



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: Foster City Levee Improvement Project

PUBLIC NOTICE NUMBER: 2015-00391S

PUBLIC NOTICE DATE: October 4, 2018

COMMENTS DUE DATE: November 5, 2018

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1. **INTRODUCTION:** The City of Foster City (POC: Jeff Moneda, (650) 286-3288, 610 Foster City Blvd., Foster City, California 94404), through its agent, Huffman-Broadway Group, Inc. (POC: Terry Huffman, (415) 385-1045, 828 Mission Ave., San Rafael, California 94901), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill material and conduct work in jurisdictional waters of the United States in association with raising the elevation of the levee surrounding the City of Foster City in 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 City of Foster City, San Mateo County, along approximately 34,300 feet (6.5 miles) of an existing levee that separates Foster City from the San Francisco Bay to the north, Belmont Slough to the east, and O'Neill Slough to the south. The project site starts at the City of San Mateo border to the northwest (adjacent to East 3rd Avenue), extends parallel to Beach Park Boulevard and Belmont Slough to the northeast and east, and ends adjacent to U.S. Highway 101 to the south at the City of San Mateo and City of Belmont limits. The project area is illustrated in the attached maps (Figures 1 and 2).

**Project Site Description:** The City of Foster City levee system was largely constructed between the 1890s and early 1960s. Early components of the levee were built to create agricultural land. New levees were built and the old levees enhanced in 1961 when a mixed-use

development was proposed. Additional minor improvements were made to the levee during the 1990s.

The existing levee is composed of both raised earthen levees and concrete floodwalls. The levee crest is a paved bicycle and pedestrian trail and is a portion of the San Francisco Bay Trail. The outboard side of the levee consists of tidal open water, slough channels, brackish wetlands, and mudflats, and the inboard side of the levee consists of residential and commercial developments, landscaped open space, unimproved lots, and brackish wetlands and other waters.

**Project Description:** As shown in the attached drawings (Figures 3, 4, and 5), the applicant proposes to raise the elevation of approximately 31,190 linear feet of the Foster City levee system and to rehabilitate or improve ancillary structures and amenities associated with the levee (utilities, culverts, intake/outflow structures, access ramps and trails, etc.).

The levee would be raised utilizing a combination of three different construction approaches: sheet pile floodwall, earthen levee, and conventional floodwall. A sheet pile floodwall would be used along approximately 23,170 linear feet of the levee, an earthen levee along 4,590 feet, and a conventional floodwall along 3,430 feet. A secondary sheet pile wall would be installed along East 3<sup>rd</sup> Avenue and Beach Park Boulevard adjacent to a deviation from the existing levee alignment to retain the raised Bay Trail where space is limited. In general, the earthen levee would be used at three different locations: (1) along East 3rd Avenue near Mariner's Point Golf Center; (2) along the Foster City Lagoon Dredge Disposal Site adjacent to Sea Cloud Park, and (3) near Port Royal Park. The conventional floodwall improvement option would be used under the San Mateo Bridge (due to limited

vertical access and the inability to drive piles under the bridge) and along the O'Neill Slough Remnant Channel from west of Port Royal Park to the end of the levee (due to limited space). No levee improvements are proposed along the Mariner's Point Golf Center because the land at this location is adequately elevated to provide the necessary flood protection.

A variety of structures and amenities associated with the levee would be rehabilitated or improved. Six existing access ramps would be upgraded to allow for ADA compliance and for emergency rescue boats to enter the Bay. Two stair structures would be constructed from the Bay Trail to the Bay. The Foster City Lagoon intake and outfall structures would be modified to accommodate the levee rehabilitation. Finally, two culverts would be installed along existing levee trails, including one replacement culvert and one new culvert, and each trail would be improved to allow for safe emergency vehicle access.

**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 retain FEMA accreditation for the City of Foster City levee system.

**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 improve the City of Foster City levee system to retain FEMA accreditation and account for sea level rise to 2050 while rehabilitating or improving structures and amenities associated with the levee system.

**Project Impacts:** Implementation of the proposed project would result in the temporary placement of 1,016 cubic yards of fill in 0.63 acre of waters of the U.S., including 0.06 acre of tidal waters, and the permanent placement of 230 cubic yards of fill in 0.14 acre of waters of the U.S., including 0.05 acre of tidal waters. Only 0.04 acre of the permanent impacts would result in the conversion of waters of the U.S. to uplands.

**Proposed Mitigation:** The City of Foster City has avoided and minimized impacts to aquatic resources by utilizing sheet pile and flood wall designs where

practicable instead of a standard earthen levee design. A standard earthen levee design would result in approximately 7 acres of permanent impacts as opposed to the proposed 0.14 acre of permanent impacts. Impacts to aquatic resources would be further avoided and minimized during construction through the implementation of standard best management practices for stormwater management and erosion control.

To compensate for unavoidable permanent impacts to aquatic resources, the City of Foster City would purchase mitigation bank credits at a 1:1 ratio from the San Francisco Bay Wetland Mitigation Bank. Temporary impacts to aquatic resources would be restored within one year; monitoring would occur to ensure successful restoration.

### 3. STATE AND LOCAL APPROVALS:

**Water Quality Certification:** State water quality certification or a waiver thereof 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 hereby notified that, unless USACE is provided documentation indicating a complete application for water quality certification has been submitted to the RWQCB within 30 days of this Public Notice date, the District Engineer may consider the Department of the Army permit application to be withdrawn. 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 is hereby advised to apply for 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.

**Other Local Approvals:** The applicant will be applying for the following additional governmental authorizations for the project: General Lease Agreement to be issued by the California State Lands Commission; 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. § 1500-1508, and USACE regulations at 33 C.F.R. § 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 and designated critical habitat are present at the project location or in its vicinity and may be affected by project implementation: Central California coast steelhead (*Oncorhynchus mykiss*), North American green sturgeon (*Acipenser medirostris*), salt marsh harvest mouse (*Reithrodontomys raviventris*), Ridgway's rail (*Rallus obsoletus*), and designated critical habitat for Central California coast steelhead and North American green sturgeon. To address project related impacts to these species and their designated critical habitat, USACE will initiate informal consultation with USFWS and NMFS, 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*, or the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE 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, USACE 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. To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act. Any

required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

**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 the 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 present in the permit area and that such resources may be adversely affected by the project. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. 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 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.

**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 in the project.

**8. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Naomi Schowalter, 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>.