilities proposed under this RGP. Exhibits 1-12 list the characteristics of each facility including their

configuration and substrate composition. These include earthen, rip-rap-lined, and concrete-lined channels, basins, and dams maintained by OCPW. Some facilities are primarily unvegetated, while others contain varying amounts of vegetation (native and non-native).

Project Description- OCPW proposes routine maintenance activities within Orange County Flood Control Division (OCFCD) right-of-way situated throughout the 13 watersheds of Orange County. Maintenance activities would be conducted on an as-needed basis and would include channel and basin/dam maintenance, bridge maintenance, and other activities regulated by the Corps Regulatory Division. The RGP would only authorize temporary impacts to waters of the United States. Furthermore, the RGP would only allow for activities resulting in minimal impacts both individually and cumulatively. No work would be authorized beyond the baseline/as-built conditions of each facility.

The extent of authorized activities would be restricted in watersheds with approved Special Area Management Plans (SAMPs). Specifically, activities conducted in the San Diego Creek Watershed and the San Juan Creek/Western San Mateo Creek Watersheds (as defined by their respective SAMPs) would be limited as follows:

- a. This RGP would authorize activities resulting in less than or equal to 0.5 acre of temporary impacts to waters of the United States, including less than or equal to 0.1 acre of temporary impacts to areas with native wetland vegetation, outside of aquatic resource integrity areas and
- b. This RGP would authorize activities resulting in less than or equal to 0.25 acre of temporary impacts to waters of the United States within aquatic resource integrity areas, but would not authorize impacts to native wetland vegetation within these areas.

No temporary impact limits would be imposed outside of these SAMP watersheds. However, OCPW has provided examples of recent maintenance projects that would likely represent the upper limits of temporary impacts for routine maintenance activities conducted under this RGP. These include the removal of 153,000 cubic yards (CY) of sediment and vegetation from an approximately 5,600-linear-foot concrete-lined channel and the removal of a total of 4,500 CYs of sediment from three locations totaling 5.8 acres within a facility with an earthen bottom and rip-rap slopes. The majority of maintenance activities conducted under this RGP would likely be smaller in scope.

As noted above, all activities in vegetated facilities would be conducted outside of the nesting season (activities in vegetated facilities would be conducted between September 15 and March 15) to the maximum extent practicable. If the nesting season cannot be avoided and construction or vegetation removal must occur between March 15th and September 15th, OCPW has proposed to do one of the following to avoid and minimize impacts to nesting birds: a) implement a 300-foot minimum avoidance buffer for all passerine birds and 500-foot minimum avoidance buffer for all raptors species. The breeding habitat/nest site would be fenced and/or flagged in all directions. The nest site area would not be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the project; b) develop a site-specific Nesting Bird Management Plan. This plan would be submitted to the Corps Regulatory Division and the California Department of Fish and Wildlife (CDFW) and would include detailed methodologies and definitions to enable a qualified avian biologist to monitor and implement nest-specific buffers based upon the life history of the individual species; species sensitivity to noise, vibration, and general disturbance; individual bird behavior; current site conditions (screening vegetation, topography, etcetera), ambient levels of human activity; the various project-related activities necessary to construct the project, and other features. The plan would be

supported by a Nest Log which tracks each nest and its outcome. The Nest Log would be submitted to CDFW at the end of each week; or c) OCPW may propose an alternative plan for avoidance of nesting birds for CDFW concurrence.

All haul/service routes would be designated along existing paved service roads situated outside of the drainage channels. All sediment/debris created during maintenance would be hauled to an approved County facility (i.e. stockyard or landfill). Wet sediment would be dried in an approved, upland stockpile site or an OCFCD parcel prior to transport using appropriate Best Management Practices (BMPs). All activities and staging would be conducted within the existing OCFCD/OCPW right-of-way or using temporary construction easements using appropriate BMPs. Each area of staging would be sited as close as possible to the maintenance activity to maximize efficiency and minimize impacts. OCPW has proposed to conduct the Maintenance Program under the RGP without the need to submit individual pre-construction notifications to the Corps Regulatory Division (see proposed Special Conditions for exceptions). This would help increase regulatory and maintenance efficiency. An annual report documenting all activities conducted under this RGP would be required to ensure work is being conducted in accordance with the terms and conditions of the RGP (see proposed Special Condition for reporting below).

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:

1. Avoidance: OCPW would avoid impacts to waters of the United States to the maximum extent practicable. The original application proposed to include activities that would have resulted in permanent impacts to waters of the United States, including the installation of rip-rap for bank stabilization, the installation or modification of headwalls, and the installation or modification of culverts. These activities are no longer proposed under this RGP. In addition, the proposed permitting framework in the SAMP areas (described above) was developed to ensure minimal impacts to aquatic resources within the San Diego Creek and San Juan Creek/Western San Mateo Creek Watersheds. No activities would be authorized by the proposed RGP that may affect a federally listed endangered or threatened species or designated critical habitat. Finally, all activities in vegetated facilities would be completed outside of the nesting season (activities in vegetated facilities would be conducted between September 15 and March 15) to the maximum extent practicable.
2. Minimization: All activities would be conducted using standard BMPs. Only temporary impacts to waters of the United States would be authorized.
3. Compensation: The proposed Maintenance Program would result in only temporary impacts to waters of the United States through routine maintenance activities in flood management facilities and at bridges. Therefore, no compensatory mitigation has been proposed for the majority of proposed activities. However, impacts to eelgrass may require compensatory mitigation in accordance with the Southern California Eelgrass Mitigation Policy (SCEMP).

Proposed Special Conditions

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

1. 33 U.S.C. 408: A pre-construction notification shall be submitted to the Corps Regulatory Division for any activity that may alter or modify an existing federal project. No activity requiring a Section 408 permit shall be authorized by this RGP until the activity has been approved by the Corps Civil Works Program within the following facilities:
 - a. Coyote Creek Channel (A01) from 900 feet downstream of Valley View Street to 1,200 feet downstream of Imperial Highway;
 - b. Santa Ana River Channel (E01) from Pacific Coast Highway to Weir Canyon Road; and
 - c. Greenville-Banning Channel (D03) from downstream of Victoria Avenue to 1,500 feet upstream of Gisler Avenue.
2. Endangered Species Act: This Corps permit does not authorize you to take any threatened or endangered species or adversely modify designated critical habitat. In order to legally take a listed species, you must have separate authorization under the ESA (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply).
3. Essential Fish Habitat: A pre-construction notification shall be submitted to the Corps Regulatory Division for any activity that may result in impacts to eelgrass (*Zostera marina*). In tidally influenced areas, a pre-construction eelgrass survey shall be conducted in accordance with the SCEMP (http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/eelpol_rev11_final.pdf) and submitted to the Corps Regulatory Division and NMFS before project-related activities commence. In addition, a pre-construction Caulerpa (*Caulerpa taxifolia*) survey shall be conducted in accordance with the Caulerpa Control Protocol (http://www.westcoast.fisheries.noaa.gov/publications/habitat/caulerpa_taxifolia/caulerpa_control_protocol_4.pdf) and submitted to the Corps Regulatory Division and NMFS before project-related activities commence. No work shall be conducted until a Notice to Proceed is issued by the Corps Regulatory Division. If the pre-construction eelgrass survey demonstrates eelgrass presence within the project vicinity, a post-project survey shall be conducted and impacts to eelgrass mitigated in accordance with the SCEMP. In the event that Caulerpa is detected within the project area, the Permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory Division, in consultation with NMFS and CDFW.
4. 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 within 24 hours (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861). 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.
5. SAMP Watersheds: Impact limits have been designated within the boundaries of the SAMPs, i.e., the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watershed. Specifically, this RGP only authorizes activities resulting in less than or equal to 0.5 acre of temporary impacts to waters of the United States, including less than or equal to 0.1 acre of temporary impacts to areas with native wetland vegetation, outside of aquatic resource integrity areas. Furthermore, within aquatic resource integrity areas, this RGP only authorizes activities

resulting in less than or equal to 0.25 acre of temporary impacts to waters of the United States with no native wetland vegetation. No impact to native wetland vegetation is authorized within aquatic resource integrity areas.

6. Authorized Work: Any work authorized by this permit must be the minimum necessary to alleviate the maintenance need and shall not exceed the design specifications of the facilities. In the event that additional maintenance activities are required, the Permittee shall submit a pre-construction notification to the Corps Regulatory Division to perform the work. If the work requested under the permit were denied, the Permittee would need a separate permit from the Corps Regulatory Division.
7. Access: You must allow representatives from this office and other Federal and state resource agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.
8. BMPs: No debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the United States. Therefore, the Permittee shall employ all standard BMPs to ensure that toxic materials, silt, debris, or excessive erosion do not enter waters of the United States during project construction.
9. Equipment: Vehicles shall not be driven or equipment operated in waters of the United States on-site, except as necessary to complete the proposed project. The Permittee shall ensure all vehicle maintenance, staging, storage, and dispensing of fuel occur in designated upland areas, located in such a manner as to prevent any runoff from entering waters of the United States.
10. Limits of Work: The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter sensitive habitats outside of the permitted structure. Adverse impacts to waters of the United States beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.
11. Suitable Material: No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
12. Aquatic Life Movements: No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area.
13. Navigation: The permitted activity shall not interfere with the right of the public to free navigation on all navigable waters of the United States. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, cessation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

14. Reports: The Permittee shall submit an annual written report to this office by February 1st of each year this RGP is valid. The report shall summarize all maintenance activities conducted at the facilities throughout the year under this RGP. The report shall include written documentation and photographs of all work performed under this RGP during the prior year. Any data collected, including water quality samples and terrestrial or aquatic sensitive species surveys, shall be included in the annual report. Providing this report is mandatory. These reports enable us to track the use of this RGP to verify that the minimal effects determination is being met, as required by section 404(e) of the Clean Water Act. Failure to provide timely annual reports would constitute non-compliance with this Special Condition and would be considered a violation (33 C.F.R. section 326.4(d)). Furthermore, failure to provide these annual reports will jeopardize the possibility of reauthorizing this permit when it expires. At a minimum, the report shall include:

- a. The name, address, and telephone number of:
 - i. The Permittee's Point of Contact
 - ii. The Permittee's agent (if appropriate)

- b. Full description of the activities conducted during the previous year, including:
 - i. Description of each maintenance event for each facility or bridge, including any deviations from the project description. This description shall include the approximate volume of material dredged and the location of placement of this material on an aerial photograph
 - ii. Size and description of the project area (include maps, drawings, and photographs in conformance with the Corps' Regional (SPD) Map and Drawing Standards)
 - iii. Information on the receiving waterbody impacted including:
 - a) Name of waterbody
 - b) Type of receiving waterbody
 - c) Temporary/permanent adverse impact(s) in acres/cubic yards/linear feet
 - d) Other mitigation steps (to avoid, minimize)
 - e) Compensatory mitigation in acres/cubic yards/linear feet
 - iv. Information on federally listed or proposed endangered species, designated or proposed critical habitat, EFH, and federally managed fish species including:
 - a) Temporary/permanent adverse impacts
 - b) Mitigation steps (to avoid, minimize)
 - c) Compensatory mitigation

For additional information, please contact Stephen Estes at 213-452-3660 or via e-mail at Stephen.M.Estes@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.

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