Regulatory Division
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US Army Corps of Engineers ®
San Francisco District

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Porto Bello Homeowners Association Boat Docks Maintenance Dredging

PUBLIC NOTICE NUMBER: 2012-00072N
PUBLIC NOTICE DATE: March 16, 2012
COMMENTS DUE DATE: April 16, 2012

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1. **INTRODUCTION**: The Porto Bello Homeowners Association (PBHA), P.O. Box 1173, San Rafael, California 94901 (contact: Taylor Sharp; phone: (415) 382-1100), through its agent Mr. Zachary Cohn, Salt River Construction Corporation, 5643 Paradise Drive, Suite B, Corte Madera, California, 94925 (phone: (415) 435-1024) has applied to the U.S. Army Corps of Engineers (Corps), San Francisco District, for a Department of the Army Permit to carry out maintenance dredging of accumulated sediment, with subsequent aquatic and upland disposal as appropriate, at the PBHA's boat docks located on the northern shoreline of the San Rafael Canal in the city of San Rafael, Marin County, California. The purpose of the proposed dredging is to return the boat docks access and berthing area, totaling approximately 1.1-acres, to its originally permitted design depth to allow safe navigational depths for recreational boats. 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 PBHA boat docks are located along the northern shoreline of the San Rafael Canal, which is a tributary and navigation channel directly connected to San Pablo Bay, located in San Rafael, Marin County, California.

Project Site Description: The proposed project site is located along the San Rafael Canal and includes six (6) private docks and one common dock consisting of 12 boat slips that service the thirty-four (34) unit condominium complex including sixteen (16) homes on the northern shoreline of the San Rafael Canal. The PBHA boat docks have been used for mooring private recreation boats for several decades and have been developed and modified for human recreational usage. The San Rafael Canal is habitat for native fish including federally listed species such as Chinook salmon, steelhead, and green sturgeon, and is considered essential fish habitat (EFH) by the National Marine Fisheries Service (See Section 4 below). The substrate within the PBHA boat docks access and berthing area consists primarily of recently deposited silt and clay. Submerged aquatic vegetation, specifically eelgrass, is not believed to be present within the PBHA boat docks access and berthing area.

Project Description: As shown in the attached drawings, the applicant plans to remove approximately 7,000 cubic yards (cys) of sediment from the PBHA boat docks access and berthing area in an initial episode and a total of approximately 27,000 cys over the life of the permit. Existing depths range from -1 to -5 feet mean lower low water (MLLW). The design depth for the PBHA maintenance dredging project is -5 feet MLLW plus an additional 1-foot overdredge allowance. The material to be dredged would be removed using a mechanical dredge (i.e. excavator mounted on a dredge scow). Suitable materials would be transported by dredge scow to the San Pablo Bay

Dredged Material Disposal Site (SF-10), or, if necessary, to an upland location outside Corps jurisdiction.

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 proposed project, as stated above, is for restoring safe navigational depths at the PBHA boat docks, for evaluation under Section 404 (b) (1) (Clean Water Act), the basic purpose of the proposed 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, which is required by the Corps to determine compliance with the U.S. Environmental Protection Agency's (EPA) Section 404 (b) 1 Guidelines for Specification of Disposal Site for Dredged and Fill Material (33 U.S.C. § 1344(b)), 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 for this proposed project 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 the LTMS Management Plan of 2001.

Project Impacts: The proposed maintenance dredging of the PBHA boat docks access and berthing area would result in the placement (i.e. discharge) of approximately 27,000 cubic yards of sediment (i.e. dredged material) over the life of the permit and 7,000 cubic yards in the initial dredging episode. The proposed project would temporarily disturb up to 1.1 acres of the substrate and associated benthic organisms (i.e. benthos) within the PBHA boat docks berthing and access area. 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 the San Rafael Canal.

According to existing eelgrass survey maps, the PBHA boat docks access and berthing is not known to contain stands of eelgrass, which is an 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 EFH 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 45 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, navigation, and the removal of any chemicals of concern are considered 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 is required to submit 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 Public Notice 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 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 (ESA). If the dredge work is conducted within those time frames, there is no need for endangered species 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 the NBA boast basins. 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 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.

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 1.1 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 PBHA boat docks are located along the northern shoreline of the San Rafael Canal in the city of San Rafael, Marin County, California. 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 San Rafael Canal. 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 PBHA boat docks 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.

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 PBHA boat docks access and berthing area has been previously dredged, historic or archeological resources are not expected to occur in the proposed 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 PBHA requested to be added to 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 Mr. Mark D'Avignon, Operations and Readiness Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; 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 U.S. Army Corps of Engineers, S.F. District website: http://www.spn.usace.army.mil/regulatory/.