



US Army Corps
of Engineers®

Regulatory Branch
1455 Market Street
San Francisco, CA 94103-1398

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Project: Winter Island Levee Repair

NUMBER: 29218S

PROJECT MANAGER: Holly Costa

PHONE: 415-503-6780

DATE: December 4, 2009

RESPONSE REQUIRED BY: January 4, 2010

Email: Holly.N.Costa@usace.army.mil

1. **INTRODUCTION:** Reclamation District No. 2122 through its agent, MBK Engineers (2450 Alhambra Boulevard, 2nd Floor, Sacramento, California 95817-1125) has applied for a U.S. Army, Corps of Engineers (Corps) permit to place fill in jurisdictional waters of the U.S. to repair a levee that was breached along the east side of Winter Island near Broad Slough, near the City of Pittsburg, Contra Costa County, California. This application is being processed After the Fact, pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).

2. PROPOSED PROJECT:

Project Background: Construction and maintenance of the Winter Island levee were previously authorized under Corps permit numbers 22033S, 220331S, and 220332S. In 2000, the Corps suggested the Reclamation District find a more long-term solution to stabilize the levees, as levee failure was becoming a regular occurrence and by obtaining multiple, consecutive emergency authorizations, they were circumventing the National Environmental Policy Act (NEPA).

In late 2004, approximately 400 feet of levee failed along the east side of Winter Island adjacent to Broad Slough (Figures 2 and 3). The Reclamation District notified the Corps of the breach and requested authorization under Regional General Permit 5,

Activities Under Emergency Situations, to repair it. The Corps determined that the breach did not constitute an emergency situation and therefore required full review under NEPA.

The Reclamation District submitted a revised application in April 2005, proposing the use of barges within the levee structure to provide greater stability for the levee foundation. Before the project could be authorized, the Corps was notified by the California Department of Fish and Game that the Reclamation District had already begun placing the barges. A Cease and Desist letter was issued to the Reclamation District and work was halted before the project was completed.

Project Description: The Reclamation District has begun constructing a setback levee parallel to the failed section (Figure 4). Fill material consists of salvaged steel barges in conjunction with imported dredge material to repair the break. The barges are decked steel material barges that vary in length from 100 to 200 feet, and 20 to 35 feet in width. The barges were floated into the break area and then sunk onto a prepared foundation and anchored with driven spuds. The foundation was formed from a leveling layer of sand obtained from an off-site dredge project, which was approved by the Dredged Material Management Office for disposal on Winter Island. The barges are clean and have been used solely for material transport. No engines or other equipment which could pollute the water have been used on the barges.

The Reclamation District plans to place one more barge in the gap, remove the barge decks and fill the interiors over time (as dredge material is available - approximately 5 years) to further sink the barges into the foundation. The setback levee would tie into the existing levee and the barges would ultimately be completely buried in sediment (see Figure 5).

Purpose and Need: The basic purpose of this project is to repair the failed portion of levee in a manner which is unlikely to fail again in the near future. The overall need for this project is to repair the levee to prevent further erosion of Winter Island.

Impacts: The footprint of the levee repair is approximately 24 feet wide by 400 feet long. A total of approximately 2000 cubic yards of fill would be placed in Section 10 waters for the levee repair. The project would result in the placement of approximately 2000 cy of fill into 0.35 acres of Corps jurisdictional waters and wetlands. Two of the three barges have already been installed.

Mitigation:

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations (40 C.F.R. Parts 1500-1508), and the Corps' Regulations (33 C.F.R. Part 230 and Part 325, Appendix B). Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 1455 Market Street, San Francisco, California 94103-1398.

Endangered Species Act of 1973 (ESA): Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. Delta smelt (*Hypomesus transpacificus*), Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*Oncorhynchus mykiss*) and green sturgeon (*Acipenser medirostris*) habitat is present in the area. Technical assistance has been requested from NMFS to design mitigation measures for temporal loss of the above listed habitat.

Magnuson-Stevens Fisheries Conservation and Management Act: The NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. The proposed project is located within an area designated as Essential Fish Habitat for various life stages of fish species managed with the Pacific Groundfish Fishery Management Plan (FMP), the Coastal Pelagic FMP and the Pacific Coast Salmon FMP. Technical assistance has been requested from NMFS to design mitigation measures for temporal loss of the above listed habitat.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issue that may be associated with this project should write 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 of this Public Notice.

b. Alternatives: Evaluation of this proposed activity's impact 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 dependent.

Coastal Zone Management Act of 1972 (CZMA): Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project is consistent with the State's Coastal Zone Management Program, if applicable. The proposed project is not within the Coastal Zone.

National Historic Preservation Act of 1966 (NHPA): Based on a review of survey data on file with various City, State and Federal agencies, no historic or archeological resources are known to occur in the project vicinity. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

4. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative

effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline 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.

5. CONSIDERATION OF COMMENTS: The Corps of Engineers 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, 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 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 in the proposed activity.

6. SUBMISSION OF COMMENTS: Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 1455 Market Street, San Francisco, California 94103-1398. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the

reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Holly Costa of our office at telephone 415-503-6780 or E-mail: Holly.N.Costa@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.