



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division, Eureka Field Office
601 Startare Drive, Box 14
Eureka, CA 95501

PUBLIC NOTICE

PROJECT: HBRA Permanent Dock and Gangway

PUBLIC NOTICE NUMBER: 2002-266490N

PUBLIC NOTICE DATE: 2-18-2011

COMMENTS DUE DATE: 3-20-2011

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1. **INTRODUCTION:** The Humboldt Bay Rowing Association (HBRA) (POC: Jerome J. Simone at telephone number 707-677-3214), P.O. Box 750 Trinidad, CA 95570, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to install a permanent dock which would extend into the navigation channel of Humboldt Bay. The dock is located between the Adorni Center and CA Route 255 Bridge, in Eureka. The dock was already authorized as a temporary structure under Nationwide Permit No. 11; however the Nationwide permit would not authorize the permanent structure. This Department of the Army permit application is being processed pursuant to the provisions of 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 dock is anchored above the high tide line at 1535 Waterfront Drive (APN 002-241-006, Eureka, Humboldt County, CA (see Figure 1). The dock extends into the federal navigation channel (beyond the Pierhead line). The location is also identified as the North 40° 48' 29.1" latitude and West 124° 9' 20.1" and northwest ¼ of Section 23, T5N-R1W, HBM, as shown on the USGS map, Eureka Quadrangle (Figure 2).

Project Site Description: The project area begins with the paved jogging/hiking path constructed on historic fill materials, and extends into the bay. Most of the floodplain is beyond the limits of the project area. The banks are imbedded with boulders, as rock slope protection (RSP), which slope down at roughly 2:1 (vertical:horizontal) gradient. From the toe of the RSP to the navigation channel, the bay bottom is fine sand with a roughly 8- to 15-foot wide strip of eelgrass (*Zostera*

marina) running parallel to the bank. There are about 510 square feet (sq. ft.) of eelgrass habitat within the project area.

Project Description: The current applicant proposes to maintain the dock as a permanent structure, rather than a temporary structure as originally permitted. As shown in the attached drawings, the project has three components: a plastic modular dock, a bridge or gangway, and a metal-capped short floating concrete cell dock. The dock is T-shaped, with the entry ramp hinged at the top of the bank so that it floats with the tide. The gangway is eight feet wide and 35 feet long. The metal-capped concrete cell is a 10-foot wide and 20-foot long floating dock that connects to the transverse (parallel to the bank) plastic modular section. The plastic section is 100 feet long and eight feet wide and constructed from durable plastic squares, each of which is 19-inches wide. The chain link gate on the gangway shown on the plans has not been and is not proposed for construction. The gangway is constructed of slotted metal to allow maximum sunlight to penetrate to the eelgrass beds below. The project is further described in the attached Figure 3, "HSU Temporary Seasonal Dock," dated November 20, 2002.

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 marina access.

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 facilitate launching rowing shells by the applicant in the vicinity of Humboldt Bay.

Project Impacts: Although the project design included a slotted gangway to provide maximum light to the water and eelgrass below, the shadow of the gangway has visibly decreased the density of the eelgrass bed in the immediate vicinity. It appears that approximately 155 sq. ft. of eelgrass bed has been impacted. This impact is likely due to shade from the gangway, as permitted, and exacerbated by leaving the dock and gangway in place through the summer and much longer than the two years initially proposed.

The project includes no discharge of dredged or fill material into jurisdictional waters.

Proposed Mitigation: The applicants propose to plant approximately 200 sq. ft. of unoccupied eelgrass habitat on site to compensate for the 155 sq. ft. of disturbed eelgrass beds.

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 is hereby notified that, unless USACE is provided documentation indicating a complete application for water quality certification has been submitted to the California Regional Water Quality Control Board (RWQCB) within 30 days of this Public Notice date, the District Engineer may consider the Department of the Army permit application to be withdrawn. 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, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403 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 is hereby advised to apply for a Consistency Determination from the California Coastal Commission to comply with this requirement.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, North Coast District Office, 710 E Street, Suite 200, Eureka, California 95501, by the close of the comment period.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project:

- 1) Permit from Humboldt Bay Harbor, Rec. and Cons. District;
- 2) Coastal Development Permit from City of Eureka, or from California Coastal Commission.

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, USACE 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, 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 normally 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 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 or 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, USACE has conducted a review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant, to determine the presence or absence of such species and critical habitat in the project area. Based on this review, USACE has made a preliminary determination that the following Federally-listed species and designated critical habitats are present at the project location or in its vicinity, and may be affected by project implementation:

- Northern California (CC) steelhead (*Oncorhynchus mykiss*) and critical habitat.
- Southern Oregon/Northern California coho (SONCC) salmon (*O. kisutch*).
- CA coastal Chinook (*O. tshawytscha*).
- Green sturgeon (*Acipenser medirostris*) and critical habitat.

Critical habitat has been also designated for coho and Chinook salmon and steelhead to include all estuarine and river reaches accessible to salmonids below longstanding, naturally impassable barriers. Designated critical habitat consists of the water, streambed, and the adjacent riparian zone.

Humboldt Bay is specifically listed as designated critical habitat for the Southern DPS for the North American green sturgeon. The overall project could potentially induce more traffic and shading in the project area, including the eelgrass beds, which may disrupt the ecology or disturb the listed species. To address project related impacts to these species and designated critical habitat, USACE will initiate consultation with NMFS, pursuant to Section 7(a) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

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, USACE 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, USACE 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 may affect the Pacific Groundfish FMP, Coastal Pelagics FMP and the Pacific Salmon FMP through adverse impacts to the eelgrass beds, which are important to coho, Chinook and steelhead juvenals, top smelt, northern anchovy, and pacific herring. To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act. 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 MPRSA 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 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, USACE has conducted a review of latest version of the *National Register of Historic Places*, as published on their web-page:

<http://www.nationalregisterofhistoricplaces.com/CA/Humboldt/state.html>.

USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. 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 USACE 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)). Since the project does not entail the discharge of dredged or fill material into waters of the United States, application of the Guidelines will not be required. 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.

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 Kelley Reid, San Francisco District, Regulatory Division, Eureka Field Office, 601 Startare Drive, Box 14, Eureka, California 95501; 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/>.