



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: Mallard Slough Pump Station Maintenance Dredging

PUBLIC NOTICE NUMBER: 2010-00209S

PUBLIC NOTICE DATE: 3/23/2011

COMMENTS DUE DATE: 4/30/2011

PERMIT MANAGER: Nina Cavett-Cox TELEPHONE: 415-503-6765 Christina.Cavett-Cox@usace.army.mil

1. **INTRODUCTION:** The Contra Costa Water District (CCWD) (POCs: Mark Seedall [925-688-8119] and Emily Corwin [925-688-8283] has applied to the U.S. Army Corps of Engineers (Corps), San Francisco District, for a ten-year Department of the Army Permit to conduct maintenance dredging of the Mallard Slough Intake Channel (MSIC) and subsequent disposal of the dredged material at the Carquinez (SF-09) and Winter Island Dredged Material Disposal Sites. 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 MSIC is an approximately 3,000 foot long by 40 foot wide channel (approximately 2.75 acres) perpendicular to the original Mallard Slough channel, south of Suisun Bay (see attached figures 1 and 2). The project is located near the Cities of Pittsburg and Bay Point, Contra Costa County, California (APNs: 096 100 017 and 096 100 018).

Project Description: As shown in the attached drawings, the applicant plans to remove approximately 33,250 cubic yards (cys) of sediment from the 2.75-acre (approximately) MSIC single episode. Existing depths range from +0.5 to -3.7 feet mean lower low water (MLLW) (average depth -1.5 feet MLLW). The design depth for the intake channel is -6

feet MLLW plus an additional 2-foot overdredge allowance. The material would be removed using a clamshell dredge and transported by barge to the Carquinez Dredge Material Disposal Site (SF-09) or the Winter Island Dredged Material Disposal Site.

The Dredge Material Management Office (DMMO) evaluates the sediments to be dredged for disposal or reuse suitability. The DMMO includes representatives from the U.S. Environmental Protection Agency (USEPA), 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 (Corps). 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.

The DMMO reviewed a summary of the Sampling Analysis Results which indicated that approximately 15,560 cys of sediment located in the far southern section of the intake channel would not be suitable for unconfined aquatic disposal (NUAD) due to elevated mercury concentrations (see figure 4). It is proposed that these sediments would be placed in an appropriate upland area such as Winter Island. The remainder of the sediment (26,000 cys) was determined suitable for unconfined disposal (SUAD) and is proposed for placement at SF-09.

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. The basic purpose of the project is to widen and deepen the MSIC in order to increase its capacity.

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/District.

Project Impacts: Impacts that may occur to the aquatic environment from maintenance dredging within the channel are: 1) the removal and disposal of the dredge material and 2) the removal of emergent vegetation that occurs along the banks of the channel. Dredging within the MSIC typically occurs every 20 years. In order to dredge the channel the applicant proposes to remove approximately 41,560 cys of dredge material from 2.27 acres of the intake channel. Once the material is removed it would be transported to Carquinez Disposal Site (SF-09) or the upland Winter Island Disposal Site. In addition, the proposed project is expected to temporarily impact 1.6% of the emergent vegetation (*Typha latifolia*) that occurs along the banks of the channel (see attached Figure 5). Impacts to the vegetation are expected to be temporary due to the fact that the channel will most likely not be dredged for another 20 years. Within this 20 year period, the Corps expects the vegetation will re-establish along the banks of the channel as it has before.

Proposed Mitigation: Impacts to wetland vegetation associated with this project are expected to be minor and temporary in nature. As stated above the Corps expects vegetation to re-establish along the banks of the channel as sediment deposition occurs. Therefore,

under the current project proposal the Corps is not going to require compensatory mitigation for this project.

Project 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)). The applicant has submitted an Analysis of Alternatives for the project and it will be reviewed for compliance with the guidelines. The applicant states that there are no practicable alternatives for this project.

On October 29, 2004 the CORPS, USEPA, BCDC, and RWQCB 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 applicant has requested that the MSIC be included in the list of small dredgers in the SDPAA.

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 the applicant has applied for a Consistency Certification from the San Francisco Bay Conservation and Development Commission.

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 the following additional governmental authorizations for the project: a Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Game.

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, 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, 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 USACE 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 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 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.

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. Federally-listed threatened or endangered species and their designated critical habitats currently identified as potentially impacted by the proposed project include: Chinook salmon, steelhead trout, green sturgeon, delta smelt, and clapper rail

Please note that programmatic biological opinions (BOs) were issued by FWS (March 12, 1999) and NMFS (September 18, 1998) for the Long Term

Management Strategy for the placement of dredged material in the San Francisco Bay region. As a result of the BOs there are allowable time frames to dredge to protect the habitat for threatened (and endangered) species and the species themselves per Section 7 of the Endangered Species Act of 1973, as amended. If the dredge work is conducted within those time frames, there is no need for consultation.

Federally-listed endangered adult winter-run Chinook salmon (*Oncorhynchus tshawytscha*) 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 from June 1 through November 30. If a permit is issued for this proposed project it will contain a condition that dredging is allowed only from June 1 through November 30 in any year, without consultation (pursuant to Section 7 of the ESA) with and approval from NMFS and the Corps.

Central California populations of steelhead trout (*Oncorhynchus mykiss*) were classified as federally threatened in August 1997. The steelhead that occur in San Francisco Bay are included in this ESU (evolutionarily significant unit) 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 Mallard Slough. If a permit is issued for this proposed project it will contain a condition that dredging is allowed only from June 1 through November 30 in any year, without consultation (pursuant to Section 7 of the ESA) with and approval from NMFS and the Corps.

On July 6, 2006, NMFS listed the North American green sturgeon (*Acipenser medirostris*) south of the Eel River in California as threatened under the Endangered

Species Act. The Corps will be initiating consultation per Section 7 of the Endangered Species Act of 1973 regarding this species. If a permit is issued for this proposed project it will contain any special conditions resulting from that consultation.

Delta smelt (*Hypomesus transpacificus*) was federally listed as a threatened species on March 5, 1993. The delta smelt is a small fish endemic to the upper Sacramento-San Joaquin estuary. The inhabit open, surface waters of the Delta and Suisun Bays and have been observed as far west as the Napa River and San Pablo Bay (FWS, 2004) The delta smelt spawns in shallow water habitats (less than -10 feet MLLW) within the same areas. The proposed project will not result in the loss of shallow water habitat because the final design depth of the proposed project is -6 feet MLLW. The Corps has determined that the proposed project is consistent with the formal programmatic BO, issued by FWS on December 1, 2004, for the issuance of Section 10 and 404 permits by the Corps for projects with relatively small impacts on delta smelt. The Corps will request, by separate letter, that the FWS append the proposed project to the programmatic BO for delta smelt. The programmatic BO for delta smelt includes the condition that in-water work in the Central Zone, where the Mallard Slough Pump Station intake channel is located, is restricted to a work window of August 1 through November 30. If a permit is issued for the proposed project, it will contain the condition that dredging work is restricted to the August 1 through November 30 work window for the protection of delta smelt.

California Clapper Rail (CCR) (*Rallus longirostris obsoletus*) was federally listed as endangered on October 13, 1977. California clapper rail is one of the largest rails, measuring 13-19 inches from bill to tail. They occur almost exclusively in San Francisco Bay Marshes. No potentially adverse effects to CCR are anticipated if dredging occurs outside of the nesting season. Therefore, the Corps has determined that consultation under the Endangered Species Act will not be required. If a permit is issued for this proposed project it will contain a condition that dredging is allowed only September 1 through February 15 in any year, without consultation (pursuant to Section 7 of the

ESA) with and approval from NMFS and the Corps.

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*.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The proposal would impact approximately 2.75 acres of EFH utilized by various fish species protected by this act. Our initial determination is that the proposed action would not have a substantial adverse impact on EFH or federally managed fisheries in California waters. This determination is based on the fact that the intake channel has been dredged two times in the past, the disposal site has been used since the 1960s for disposal and, therefore, both sites are considered by the Corps to be disturbed and the proposed activity will result in no new impacts to EFH. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with NMFS. The MSIC is located along the Suisun Bay near the City of Pittsburg, Contra Costa County, California. The intake channel was constructed by dredging in the 1930's, and previously maintained by dredging in 1968 and 1987. The sediments to be dredged during the proposed maintenance dredge episode are composed mainly of silts and clays (fines) with approximately 77% fines in the outer channel and approximately 84% fines in the inner channel. 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 Suisun Bay. As the infaunal community

recovers in the dredged area, fish species will return to feed. The "Baywide Eelgrass Inventory of San Francisco Bay," prepared by Merkel and Associates, dated October 2004, does not cover Suisun Bay. However, aerial photographs from this document do not show eelgrass in the area in or around the intake channel as having any eelgrass beds. Eelgrass is not expected to be established in this area.

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 Corps 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 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 intake channel has 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 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 the Corps.

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 MSIC 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: 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 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 Nina Cavett-Cox, 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 Corps website:

<http://www.spn.usace.army.mil/regulatory/>.