



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3406

PUBLIC NOTICE

PROJECT: India Basin Open Space and 700 Innes Development Project

PUBLIC NOTICE NUMBER: 2014-00210S

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COMMENTS DUE DATE: July 22, 2020

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1. **INTRODUCTION:** BUILD, Inc. (POC: Jillian Blanchard, 415-867-6769), 315 Linden Street, San Francisco, California 94102, through its agent, WRA, Inc. (POC: Ellie Knecht, 510-296-0537), 2169-G East Francisco Blvd., San Rafael, CA 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 into and conduct work in jurisdictional waters of the United States associated with the construction of a waterfront park and mixed-use development, located on Hunters Point in the city of San Francisco, San Francisco County. 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 on 29.38 acres of waterfront within the India Basin at 700 Innes Avenue, in the City of San Francisco, San Francisco County, California (lat. 37.732283°, long. -122.372098°, Section 10, Township 2S, Range 6W, Mount Diablo USGS Quadrangle, APNs 4606, 4607, 4620, 4621, 4630, 4631, 4644, 4645, and 4655). The project site is adjacent to India Basin in the San Francisco Bay.

Project Site Description: The majority of the project site was originally open bay waters, which were filled in the 1950s. The site currently contains 3.25 acres of tidal waters of the U.S. (including 1.14 acres of tidal wetland), 0.3 acre of non-tidal wetland waters of the U.S., and 0.01 acre of non-tidal other waters of the U.S. Upland habitat on the project site includes a paved road (Arellous Walker Drive), ruderal grassland, and a portion of the Bay Trail.

Project Description: As shown in the attached drawings, the applicant proposes to create 11.6 acres of publicly accessible parkland and open space, including a section of the Blue Greenway portion of the San Francisco Bay Trail. The proposed project would develop 11.6 acres into wetlands, a boardwalk, a beach, and a waterfront park, and 17.9 acres would be converted to a mixed-use development. This mixed-use development would include residential, retail, commercial, and office space (up to 1,575 dwelling units and 4.8 acres of ground-floor retail, commercial, or flex space), and art space. Work within non-tidal waters of the U.S. includes the construction of a mixed-use development and waterfront park (500 cubic yards of fill within 0.31 acre). Work within tidal waters of the U.S. includes:

- construction of a boat launch ramp (60 cubic yards of fill discharged into 0.06 acre);
- repairs to an existing wave attenuation feature (700 cubic yards of fill discharged into 0.20 acre);
- removal of an existing outfall (150 cubic yards of dredged and fill material discharged into 0.03 acre); and
- construction of an inlet to allow tidal influence into wetland creation areas (minimal discharge due to grading in 0.12 acre).

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 construct a mixed-use development with high-density housing and adjacent park space. Housing and park development are not considered water dependent activities.

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 construct a public/private high-density mixed-use development and adjacent waterfront park improvements in the City of San Francisco that provides critical affordable housing.

Project Impacts: Proposed work would result in the total discharge of 1,410 cubic yards of permanent fill in 0.72 acre of waters of the U.S. (with a loss of 0.56 acre of seasonal wetland). The proposed project would create 0.29 acre of new tidal wetlands and 0.33 acre of new seasonal wetlands on the project site, resulting in a net increase of 0.29 acre of tidal wetlands and net decrease of 0.23 acre of seasonal wetlands.

Proposed Mitigation: The applicant proposes to mitigate for the loss of 0.56 acre of seasonal wetland through the creation of 0.29 acre of tidal wetland and 0.33 acre of seasonal wetland within the park portion of the project area.

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 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 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 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.

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. Green sturgeon (*Acipenser medirostris*), Central California Coast steelhead (*Oncorhynchus mykiss*), and Chinook salmon (California Coastal ESU, Central Valley Spring Run ESU, and Sacramento River Winter Run ESU; *Oncorhynchus tshawytscha*) may occur in India Basin adjacent to the proposed project site. In addition, India Basin is considered critical habitat for green sturgeon. Proposed work in the tidal areas of the project site, including the creation of new tidal wetlands and the installation of a new dock may impact these species by temporarily releasing sediment into India Basin. Proposed minimization measures are expected to prevent fish entrapment or mortality. Once complete, the overall project is anticipated to increase habitat quality for these species in India Basin by increasing the acreage and quality of tidal wetlands within the project site. To address project related impacts to these species and designated critical habitat, USACE will initiate informal consultation with 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. The Corps has determined that the project would have an adverse effect on EFH for species managed under the Pacific Groundfish Fishery Management Plan, Coastal Pelagics Fishery Management Plan, and Pacific Coast Salmon Fishery Management Plan. This determination is based on the potential for proposed construction activities to result in increased turbidity and noise in the immediate vicinity of the project site during construction of tidal wetlands and installation of the boat launch and removal of the outfall. To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(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.

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 Act. No Department of the Army Permit will be issued until the applicant obtains any required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project is not likely to 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 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. Buildings within and adjacent to the project area are eligible for listing in the *National Register of Historic Places*. The proposed project would relocate one of these buildings, and it would affect the viewshed of historic buildings in the vicinity of the project area. 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 Sarah Firestone, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor, Suite 1111, San Francisco, California 94102-3404; 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>.