



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: Marina Lagoon RGP Renewal

PUBLIC NOTICE NUMBER: 2000-257530S

PUBLIC NOTICE DATE: 16 March 2016

COMMENTS DUE DATE: 16 April 2016

PERMIT MANAGER: Janelle Leeson

TELEPHONE: 415-503-6773

E-MAIL: janelle.d.leeson@usace.army.mil

1. **INTRODUCTION:** The City of San Mateo (City) (POC: Sarah Scheidt: 650-522-7385, 2050 Detroit Drive, San Mateo, California 94403) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to renew the Marina Lagoon Regional General Permit for authorization of the placement of fill and work in Marina Lagoon in the City of San Mateo, San Mateo County, California. 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 project site is located in the Marina Lagoon, on the west shore of the San Francisco Bay, on the Redwood Peninsula, and within the City of San Mateo. The lagoon is bordered on the west by the City of San Mateo and on the east by Foster City. San Francisco Bay is to the north of the lagoon and the O'Neil Slough to the south (Figure 1).

**Project Site Description:** Marina Lagoon is a remnant of a historical tidal slough, a portion of the existing Seal Slough. Past construction diked and dredged the slough to create the current, non-tidal lagoon. The lagoon is 185 acres in size and approximately 4.5 miles long (Figure 2). It ranges from 300 to 400 feet wide and has an average depth of 6 feet at mid-channel during summer. The City regulates the water levels, which fluctuate a few feet a year to maintain the function of the lagoon as flood-control relief for low elevation areas.

**Project Description:** The proposed project is the renewal of a 5 year permit for routine maintenance, modification, or construction activities on the Marina Lagoon. Following are the proposed items requested to be covered in the renewed permit:

- 1) Construction, maintenance, and improvement of public and private individual boat docks and ramps and pile supported boardwalks on both banks of Marina Lagoon within the City limits of San Mateo.
- 2) Maintenance and improvement of existing storm water outfalls, and activities related to the construction of storm water outfalls where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or is otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean water Act). This would include yearly maintenance dredging to remove silt in front of the 19<sup>th</sup> Avenue creek inlet and at the south end of the lagoon in front of the Laurel creek inlet and O'Neil slough inlet structure.
- 3) Construction, maintenance, and improvement of fences (along established property lines only). Fences shall not extend more than 6 feet beyond the point of the shoreline intersected by the plane of the summer high water level.
- 4) Construction, maintenance, and improvement of bank protection including riprap, bulkheads, paving on banks, and cuts and fills. To the maximum extent practicable, any new or

additional bank stabilization would incorporate of structures or modifications beneficial to fish and wildlife.

- 5) Maintenance, including sand replenishment, at the existing beaches at lakeshore Park, Aquatic Park. Sand replenishment is estimated to occur once per year.
- 6) Removing debris from behind the boom located at the south end of the lagoon in front of the Laurel Creek outfall and the O'Neil Slough inlet.

**Project Impacts:** For the purpose of this application, this section will include the approximate number of cubic yards of new structures/fill material to be placed within U.S. Army Corps jurisdiction. New structures to be potentially placed in jurisdictional waters would be dock piles associated with the construction of new docks, new fences, and new areas of bank stabilization. The approximate amount of structures or fill material to be placed within jurisdictional waters over the five years of this permit is 20.65 cubic yards.

- 1) Dock piles: The City estimates there could be up to 5 newly constructed fixed docks per year, for a total of 25 new docks over the span of the 5 year permit. A typical dock on the lagoon is approximately 5 feet wide and 10 feet long, requiring at least 4 support piles. A typical pile has a diameter of 12 inches, and therefore, the total amount of new dock structures would be approximately 17.45 cubic yards within Corps jurisdiction.
- 2) Fence posts and piles: Potentially 20 linear feet of new fencing would be constructed per year. This includes chain link fencing, one metal support pole per each new fence structure below the high tide line. The total amount of fence structures placed with Corps jurisdiction would be approximately 1 cubic yard.
- 3) Rock rip rap: There is the potential of 20 linear feet per year or 100 linear feet per 5 years of new one quarter ton rock rip rap used to armor failing slopes. The rip rap would be placed at 2 feet below the high tide line. The total amount of one quarter ton rip rap added to below the high tide line over the course of 5 years would be approximately 2.2 cubic yards.

- 4) Dredging impacts: Operation of the Marina Lagoon would require periodic maintenance dredging to sustain the desired depth of sediment in front of the 19<sup>th</sup> Avenue Creek and Laurel Creek outfalls. The proposed dredging activities would result in the short term disturbance of localized sediment. An estimated 1,500 cubic yards of sediment is proposed to be dredged over the span of the 5 year permit.

**Summary of work conducted under the previous 5 year authorization period for RGP 7:**

- 1) Approximately 330 tons of sand were used to replenish beach sand at Aquatic Park and Lakeshore Park Beaches.
- 2) Two new boat docks were constructed. Four boat docks were removed.
- 3) Six existing boat docks were modified, repaired or rebuilt.

**Proposed Mitigation:** The proposed activity would not result in the permanent loss of wetlands. The proposed activity will result in minimal loss to other waters of the U.S. No mitigation is proposed at this time.

**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 Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Determination 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 Determination 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 Certification 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.

#### 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 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 Federally-listed Ridgeway's rail (formally California clapper rail) (*Rallus longirostris obsoletus*), may be present at the project location or in its vicinity, and may be affected by project implementation.

**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*. Due to the absence of EFH on the project site, no consultation for EFH will be completed.

**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. As the Federal lead agency for this undertaking, USACE has conducted a review of latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant, to determine the presence or absence of historic and archaeological resources within the permit area. 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 been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

**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.

**6. 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.

**7. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Janelle Leeson, San Francisco District, Regulatory Division, 1455 Market Street, 16<sup>th</sup> Floor, San Francisco, California 94103-13978; 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* page on the USACE San Francisco District website:  
<http://www.spn.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>.