



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: Vallejo Marina Maintenance Dredging

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COMMENTS DUE DATE: August 27, 2012

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1. INTRODUCTION: The City of Vallejo through its agent Leah Dreger, Weston Solutions, Inc., 428 13th Street, 6th Floor, Unit B, Oakland, California 94612 has applied to the U.S. Army Corps of Engineers (Corps), San Francisco District, for a Department of the Army Permit to dredge approximately 75,000 cubic yards (cys) initially and approximately 500,000 cys of sediment from the Vallejo Marina over 10 years. The purpose of the proposed dredging is to return the two basins in the Marina to the originally permitted depths for safe navigation of recreational boats. The applicant is proposing to dispose of the dredged material at the Carquinez Disposal Site (SF-9). 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 locations of the proposed dredge and disposal sites are shown on Sheet 1 (attached). The proposed dredge site is located at latitude 38° 6' 30" north and longitude 122° 16' 10" west. It is south of the Mare Island Causeway in Mare Island Strait. The project site is located on Mare Island Strait in Vallejo, Solano County, California.

The applicant is proposing to dispose of the dredged material at the SF-9.

Project Site Description: The proposed dredge site has an area of approximately 29 acres. It is a municipal small craft marina. SF-9 is about 45.9 acres of open water.

Project Description: As shown in the attached figures, the applicant plans to remove approximately 75,000 cubic yards (cys) of sediment from the approximately 29-acre basin in an initial episode and a total of 500,000 cys over the 10 year life of the permit. Existing depths range from -0.2 to -8.7 feet mean lower low water (MLLW) in the Marina basins. The design depth for the proposed project is -10 feet MLLW plus an additional 1-foot overdredge allowance. The material would be removed using a clamshell and removed by barge to SF-9.

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 maintaining 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 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, and navigation are major and long term.

Proposed Mitigation: No compensatory mitigation is proposed because none 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.

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 State Lands Commission has obtained a non-objection letter from the State Lands 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, 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 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. 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.

Please note that programmatic biological opinions (BOs) were issued by USFWS (March 12, 1999) and NMFS (September 18, 1998) for the LTMS. 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.

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 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 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 Mare Island Strait and the Vallejo Marina. 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 (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.

Delta smelt (*Hypomesus transpacificus*) was listed as a threatened species on March 5, 1993 (58 FR 12854) and critical habitat for delta smelt was designated on December 19, 1994. Delta smelt are a relatively small (60-70 mm), slender bodied fish that are endemic to the upper Sacramento-San Joaquin estuary. They occur in the Sacramento-San Joaquin Delta below Isleton on the Sacramento River, below Mosdale on the San Joaquin River and in Suisun Bay. They move into freshwater when spawning, which can occur in the Napa River and San Pablo Bay. The Corps will consult under Section 7 of the Endangered Species Act with the USFWS on adverse effects to delta smelt by the proposed project. If a permit is issued for this proposed project it will contain a condition that dredging is allowed only from August 1 through November 30 in any year, without consultation (pursuant to Section 7 of the ESA) with and approval from the USFWS and the Corps.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): 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 and in its vicinity. 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 EPA completed a programmatic EFH consultation with NMFS on June 9, 2011 for potential adverse effects upon EFH from maintenance dredging projects in San Francisco Bay covered under the Long Term Management Strategy (LTMS) Program. The programmatic EFH consultation resulted in Programmatic EFH Conservation Recommendations and Conservation Measures that the above-referenced regulatory and resource agencies agreed upon to reduce adverse effects to EFH from maintenance dredging projects in San Francisco Bay. This project qualifies for coverage under the Programmatic EFH consultation and would be required to implement any applicable programmatic EFH Conservation Recommendations and Measures.

The proposal would impact approximately 29 acres of EFH utilized by various species of sole, shark and rockfish. The Corps' initial determination is that the proposed action would not result in new impacts to EFH. This determination is based on the fact that the boat basins have been dredged several 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. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with NMFS. The recently-deposited bottom sediments to be dredged during maintenance dredge activities are composed mainly 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 adjacent aquatic habitat within the Mare Island Strait. 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 show the area to be dredged at the Vallejo Marina as having any eelgrass beds. Eelgrass is not expected to be established in the boat basins or within close proximity, therefore, adverse effects, both direct and indirect, are not expected to occur.

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 MPRSA. 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 the 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, by the close of the comment period.

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 Vallejo Marina 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 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 Vallejo Marina is included in the list of small dredgers in the SDPAA.

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.

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, San Francisco District website: <http://www.spn.usace.army.mil/regulatory/>.

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 Debra O’Leary, 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