



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

PUBLIC NOTICE

PROJECT: Hercules Intermodal Transit Center

PUBLIC NOTICE NUMBER: 2008-00382S

PUBLIC NOTICE DATE: 30-May-2013

COMMENTS DUE DATE: 30-June-2013

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1. **INTRODUCTION:** The City of Hercules (City) (POC: John McGuire, 510-245-6525), 111 Civic Drive, Hercules, CA 94547, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit for the Hercules Intermodal Transit Center (ITC). 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 proposed project site is located primarily within the City of Hercules Waterfront District, western Contra Costa County, 94547. A small portion of the project extends into the unincorporated area of Contra Costa County towards Rodeo. The site is on the southeastern shoreline of San Pablo Bay, approximately one mile northwest of Interstate 80.

Project Site Description: The site is a former dynamite and fertilizer manufacturing facility that was remediated in the 1990s. Currently, the site is undeveloped. The waterways covered within the proposal include San Pablo Bay; Refugio Creek, a highly degraded natural perennial stream; and a small unnamed drainage near the Victoria by the Bay development.

Project Description: The applicant proposes to construct a new station stop along the Capitol Corridor line on the UPRR corridor in the City of Hercules adjacent to San Pablo Bay. The project will include track realignment; platform and station construction; and construction of new roads to the site including extensions of John Muir Parkway and Bayfront Boulevard, and

Transit Loop Drive. The John Muir Parkway/Bayfront Boulevard improvements will require the construction of two new bridges over Refugio Creek (Bayfront Bridge and Transit Loop Bridge) and the replacement of the existing railroad bridge over Refugio Creek. Other improvements include the construction of retaining walls and railing to provide grade separation of the tracks from the Hercules Bayfront development area, the completion of the East Bay Regional Parks District trail (Bay Trail) along the waterfront area, Creekside Trail, and the realignment and restoration of Refugio Creek.

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 increase local and regional mobility and transportation options.

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 new and expanded transit services with multi-modal connections encouraging use of public transit. The Hercules ITC would provide bus-to-train connections, in addition to providing car commuters with access to new transit options that would divert traffic from I-80.

Project Impacts: Impacts from the project would result mostly from excavation and embankment activities related to the construction of roads, bridges, and the new station structure. Construction of the roads will require crossings of Refugio Creek. Enhancement of Refugio

Creek will require realignment of the entire channel within the project boundaries. The UPRR bridge crossing of Refugio Creek will be moved to the east to accommodate a larger floodplain and enhanced creek corridor. Construction of the station stop will also require the construction of a station platform between the existing tracks as well as a station structure to accommodate transfer of the bus and rail passengers. The site is a former Brownfield that has been remediated. The site supports a number of small seasonal depressional wetlands. Additionally, on the Bay side of the UPRR, the site supports a mosaic of tidal wetlands including mudflats and tidal marsh.

Proposed Mitigation: The City proposes to provide compensatory mitigation for impacts to sensitive aquatic communities as a result of the proposed project by creating/restoring wetland adjacent to Refugio Creek and to the North Channel, a non-tidal tributary to Refugio Creek. The mitigation plan proposes to enhance the floodplain of Refugio Creek by widening the flood channel and creating wide benches to support a mosaic of tidal marsh along the banks of Refugio Creek. Wetland compensation is proposed at a ratio of 3:1 for created wetlands to impacted (lost) wetlands. The project will result in the complete unavoidable loss of approximately 0.816 acre of wetlands. The mitigation plan proposes to create approximately 2.367 acre of compensatory wetlands.

Project Alternatives: Evaluation of this proposed activity's impacts includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). An evaluation has been made by this office under the guidelines and it was determined that the proposed project is water or wetland dependent.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver 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 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, or 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. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant has applied for a permit from the San Francisco Bay Conservation and Development Commission to comply with this requirement.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111, by the close of the comment period.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): An Environmental Impact Study (EIS) was prepared for the Hercules Intermodal Transit Center. As the Federal lead agency for the project, the Federal Transit Authority (FTA) issued a Record of Decision on June 14, 2012. In addition, a Caltrans Categorical Exclusion was issued on August 14, 2012 through the Local Assistance Program for the Bay Trail portion of the Phase 1A project. 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. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. 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 is 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 insure 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, FTA initiated and completed formal consultation with USFWS and NMFS, pursuant to Section 7(a) of the Act. The Biological Opinion issued by the USFWS on December 30, 2011 concurred that the project may affect but is not likely to adversely affect the following Federally-listed species: Salt Marsh Harvest Mouse (*Reithrodontomys raviventris*), California Clapper Rail (*Rallus longirostris obsoletus*), Soft Bird's Beak (*Cordylanthus mollis ssp. Mollis*), and Vernal Pool Fairy Shrimp (*Branchinecta lynchi*). The Biological Opinion also mandated required compensation for adverse impacts and take of federally threatened California Red-legged Frog (*Rana draytonii*). The Letter of Concurrence issued by the NMFS issued on January 30, 2012 concurred that the following species may be affected by project implementation: Sacramento River winter run Chinook salmon (*Orcorhynchus tshawytscha*), Central Valley spring run Chinook salmon (*O. Tshawytscha*), Central California Coast Steelhead (*Oncorhynchus mykiss*), Central Valley steelhead (*o. mykiss*), North American green sturgeon southern (*Acipenser medirostris*). With the implementation of the mitigations and construction limitations mandated by the Letter of Concurrence, construction activities associated with the project are not likely to adversely affect any of these species.

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. To address project related impacts to EFH, FTA initiated and completed consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act. The Letter of Concurrence issued by the NMFS issued on January 30, 2012, concurred that the project is located within an area identified as EFH for various life stages of fish species managed with the following Federal Fisheries Management Plans (FMPs): *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, the *Pacific Salmon FMP*, and the *Coastal Pelagic FMP*. EFH Conservation Recommendations are included to avoid, minimize, or otherwise offset adverse effects to EFH.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRS 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 the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely 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 (SHPO) 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, FTA has initiated and completed Section 106 consultation with SHPO. The Letter of Concurrence issued by SHPO on April 13, 2012 concluded that

implementation of the project will have no adverse effects to historic properties or known archaeological sites. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until FTA 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 lowers 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.

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 of the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Ian Liffmann, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-13978; 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, and full color versions of the attachments, may be viewed under the *Public Notices* link on the San Francisco District Regulatory website: www.spn.usace.army.mil/Missions/Regulatory.