



**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: Sears Point Restoration Project

PUBLIC NOTICE NUMBER: 2011-00152N

PUBLIC NOTICE DATE: 01-23-2013

COMMENTS DUE DATE: 02-22-2013

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1. INTRODUCTION: Sonoma Land Trust (POC: Julian Meisler (707)526-6930), 966 Sonoma Avenue Santa Rosa, CA 95404, through its agent, Ducks Unlimited Inc. (POC: Patrick Britton (916) 852-2000), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to excavate and discharge fill into jurisdictional waters of the United States to restore approximately 955 acres of tidal marsh, preserve and enhance a 106-acre area of non-tidal seasonal wetland and provide public recreation access south of Highway 37 on the 2,327-acre Sears Point property located in southern Sonoma County, just north of San Pablo 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: 2100 Hwy 37, Petaluma, Sonoma County, CA 94954 (Portions of APNs 068-140-018, 068-160-003, 068-160-006, 068-140-007, 068-140-019, 068-140-009, 068-140-008, 068-160-007, 068-180-021, 068-180-022). The site is located in an unsectioned portion of the Petaluma Land Grant on the 7.5 minute Sears Point, CA and Petaluma Point, CA USGS quadrangles. Latitude 38° 7'51.19"N Longitude - 122°27'3.36"W

Project Site Description: The project area is near the intersection of Lakeville Highway-Reclamation Road and State Route 37 (Highway 37). A portion of the Northwestern Pacific Railroad (NWPRR) line, which is presently owned by Sonoma-Marin Area Rail Transit

(SMART) District, traverses the project area from west to east and the alignment transitions north near the project's eastern boundary. Freight Service resumed along the rail line in 2011. Six hundred and forty eight (648) acres of the project site are the former Dickson Ranch. Site topography ranges from below mean sea level in portions of the subsided diked baylands along the southern project boundary to approximately 400 feet above mean sea level (msl) in the uplands north of Highway 37. With the exception of a small number of barns, houses, and outbuildings scattered throughout the project site, the area is predominantly undeveloped diked agricultural baylands, comprising a mixture of tidal marsh, seasonal wetlands, streams, and upland habitats. There are approximately 76.6 acres of jurisdictional wetlands and other waters in the project area.

Project Description: As shown in the attached drawings, the applicant proposes to restore approximately 955 acres of tidal marsh; preserve and enhance a 106-acre area of non-tidal seasonal wetland while maintaining existing agriculture between the SMART line and Highway 37; and provide public recreation access south of Highway 37. The Project construction is expected to be completed as a phased project over a two-to three-year period with a construction window between April and December, or as feasible based on weather.

A levee with a design height of +12 feet North American vertical datum of 1988 (NAVD) and an initial top elevation of +12 to +15.8 feet NAVD, would be constructed south of and parallel to the SMART rail line to separate the nontidal and tidal habitats. Up to 6,850 feet of the existing perimeter levee along San Pablo Bay would be lowered to elevations between MHHW and 1 foot above MHHW from existing heights of about 10 to 11 feet NAVD to create additional habitat for high marsh plants such as gumplant, coyote bush, and other native species

that are dependent upon infrequent tidal inundation.

Up to four breaches would be utilized in the existing outboard levee to restore the area to full tidal marsh. Two breaches would be excavated during the initial restoration phase. Dredging would be utilized to create an approximately 2,100 long connector channel between Breach 1 and the Petaluma Navigation Channel. A variety of features including pilot channels, ditch blocks, marsh mounds, sidecast ridges, sidecast mounds, and gentle habitat slopes would be included in project design to help increase circulation and to dissipate wind and wave energy to reduce erosion.

Riparian enhancement would occur through vegetation planting and exclusionary fencing at the downstream end of the existing culvert under Highway 37 that outfalls east of the existing Refuge entrance road in the northeast corner of the project area.

To facilitate tidal restoration south of the railroad, three stormwater discharge pumps currently located on the outboard levee would be removed and replaced with pumps located on the north side of the railroad.

An access road would be constructed from Reclamation Road to the USFWS San Pablo Bay NWR headquarters. The access road would be constructed by raising a portion of Reclamation Road, and extending Reclamation Road. The primary purpose of the access road is to allow school and tour buses signalized site access, as visitor usage is expected to increase over the coming years.

As part of the restoration effort, Sonoma Land Trust would attempt to partially bridge the gap between two disconnected segments of the San Francisco Bay Trail by constructing one or more trail alignments across the Sears Point property, as well as providing additional trails on the property if funding allows. Up to five trail segments are proposed for the project, and would be constructed if funding is available.

A total of approximately 6.238 acres of wetlands or other waters will be filled permanently, while the remaining 70.349 acres will be temporarily disturbed either through cut and fills or equipment working within the main restoration unit, however these wetlands will ultimately be converted to tidal marsh habitat. Approximately 877.348 acres of additional aquatic habitat will be created by this project.

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 aquatic habitat and tidal wetland

restoration in San Pablo Bay.

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 re-establish aquatic habitats and hydrologic connections including restoration of tidal wetlands in San Pablo Bay for the benefit of the larger San Francisco Bay estuary system; provide public recreational opportunities not currently available at Sears Point; and contribute to the recovery of numerous species protected under the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA).

Proposed Mitigation: This project will create approximately 877.348 acres of additional aquatic habitat, no compensatory mitigation is required.

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 recently 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 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 submitted an application to 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.

Other Local Approvals: The applicant has applied for authorizations from the following additional governmental agencies: California State Lands Commission, and California Department of Fish and Game.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): U.S. Fish and Wildlife Service (FWS) is the lead agency for National Environmental Policy Act (NEPA) review of the Project. The Corps was a "cooperating agency" for preparation of the NEPA Environmental Impact Statement (EIS).

The Sonoma Land Trust, U.S. Fish and Wildlife Service San Pablo Bay National Wildlife Refuge, California Department of Fish & Game prepared a joint EIR-EIS, which was finalized in April 2012. The complete finalized EIR-EIS can be found at http://www.sonomalandtrust.org/publications/plans_report_s.html. The findings from the final EIS will be incorporated into the decision document that provides the rationale for issuing or denying a Department of the Army Permit for the 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 decision

document will 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 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. USACE has made a preliminary determination that the following Federally-listed species are present at the project location or in its vicinity, and may be affected by project implementation: callippe silverspot butterfly (*Speyeria callippe callippe*), Myrtle's silverspot butterfly (*Speyeria zereke myrtleae*), California red-legged frog (*Rana draytonii*), California clapper rail (*Rallus longirostris obsoletus*), western snowy plover (*Charadrius alexandrinus nivosus*), salt marsh harvest mouse (*Reithrodontomys raviventris*), steelhead, Central California DPS (*Oncorhynchus mykiss*), Steelhead, Central Valley DPS (*Oncorhynchus mykiss*), chinook salmon, Sacramento River winter-run (Evolutionarily Significant Unit (ESU) (*Oncorhynchus tshawytscha*), chinook salmon, Central Valley spring-run ESU (*Oncorhynchus tshawytscha*), Chinook salmon, California fall and late-fall run ESU (*Oncorhynchus tshawytscha*), green sturgeon (southern DPS) (*Acipenser medirostris*), delta smelt (*Hypomesus transpacificus*) longfin smelt (Bay-Delta DPS) (*Spirinchus thaleichthys*), soft bird's-beak (*Cordylanthus mollis ssp mollis*). Critical habitat for steelhead, Central California DPS, chinook salmon, Sacramento River winter-run (Evolutionarily Significant Unit (ESU), and green sturgeon includes the project area.

As the Federal lead agency for this project, the U.S. Fish and Wildlife Service, San Pablo Bay National Wildlife Refuge initiated consultation for this project in March 2012. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. A Biological

Opinion for the project was issued by the USFWS on January 10, 2013.

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*, and the *Pacific Coast Salmon FMP*. USACE has made a *preliminary* determination that EFH is present at the project location or in its vicinity, specifically, Pacific Groundfish FMP: various rockfish, flat fish, and sharks; Coastal Pelagic FMP: northern anchovy and Pacific sardine; Pacific Salmon FMP: Chinook salmon. As the Federal lead agency for this project, U.S. Fish and Wildlife Service, San Pablo Bay National Wildlife Refuge will be responsible for determining the presence or absence of EFH, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

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, to comply with this requirement.

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 project, the U.S. Fish and Wildlife Service, San Pablo Bay National Wildlife Refuge will be responsible for determining the presence or absence of historic properties or archaeological resources, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE has obtained all necessary supporting documentation from the applicant concerning the consultation process. 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 will be temporarily suspended until the lead federal agency 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 impact 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 EVALUATION: 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 Sahrye Cohen, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; 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 *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/regulatory/>.