



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, CA 94103-1398

# PUBLIC NOTICE

PROJECT: Oro Loma Sanitary District Wet Weather Equalization  
and Ecotone Demonstration Project

PUBLIC NOTICE NUMBER: 1994-190250S

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COMMENTS DUE DATE: May 16, 2014

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1. **INTRODUCTION:** Oro Loma Sanitary District (OLSD), through its agent, Environmental Science Associates (ESAssoc) (POC: James O'Toole, 707-795-0904, 1425 N. McDowell Boulevard, Suite 200, Petaluma, California), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit for the proposed Oro Loma Sanitary District Wet Weather Equalization and Ecotone Demonstration Project (Project), which would construct a multi-purpose wet-weather equalization facility that will include both a treatment wetland and an upland ecotone slope for polishing of treated wastewater. The facility would accommodate infrequent peak wet-weather flows, and provide an opportunity to pilot several adaptation strategies related to sea level rise, water quality protection, and infrastructure sustainability. 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 proposed project is located near the eastern shoreline of San Francisco Bay, approximately 4 miles south of the Oakland International Airport. The project site consists of an approximately 15.3-acre area located at 2536 Grant Avenue in the community of San Lorenzo, sited adjacent to and east of the existing OLSD wastewater treatment plant (WWTP), in unincorporated Alameda County, California (latitude: 37.6678°, longitude: -122.1556°).

**Project Site Description:** The proposed project site is located interior of the eastern San Francisco Bay

shoreline in a heavily industrialized area, 950 feet east of the San Lorenzo bayshore, separated from the San Francisco Bay by OLSD's WWTP. The project site is a vacant lot of remnant tidal marsh that is partially graveled and serves as a materials storage area for WWTP operations. A pallet recycling company borders the site on the east, Grant Avenue borders the site on the north and Bockman Canal borders the site on the south. OLSD WWTP drying beds are located opposite the project site south of Bockman Canal, with the Oro Loma marsh located beyond the drying beds. A tidal gate at Bockman Canal blocks most tidal flow from the site, though a small leak in the gate provides minor tidal influence in the onsite southern channel paralleling the canal. Elevations range from approximately six to seven feet (NAVD88). Topography is generally flat throughout the project site with some minor topographic depressions and minor hummocks composed of past fill materials. Surface runoff is generally slow to drain due to the lack of topographic relief. The site also receives stormwater runoff from Grant Avenue and surrounding industrial facilities and conveys it to Bockman Canal via a small channel.

**Project Description:** The proposed project would serve as a demonstration project on the Hayward shoreline to explore the concept related to sea level rise adaptation, water quality protection, and infrastructure sustainability. The project would include the following components:

- 8 million gallon Wet Weather Equalization Facility (Basin and Containment Berm)
- Natural Treatment Wetlands
- Primary Effluent Bypass Line to Equalization Basin
- 600-linear foot Ecotone Slope
- Nitrification Facility

- Pump Station to lift Secondary Effluent to Nitrification Facility
- Realigned Storm Drain Channel and Bioswales
- Pump Station to Ecotone Slope
- Return Pipeline to Secondary Clarifier Pumping Station for pumping to headworks
- Mitigation Wetlands

The project objectives, related to the present operation of the water treatment facility and to the future operation of the facility and the management of the Bayshore with rising sea levels, are defined as follows:

- Provide onsite temporary storage for peak wastewater flows during periods when the WWTP is experiencing peak flows.
- Reduce peak discharges into the East Bay Dischargers Authority (EBDA) pipeline to reduce operating costs and allow flexibility in plant maintenance activities.
- Provide nitrification of effluent, and wastewater polishing and denitrification through the enhancement wetlands and ecotone slope.
- Provide ancillary stormwater quality benefits by enhancing treatment of existing discharges of industrial and commercial stormwater flows that discharge to the site before they enter the Bockman Canal System.
- Demonstrate how treated wastewater may be discharged through seepage habitat levees to restore historical moist grassland/bayland ecotone while treating reclaimed wastewater and increasing resilience to sea level rise.
- Provide moist grassland/bayland habitat.
- Demonstrate alternative treatment for nutrient removal through a variety of configurations with varying soil substrate and vegetation types to help ascertain ideal configurations for larger future projects.

**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 protection of an existing wastewater treatment facility.

**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 provide an effective and environmentally friendly response to protect the OLSD wastewater treatment plant against the effects of sea level rise by considering and responding to the constraints of existing infrastructure, protecting property and habitat, adhering to protocols for trace pollutants and nutrient concentrations, and reducing overall energy demands.

**Project Impacts:** Construction of the proposed project would result in the permanent impact of 1.02 acre of wetlands from construction of the Ecotone Slope and Containment Berm. Creation of the Treatment Wetlands, Vegetated Swales, and Storm Drain Channel Realignment would temporarily impact 0.48 acre of wetlands and 0.01 acre (109 linear feet) of other waters.

**Proposed Mitigation:** As part of project design, OLSD would create and enhance approximately 2.0 acres of onsite mitigation wetlands, consisting of both salt and freshwater wetlands. The mitigation wetlands would be created adjacent to existing onsite wetlands by excavating upland areas and laying back the existing slope to expand the wetland area. At this time, all of the wetlands would be able to be located on OLSD property. Mitigation wetlands would be constructed by excavating away from existing wetlands and drainage ditches to pull back banks and establish grades conducive to wetland species establishment, consistent with existing features. This work is anticipated to occur with an excavator, a dozer/scrapper, a front end loader and a truck for temporarily stockpiling excavated materials for later use in construction of the containment berm and/or ecotone. An estimated 7,400 cubic yards of material would be excavated to form the mitigation wetlands. The mitigation wetlands would be planted with salt marsh species relocated from existing jurisdictional wetlands and bought from local nurseries.

**Project Alternatives:** An analysis of project alternatives was provided with the permit application. Onsite alternatives include a No Project Alternative, a Storage Tank Alternative, Original Basin Alternative, and Reconfigured Basin Alternative (the proposed project). There are no feasible offsite alternatives because the project relies on proximity to a wastewater treatment plant for its supply and return of primary and secondary effluent, and the long-term vision that the project supports relies on infrastructure integration with the Bay shoreline. The Corps has not endorsed the submitted alternatives analysis at this time. The Corps will prepare its own

404(b)(1) alternatives analysis prior to reaching a final permit decision.

### 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 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 has applied for a Consistency Determination from the San Francisco Bay Conservation and Development Commission to comply with this requirement.

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 1600 Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife.

### 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 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 ensure 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

may be present at the project location or in its vicinity, and may be affected by project implementation: Salt marsh harvest mouse (*Reithrodontomys raviventris*: SMHM) is presumed to be present within the project site. Marginally suitable habitat for salt marsh harvest mouse occurs on the project site in four brackish wetland features supporting a dense cover of pickleweed, fat hen, and alkali heath. To minimize and avoid impacts to SMHM from this project, OLSD would create and enhance wetland and upland habitat as described in this plan, and perform monitoring to demonstrate success. In addition, mitigation for SMHM would be provided through avoidance and minimization measures to be implemented during construction. To address project related impacts to SMHM, USACE will initiate formal consultation with USFWS, 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 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*. USACE has made a *preliminary* determination that EFH is not present at the project location or in its vicinity, and that consultation will not be required. 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 NMFS.

**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 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. ESAssoc prepared a Phase I Cultural Resources Survey Report for the Oro Loma Sanitary District (OLSD), which documents the methods and findings of the cultural resources background research and survey conducted for the Oro Loma Wet Weather Equalization, Treatment Wetland and Ecotone Demonstration Project located in San Lorenzo, Alameda County. ESAssoc also completed a records search at the Northwest Information Center of the California Historical Resources Information System at Sonoma State University. The records search indicated that six cultural resources studies have been completed within or immediately adjacent to the project Area of Potential Effects (APE). No cultural resources have been previously identified within the project APE. Based on this review, 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. 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)). 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 USACE.

**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 Holly Costa, San Francisco District, Regulatory Division, 1455 Market Street, 16<sup>th</sup> Floor, San Francisco, California 94103-1398; 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 *Public Notices* tab on the USACE website:

<http://www.spn.usace.army.mil/Missions/Regulatory>.