



US Army Corps
of Engineers®
San Francisco District

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Tesoro Martinez Refinery Waste Management Unit 10/11/14, 13, and 32 Closure

PUBLIC NOTICE NUMBER: 2008-00083S
PUBLIC NOTICE DATE: December 8, 2016
COMMENTS DUE DATE: January 8, 2017

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1. INTRODUCTION: The Tesoro Refining & Marketing Company LLC (Tesoro) (POC: Mr. Tim Fitzpatrick, 925-372-3011), through its agent, WRA, Inc. (POC: Matthew Osowski, 415-454-8868), 150 Solano Way, Martinez, CA 94553, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to implement the closure of five former Waste Management Units (WMUs 10, 11, 14, 31, and 32) located within the Tesoro Martinez Refinery (formerly the Golden Eagle Refinery) in Martinez, Contra Costa County, California. Closure of the WMUs would be conducted pursuant to the San Francisco Bay Regional Water Quality Control Board Waste Discharge Requirements (WDR R2-2004-0056) and the U.S. Environmental Protection Agency Administrative Resource Conservation and Recovery Act (RCRA) 3008h Order 09-89-0013. 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 refinery is located approximately two miles east of the Benicia-Martinez Bridge and Interstate 680, in Contra Costa County, California. The project area is located at the north end of the refinery and can be found on the Vine Hill USGS (1980) 7.5-minute topographical quadrangle (Township 2N, Range 2W, Section 10) at approximately 38° 2' 2.87"N, 122° 4' 13.36"W (figure 1). The project area consists of WMUs 10, 11, and 14 (typically considered together as WMUs 10/11/14), WMU 31, WMU 32, and including adjacent staging, access, and work areas (figure 2).

Project Site Description: Land uses in areas surrounding the project area include a mix of open space and various public and private uses including heavy industry, railways, residential (Cities of Clyde and Concord), commercial, Lower Walnut Creek (also known as Pacheco Creek) to the east, and brackish marshes that connect to Hastings Slough to the north, adjacent to Suisun Bay. Other land uses in the vicinity include refineries and waste disposal, including the former IT Corporation Baker Facility, the ACME Fill Corporation Landfill, and the former Vine Hill Complex hazardous waste disposal facility. The former Concord Naval Weapons Station is located approximately 2 miles to the east. The WMUs in the project area total approximately 74 acres, of which approximately 45 acres are jurisdictional waters, including 34.32 acres disturbed brackish wetlands and 10.58 acres other waters of the U.S.

Project Description: As shown in the attached drawings, the applicant proposes to complete WMU closure construction, conduct ongoing supporting field investigations and field design studies, and provide post-closure monitoring and maintenance in the project area. The initially proposed WMU closure construction has been revised due to comments received from the Regional Water Quality Control Board. WMU closure would be undertaken using procedures meeting the terms of the WDR and USEPA Order, including applicable California Code of Regulations Title 27 requirements for unit closure as a landfill. Closure activities at each of the WMUs would consist of some combination of: (1) consolidating waste material into a smaller footprint for placement of a final cap; (2) backfilling excavated areas resulting from consolidation or removal activities with clean soil and

revegetating; (3) processing or amending waste materials to improve its engineering properties for transport and/or supporting an overlying cap; and/or (4) covering the waste with a permanent Title 27 multi-layer cap or a RWQCB-approved engineered alternative cap. All temporarily impacted waters of the US will be restored post-construction within the WMUs. WMU closure-related activities included site characterization, field pilot/feasibility studies and field engineering design studies to develop the closure designs and final plans.

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 to conduct closure activities within the five WMUs (10/11/14, 31, and 32) and therefore the project is not water-dependent.

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 implement closure of the five WMUs (10/11/14, 31, and 32) compliant with the terms of regulatory orders issued by the RWQCB and USEPA.

Project Impacts: The total estimated volume of excavation work within waters of the U.S. is approximately 135,000 cubic yards (cy) over an approximate excavation area of 18.58 acres. Excavation work also includes other temporary, indirect impacts to waters of the U.S. resulting from construction activities ranging from access, on-going design, engineering studies, and earth movement. Total acreage (and volume) of permanent impacts to wetlands and non-wetland waters, as a result of fill placement for final cover or cap installation, are estimated to be 8.47 acres and 68,000 cy, respectively.

Proposed Mitigation: The project would avoid 17.85 acres of the total 44.9 acres of jurisdictional waters of the U.S. in the project area. Temporary impacts to 18.58 acres of waters of the U.S. would be restored. The project would compensate for unavoidable, permanent impacts to jurisdictional waters of the U.S. through the purchase of 8.47 vernal pool (seasonal wetland) creation credits from the North Suisun Mitigation Bank.

Project Alternatives: Three closure alternatives were analyzed for each WMU. The range of alternatives includes: (1) clean closure that would involve waste removal and transport to another WMU for consolidation and final disposition or, if impracticable, to a properly permitted off-refinery commercial disposal facility; (2) installing a cap over the waste, either following the California Code of Regulations (CCR) Title 27 (Title 27) prescriptive design or a RWQCB-approved engineered alternative, and including, where practicable, consolidating the waste into a smaller footprint prior to capping; and (3) the no-fill alternative.

Off-refinery disposal of all waste at WMUs 10/11/14 would avoid permanent impacts to jurisdictional waters; however, this would require transporting the hazardous waste more than 440 miles to the nearest licensed disposal facility, which would pose significant risks to the environment and human safety should any accidents or spills on public roads occur and would incur extremely high additional costs. Consolidation of waste to WMU 14 and placement of an approved cap would result in 4.82 acres of permanent impact to jurisdictional waters of the U.S. Consolidation of all WMU 31 wastes to WMU 14 for final capping avoids permanent impacts at WMU 31 to waters of the U.S., as would consolidation of wastes and construction of a final cap on WMU 31 itself. Clean closure for WMU 32 would have no permanent impacts to waters of the U.S.; however, this alternative would pose significant potential environmental impacts as a result of excavating and transporting the waste, and would add excessively to the cost of the project. Installation of a RWQCB-approved cap over this WMU would result in permanent impacts to 3.65 acres of jurisdictional waters. The no fill alternative would fail to meet the project purpose. The Corps has reviewed the project alternatives and endorses the preferred alternative that includes clean closure consolidation of wastes from WMUs 10, 11 and 31 to WMU 14, installation of a Title 27 cap over WMU 14, and placement of a RWQCB-approved, low-permeability cap over WMU 32.

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 certification 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 a portion of the project occurs in the coastal zone or may affect coastal zone resources, the applicant is hereby advised to apply 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.

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 are present at the project location or in its vicinity, and may be affected by project implementation: the salt marsh harvest mouse (*Reithrodontomys raviventris*) and California Ridgway's rail (*Rallus longirostris obsoletus*). To minimize the potential temporary impacts to species habitat, the project would include the enhancement and preservation of high quality wetland habitat in the Cordelia Slough Preserve, the amount to be determined during consultation with the USFWS. The avoidance, minimization, and mitigation measures proposed by the applicant are sufficient to offset the proposed work and minimize the potential for direct take of these two species.

To address project related impacts to these species, USACE has initiated 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*. Based on this review, 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. As the Federal lead agency for this undertaking, USACE has reviewed 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.

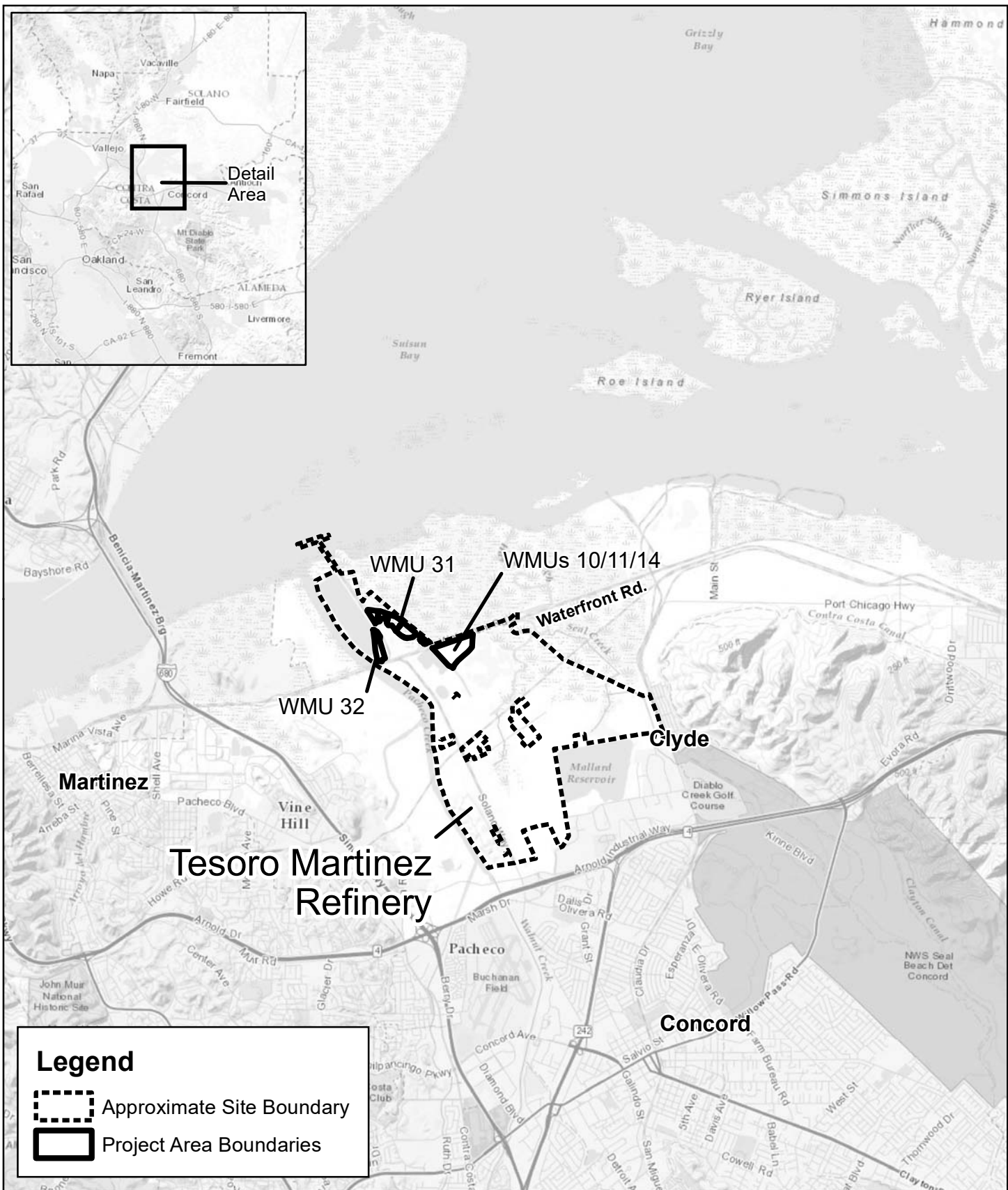
5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES: Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is 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 special aquatic sites. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

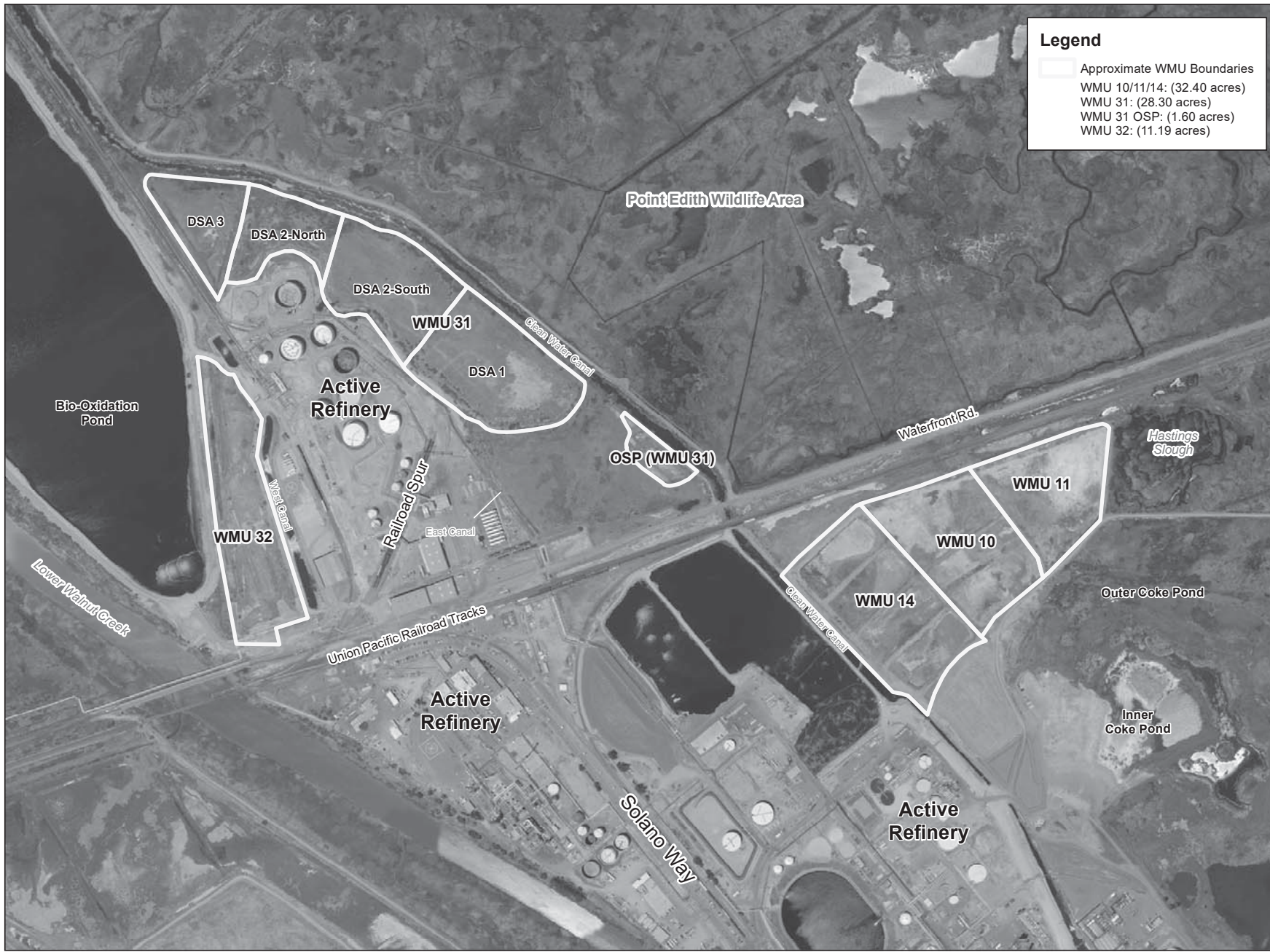
6. PUBLIC INTEREST EVALUATION: The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing 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.

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 Frances Malamud-Roam, San Francisco District, Regulatory 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 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>.





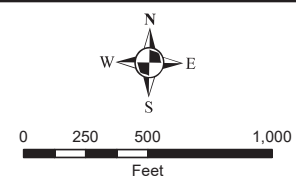
Legend

- Approximate WMU Boundaries
- WMU 10/11/14: (32.40 acres)
- WMU 31: (28.30 acres)
- WMU 31 OSP: (1.60 acres)
- WMU 32: (11.19 acres)



Tesoro Martinez Refinery
 WMUs 10/11/14, 31, & 32
 Contra Costa County,
 California

Figure 2.
Waste Management
Units 10/11/14, 31, 32
Aerial



Map By: SG
 Map Date: Sept 2016
 Basemap: ESRI World Imagery

| WMU 10/11/14 | | WMU 31 | | WMU 32 | |
|--|------------------|--|------------------|--|-----------------|
| WMU 10/11/14 Boundary: (32.40 ac.) | | WMU 31 Boundary: (29.90 ac.) | | WMU 32 Boundary: (11.19 acres) | |
| Project Area: (40.95 ac.) | | Project Area: (50.44 ac.) | | Project Area: (19.00 acres) | |
| Closure Footprint | | Access Road | | Closure Footprint | |
| Permanently Impacted Area Type | | Impacted Wetlands Restored in Uplands | | Permanently Impacted Area Type | |
| Non-Wetland Waters: (2.47 ac.) | Total: 4.82 ac. | Non-Wetland Waters: (<0.01 ac.) | Total: 0.63 ac. | Non-Wetland Waters: (0.08 ac.) | Total: 3.65 ac. |
| Wetlands: (2.35 ac.) | | Wetlands: (0.63 ac.) | | Wetlands: (3.57 ac.) | |
| Temporarily Impacted Area Type | | Temporarily Impacted Area Type | | Avoided Non-Wetland Waters/Wetlands | |
| Non-Wetland Waters: (6.54 ac.) | Total: 13.67 ac. | Non-Wetland Waters: (0.13 ac.) | Total: 4.28 ac. | Non-Wetland Waters: (0.07 ac.) | Total: 0.57 ac. |
| Wetlands: (7.13 ac.) | | Wetlands: (4.15 ac.) | | Wetlands: (0.50 ac.) | |
| Avoided Non-Wetland Waters/Wetlands | | Avoided Non-Wetland Waters/Wetlands | | | |
| Non-Wetland Waters: (0.80 ac.) | Total: 2.92 ac. | Non-Wetland Waters: (0.50 ac.) | Total: 14.36 ac. | | |
| Wetlands: (2.12 ac.) | | Wetlands: (13.86 ac.) | | | |

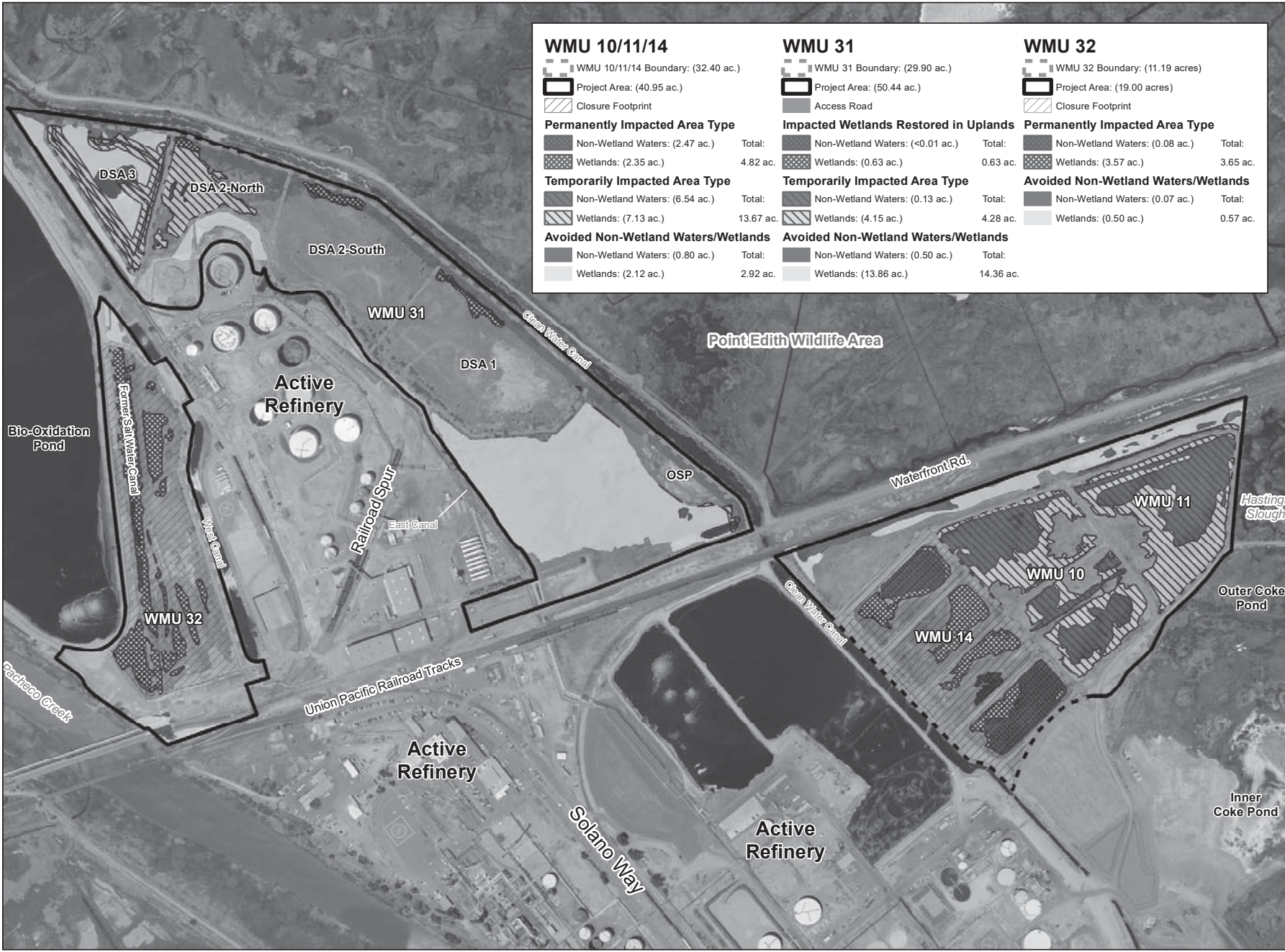


Figure 3.
Summary of LEDPA
Wetland Impacts for
WMUs 10/11/14,
31, & 32

