



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: Moss Landing Harbor Maintenance Dredging

PUBLIC NOTICE NUMBER: 2002-26356S

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COMMENTS DUE DATE: November 27, 2016

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1. **INTRODUCTION:** The Moss Landing Harbor District (POC: Ms. Linda McIntyre, phone: (831) 633-5417), 7881 Sandholdt Road, Moss Landing, California 95039 through its agent, Caravel Environmental Consulting, 4117 West Rincon Avenue, Campbell, California 95008 (POC: Mr. Ken Israel, phone: (669) 242-9413) has applied to the U.S. Army Corps of Engineers (Corps), San Francisco District, for a 10-year Department of the Army Permit to perform maintenance dredging at the Moss Landing Harbor (Harbor). The purpose of the proposed dredging is to return the berthing areas, fairways, and navigational channels in the Harbor to the originally permitted depths to provide safe navigational depths for commercial fishing boats, recreational boats, and scientific research vessels that are berthed in the Harbor. Maintaining appropriate depths for the functionality of the Moss Landing Power Plant cooling water intake pipes is also part of this proposed project purpose. 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 at Moss Landing Harbor, at 7881 Sandholdt Road, Moss Landing, California 95039 just west of Highway 1 and adjacent to Monterey Bay.

Project Site Description: Moss Landing Harbor was constructed in 1947 and is located at the mouth of Elkhorn Slough approximately half way between the cities of Santa Cruz and Monterey in Monterey County. The Harbor is used primarily by commercial fishing vessels, recreational boats, and scientific research vessels. The Harbor is divided in two by the Harbor Entrance and Elkhorn Slough and is comprised of the North and South Harbors. The North Harbor has approximately 155 recreational boats, a yacht club, and commercial kayaking center. The South Harbor has approximately 455 commercial and recreational boats, including commercial fishing and oceanographic research vessels. The South Harbor also includes the cooling water intakes for the Moss Landing Power Plant. The Harbor is located in at the mouth of two major watersheds and is a depositional sink for fine sediments from the Old Salinas River and Elkhorn Slough. It also receives a limited amount of sandy sediment transported by long-shore currents into the Harbor. Excessive shoaling of sediment in the Harbor can impede navigation and restrict vessel movement thereby creating a need for regular maintenance dredging.

Project Description: As shown in the attached drawings, the applicant plans to remove approximately 80,000 cubic yards (cys) of sediment from the 25-acre (approximately) dredging footprint in an initial episode and a total of 550,000 cys over the life of the permit. Existing depths range from -4.8 to -11 feet mean lower low water (MLLW) in South Harbor and -7.5 to -11.0 feet MLLW in the North Harbor. The material would be removed using hydraulic dredge and pumped to

either one of two offshore authorized dredged material disposal sites (SF-12 and SF-14) or, if comprised of greater than 80% sand, to nearby beach nourishment sites for beneficial reuse (see sheet 1 of 6). In rare instances, a mechanical clamshell dredge may be used if there is excessive debris present. The debris would be separated and disposed at a landfill, and the dredged material would be transported by dredge scow and placed at SF-12 or SF-14.

The design depths for the proposed project vary depending on the dredging area. Dredge areas are shown in Figure 2. Dredge depths are as follows:

- South Harbor, western berths – Project depth of -12 feet (MLLW) plus a 2-foot overdepth allowance.
- South Harbor, eastern berths – Project depth of -10 feet MLLW plus a 2-foot overdepth allowance.
- North Harbor, channel and berths – Project depth of -10 feet MLLW plus a 2-foot overdepth allowance.
- Power Plant Intake Area, eastern side of the South Harbor – Project depth of -20 feet MLLW plus a 2-foot overdredge.

Prior to the dredging episode, the Corps Dredge Material Management Office (DMMO), the U.S. Environmental Protection Agency (EPA), and the North Coast Regional Water Quality Control Board (RWQCB), will evaluate the sediments to be dredged for disposal at proposed disposal sites (SF-12 and SF-14), and the proposed beach nourishment area.

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 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 to carry out maintenance dredging within the Harbor in order to restore navigable project design depths to allow vessels to safely navigate in and out of the Harbor and to dispose of the dredged material in an environmentally sound manner.

Project Impacts: The proposed dredging within the Harbor would result in the temporary disturbance of 25 acres of substrate. The dredged sediment would be pumped to SF-12, SF-14 for disposal, or the beach nourishment site for beneficial reuse. Eelgrass (*Zostera marina*) is present in the Harbor along the northern bank of the mouth of Elkhorn Slough; however, no eelgrass beds would be removed or directly impacted by the proposed dredging because they are not within the dredge footprint.

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, safety, and navigation are major and long term.

Proposed Mitigation: Compensatory mitigation for this project is not needed and none is proposed.

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 or dredging episode approval 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, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401, 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 District Manager, California Coastal Commission, Central Coast District Office, 725 Front Street, Suite 300, Santa Cruz, California 95060-4508, 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, 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.

The South-Central California Coast distinct population segment (DPS) of steelhead trout (*Oncorhynchus mykiss*) were first classified as federally threatened in August 1997. Subsequently, various DPSs of West Coast steelhead were again federally listed (i.e. reaffirmed) as threatened on June 28, 2005 (70 FR 37160) and critical habitat was designated on September 2, 2005 (70 FR 52488). The aforementioned DPS of steelhead are known to spawn

in coastal streams below impassible barriers in Monterey County and in the Salinas River. The Monterey Bay coastal area is known feeding habitat for steelhead and there is a potential for steelhead to be present in the project area during dredging because they are known to access the Salinas River via the Harbor and the Old Salinas River. The proposed dredging may affect, but is not likely to adversely affect steelhead because steelhead are infrequently present in the Harbor and dredging would be taking place at times when steelhead are not likely to be present.

On April 7, 2006, NMFS listed the North American green sturgeon (*Acipenser medirostris*) DPS south of the Eel River in California as threatened under the Endangered Species Act (71 FR 17757). On October 9, 2009, NMFS issued the final rule designating critical habitat for green sturgeon (74 FR 52300). Specific areas covered under the critical habitat designation include: Monterey Bay, California. Green sturgeon are known to occur along the California coast and utilize Monterey Bay, and Elkhorn Slough, for feeding and growth to maturity. The proposed dredging and placement of dredged material offshore in Monterey Bay could adversely affect green sturgeon and their critical habitat, which is present offshore from the Harbor.

Southern sea otter (*Enhydra lutris nereis*) habitat is present in the Harbor. The Corps has determined that the proposed project could adversely affect southern sea otters and their habitat by noise disturbance which could affect sea otter foraging or resting behavior in the area, or by the temporary removal of substrate potentially used by sea otters for foraging. The proposed project is not likely to result in take of southern sea otters, but could disturb otter behavior and habitat. Hence, there could be adverse effects to sea otters. However, the applicant has proposed conservation measures including onsite biological observers to minimize adverse effects to sea otters.

Tidewater goby (*Eucyclogobius newberryi*) are present in Bennett Slough and Moro Coho Slough located to the north and south of the Harbor, but are not known to be present in the Harbor where the dredging would occur. The proposed dredging may

affect, but is not likely to adversely affect the tidewater goby because the species is not expected to be present in the immediate dredging area.

Western snowy plover (*Charadrius alexandrinus nivosus*) is known to be present in the project area during specific times of the year. The proposed beach nourishment site could be habitat for western snowy plovers, but placement of dredged material at the beach nourishment site would not occur during the snowy plover nesting season March 1 through September 30. The proposed project may affect, but is not likely to adverse effect the western snowy plovers.

The Corps will initiate consultation with NMFS and USFWS under Section of the ESA for any potential affects to the above federally listed threatened and endangered species and their critical habitat.

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 or in its vicinity, and that the critical elements of EFH may be adversely affected by project implementation. The proposed project is located within an area managed under the Pacific Groundfish, the Coastal Pelagic and/or the Pacific Coast Salmon FMPs.

The recently-deposited bottom sediments to be dredged during maintenance dredge activities are

composed mainly (approximately 95%) 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 and along the Harbor. As the infaunal community recovers in the dredged area, fish species will return to feed. Therefore, the proposed dredging is expected to have only short-term, minor adverse effects on EFH. The Corps will initiate consultation with NMFS on EFH pursuant to the MSFCMA and will consider inclusion of EFH Conservation Recommendations as special conditions to the Corps permit.

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. Since placement of the dredged material resulting from the proposed project would occur in sanctuary waters or may affect sanctuary resources, the applicant is hereby advised to apply for certification or a permit from the Secretary of Commerce, or his designee, to comply with this requirement.

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 Harbor 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.

The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines to determine if the project is the least environmentally damaging practicable alternative.

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 Mark D'Avignon, San Francisco District, 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 US Army Corps of Engineers, S. F. District website:

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