Regulatory Division
1455 Market Street, 16th Floor
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US Army Corps of Engineers ®
San Francisco District

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Bel Marin Keys Maintenance Dredging

PUBLIC NOTICE NUMBER: 2006-22397N
PUBLIC NOTICE DATE: June 9, 2017
COMMENTS DUE DATE: June 30, 2017

PERMIT MANAGER: Mark D'Avignon TELEPHONE: 415-503-6806 E-MAIL: mark.r.d'avignon@usace.army.mil

1. **INTRODUCTION**: The Bel Marin Keys Community Services District (BMKCSD), 4 Montego Key, Novato, California (contact: Noemi Camargo-Martinez; phone: (415) 883-4222), through its agent, CLE Engineering, 10 Commercial Boulevard, Suite 100, Novato, California 94949 (contact: Wendy Rocha, phone: (508) 642-2469) has applied to the U.S. Army Corps of Engineers (Corps), San Francisco District, for a 10-year Department of the Army Permit to carry out maintenance dredging of accumulated sediment, with upland disposal at the Bel Marin Keys Dredged Material Management Site (BMK DMMS), in the Bel Marin Keys North Lagoon and Novato Creek in Novato, Marin County, California. The purpose of the proposed maintenance dredging is to return the Bel Marin Keys Lagoon and designated areas within Novato Creek, to the originally permitted design depth to allow safe navigational depths for recreational boats and water level management within the Bel Marin Keys Lagoons. 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: As shown in the attached proposed-project plans and drawings, the Bel Marin Keys Lagoons and the BMK DMMS are located east of Highway 101 south of Highway 37 adjacent to Novato Creek on the western shoreline of San Pablo Bay in Novato, Marin County, California.

Project Site Description: The proposed project site is located at the Bel Marin Keys Development (BMK), which consists of approximately 702 single family homes. The BMK is surrounded by open space and bounded by tidal wetlands to the south, Novato Creek to the east and west, and managed farm land to the north and northeast. The BMK surrounds two man-made lagoons, each in approximately 100 acres in area, that open to Novato Creek via boat locks and culverts. The BMK Lagoons and Novato Creek are habitat for native fish including federally-listed species such as steelhead and green sturgeon, and are considered essential fish habitat (EFH) by the National Marine Fisheries Service (See Section on the Magnuson-Stevens Fishery Conservation and Management Act below.). The substrate within the BMK Lagoons and Novato Creek consists primarily of recently deposited silt and clay. Submerged aquatic vegetation, specifically eelgrass, is not believed to be present within the BMK Lagoons or Novato Creek.

Project Description: As shown in the attached drawings, the applicant plans to remove approximately 24,774 cubic yards (cys) of sediment from the 7-acre (approximately) dredge footprint within the North Lagoon and Novato Creek in an initial episode and a total of approximately 100,000 cys from the BMK Lagoons and Novato Creek over the life of the permit. Existing depths range from 0 to 5 feet mean lower low (MLLW). The design depths for the BMK Lagoon and Novato Creek dredge areas is -2.5 feet MLLW plus an additional 1-foot overdredge allowance. The dredged material would be removed using a hydraulic dredge and pumped, via a dredged material slurry pipeline, to

the 22-acre BMK DMMS site. The BMK DMMS is a permitted dredged material placement site located just west of the BMK on BMK Boulevard and adjacent to Novato Creek. Dredged material placed within the BMK DMMS would be allowed to settle and clarified return-water would be released into Novato Creek via a culvert at the northeast corner of the site. The BMK DMMS was originally constructed in 1985, and was enhanced and used again in 2005 for the last major dredging episode at the BMK, which involved placement of approximately 80,000 cys of sediment. Dredged material placed at the BMK DMMS will be reused for tidal wetland creation, levee maintenance, or other appropriate beneficial reuses.

Prior to each dredging episode, the Dredge Material Management Office (DMMO) will evaluate the sediments to be dredged for disposal or reuse suitability. The DMMO includes representatives from the U.S. Environmental Protection Agency, San Francisco Bay Conservation and Development Commission (BCDC), San Francisco Bay Regional Water Quality Control Board (RWQCB), and the U.S. Army Corps of Engineers. The DMMO is tasked with approving sampling and analysis plans in conformity with testing manuals, reviewing the test results and reaching consensus regarding a suitable disposition for the material.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by the Corps to determine whether the project is water dependent. Although the purpose of the project, as stated above, is for safe navigational depths, for consideration in Section 404(b)(1) (Clean Water Act), the basic purpose of the project is the disposal of dredged material.

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 the disposal of dredged material from maintenance dredge projects in the San Francisco Bay Region consistent with the adopted LTMS (Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region) EIR/EIS and LTMS Management Plan of 2001.

Project Impacts The proposed maintenance dredging of the BMK North Lagoon and Novato Creek dredge areas would result in the placement (i.e. discharge) of approximately 100,000 cubic yards of sediment (i.e. dredged material) over the life of the permit and approximately 24,774 cubic yards in the initial dredging episode. The proposed project would temporarily disturb up to approximately 7 acres of the substrate and associated benthic organisms (i.e. benthos) within the BMK North Lagoon and Novato Creek in the initial dredge episode. However, it is expected the substrate and benthos would return to pre-dredging conditions relatively soon after dredging stops. Fish species utilizing the boat basins for feeding and protection from predators would be temporarily displaced by dredging activities, but would be able to find similar foraging opportunities and protection from predators in the adjacent aquatic habitat in Novato Creek and San Pablo Bay.

According to existing eelgrass survey maps, the BMK Lagoons and Novato Creek are not known to contain stands of eelgrass, which is a submerged aquatic plant of ecological importance in San Francisco Bay and identified by the National Marine Fisheries Service (NMFS) as essential fish habitat (EFH) (See Section on the Magnuson-Stevens Fishery Conservation and Management Act below.). Therefore, removal of eelgrass beds due to dredging is not expected to occur. There are no known eelgrass beds in close proximity (i.e. within 250 meters) to the proposed dredging site, therefore, indirect effects to eelgrass due to turbidity and siltation are not expected to occur from the proposed dredging activity.

The detrimental effects on erosion/sedimentation rates, substrate, water quality, fish habitat, air quality, and noise are all expected to be minor and short term. No permanent negative effects such as undesired

substrate alteration, decreased water quality, loss of fish habitat, decrease air quality, and noise pollution are anticipated. The beneficial effects on economics, employment, removal of contaminants, safety, and navigation are major and long term.

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.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102, 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, the Corps 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, the Corps 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 the Corps Regulations at 33 C.F.R. Part 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of the Corps and other non-regulated activities the Corps 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 NMFS, or both, 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. Based on this review, the

Corps has made a preliminary determination that the following federally-listed species and designated critical habitat are present at the project location or in its vicinity, and may be affected by project implementation.

Sacramento River winter-run Chinook salmon (Oncorhynchus tshawytscha) were federally-listed as endangered on January 4, 1994 (59 Fed. Reg.442). Adult winter-run Chinook salmon migrate through San Francisco Bay, as well as Suisun Bay and Honker Bay, to spawning areas in the upper Sacramento River during the late fall and early winter. Juveniles travel downstream through San Francisco Bay to the Pacific Ocean in the late fall as well. The movements of adult and juvenile salmon through the Bay system are thought to be rapid during these migrations. Since impacts to the water column during disposal events would be short-term, localized and minor in magnitude, no potentially adverse effects to winter-run Chinook salmon that may be near the disposal site are anticipated, if the dredge work is conducted within the permitted work window.

Central Valley Spring-Run ESU Chinook salmon (Oncorhynchus tshawytscha) were listed as threatened on September 16, 1999 (64 FR 50394). Spring-run Chinook salmon typically migrate upstream through San Francisco Bay to spawning areas between March and July. Spawning usually occurs between late-August and early October with a peak in September. Juveniles travel downstream through San Francisco Bay in late fall to spring and then to the Pacific Ocean once they have undergone smoltification. Since impacts to the water column during disposal events would be short-term, localized and minor in magnitude, no potentially adverse effects to spring-run Chinook salmon that may be near the disposal site are anticipated, if the dredge work is conducted within the permitted work window.

Central California populations of steelhead trout (Oncorhynchus mykiss) were federally classified as threatened in August 1997. The steelhead that occur in San Francisco Bay are included in this distinct population segment and therefore receive protection under the Endangered Species Act. There is concern that steelhead migrating through the Bay to streams in the North Bay might enter the MYC boat basin. Since impacts to the water column during disposal events would be short-term, localized and minor in magnitude, no potentially adverse effects to steelhead that may be near the disposal site are anticipated, if the dredge work is conducted within the permitted work window.

The Central Valley California Distinct Population Segment (DPS) steelhead (*Oncorhynchus mykiss*) was federally-listed as threatened on March 19, 1998 (63 FR 13347), and were reconfirmed as threatened on January 5, 2006 (71 FR 834). Critical habitat for central valley California steelhead was designated on September 2, 2005 (70 FR 52488). The DPS includes all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries. Excluded are steelhead from San Francisco and San Pablo Bays and their tributaries. All Central Valley steelhead are currently considered winter steelhead. Juvenile steelheads live in freshwater between one and four years, then become smolts and migrate to the sea from November through May.

On July 6, 2006, NMFS listed the North American green sturgeon (Acipenser medirosrtis) south of the Eel River in California as threatened under the Endangered Species Act (71 Fed. Reg. 17757). The Corps has initiated consultation per Section 7 of the ESA regarding this species. If a permit is issued for this proposed project it will contain any special conditions resulting from that consultation.

Habitat for **Ridgway's rail** (*Rallus obsoletus*) has been identified along portions of Novato Creek in the vicinity of Bel Marin Keys. In order to avoid potential impacts to Ridgway's rail, dredging in Novato Creek, or within 250 feet of known nesting habitat for Ridgway's rail, shall occur from September 1 to November 30 in order to avoid the breeding season of the Ridgway's rail

Additionally, the Corps has concerns regarding potential impacts to Pacific herring during its annual spawning season. The proposed maintenance dredging will occur within the traditional Pacific herring

spawning grounds. As a result, the Corps will condition the permit (if issued) so that dredging will be allowed only from March 1 through November 30 in any year.

Please note that programmatic biological opinions (BOs) were issued by USFWS (March 12, 1999) and NMFS (July 9, 2015) for the LTMS. As a result of the BOs there are allowable time frames to dredge to protect threatened and endangered species and their designated critical habitat per Section 7 of the Endangered Species Act of 1973, as amended. If a permit is issued for this proposed project it will contain a condition that dredging and disposal operations shall occur only from September 1 through November 30. Dredging outside the LTMS environmental work window of September 1 through November 30 would require consultation with the National Marine Fisheries Service (NMFS) (pursuant to Section 7 of the Endangered Species Act) and approval from the NMFS and the U.S. Army Corps of Engineers. If the dredge work is conducted within those time frames, there is no need for consultation.

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. 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*. As the federal lead agency for this project, the Corps 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, the Corps has made a preliminary determination that EFH is present at the project location or in its vicinity, and that the critical elements of EFH may be adversely affected by project implementation. The proposed project is located within an area managed under the Pacific Groundfish, the Coastal Pelagic and/or the Pacific Coast Salmon FMPs.

The Corps and NMFS completed a programmatic EFH consultation on June 9, 2011 for maintenance dredging. One of NMFS's key concerns with dredging is potential impacts to eelgrass beds. The "Baywide Eelgrass Inventory of San Francisco Bay," prepared by Merkel and Associates, dated October 2010, does not show eelgrass beds within 250 meters of the Bel Main Keys Lagoon and Novato Creek. Therefore, the applicant would not be required to deploy silt curtains in order to minimize adverse effects upon eelgrass from turbidity created from the disturbance of sediment during dredging operations.

The recently-deposited bottom sediments to be dredged during maintenance dredge activities are composed mainly (approximately 95%) of silts and clays (mud). It is presumed that fish species utilizing the area would be using it for feeding during a period of growth. When dredging occurs, the fish should be able to find ample and suitable foraging areas in the adjacent marine habitat of Novato Creek and San Pablo Bay. As the infaunal community recovers in the dredged area, fish species will return to feed. Therefore, the proposed dredging is expected to have only short-term, minor adverse effects on EFH.

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 NHPA 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.

Because the Bel Marin Keys North Lagoon and Novato Creek dredging areas have been previously dredged, historic or archeological resources are not expected to occur in the project vicinity. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until the Corps 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 disposal of dredged material 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 waters of the U.S.

On October 29, 2004 the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, San Francisco Bay Conservation and Development Commission, and the San Francisco Bay Regional Water Quality Control Board adopted the "Small Dredger Programmatic Alternatives Analysis (SDPAA) for Disposal of Maintenance Dredged Material in the San Francisco Bay Region." Due to the limited disposal alternatives in the San Francisco Bay region, small dredgers (as defined in the SDPAA) are not required to submit an alternatives analysis for disposal of maintenance-dredged material. The BMK is included in the list of small dredgers in the SDPAA.

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**: The Corps 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 the Corps 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 Mark D'Avignon, San Francisco District, Operations and Readiness 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 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 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 US Army Corps of Engineers, S. F. District website:
http://www.spn.usace.army.mil/Missions/Regulatory.