



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: 900 Innes Park Redevelopment Project

PUBLIC NOTICE NUMBER: 2016-00417S
PUBLIC NOTICE DATE: January 4, 2022
COMMENTS DUE DATE: February 7, 2022

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1. **INTRODUCTION:** The San Francisco Recreation and Parks Department (RPD) (POC: David Froehlich, 628-652-6649), 49 South Van Ness Avenue, Suite 1220, San Francisco, California, through its agent, Boudreau Associates, LLC (POC: Christine Boudreau, 415-296-1155) 327 Jersey Street, San Francisco, California, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to work within and discharge fill material into jurisdictional waters of the United States associated with the construction of a shoreline public park with amenities, located at 900 Innes Avenue, in the City and County of San Francisco, 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 lies on the eastern shore of the San Francisco Peninsula within the Bayview-Hunters Point neighborhood in the southeast quadrant of the City, state parcel ID 4646003, on the Hunters Point, CA 7.5-minute USGS Quadrangle (lat. 37.734658°N, long. -122.374343°W; Figure 1).

Project Site Description: The site is generally bounded to the northwest by India Basin Shoreline Park, to the east by an extension of the Bay and India Basin Open Space, to the southwest by Innes Avenue, and to the southeast by the Griffith Street right-of-way (ROW). The 900 Innes property consists of parcels owned by RPD as well as unimproved ROW to be partially vacated in coordination with San Francisco Public Works. The total Project area is 2.54 acres, of which 2.38 acres is upland (above HTL) and 0.16 acres is offshore. Current offshore

remediation of historic contaminants is projected to be completed this year. When that work is completed, the landside portion of the site will slope from Innes Avenue down to the waterfront at a 10-15% grade, and a vegetated bluff will extend along the India Basin shoreline park (IBSP) shoreline to the northwest from an elevation of approximately 18 feet NAVD88 down to the waterline. The nearshore basin will remain relatively shallow post-remediation, with elevations throughout the Project area just above the mean lower low water (MLLW) mark. At the lowest tide, the mudflat will remain exposed, extending at least 40 feet into India Basin along the Project site shoreline and further in many locations. The India Basin nearshore area will exhibit shallow mudline elevations throughout, including areas outside of the Project site adjacent to IBSP.

Project Description: As shown in the attached drawings (Figure 3), the applicant proposes to redevelop the approximately 2.54-acre 900 Innes Avenue site in San Francisco's Bayview-Hunters Point neighborhood to establish a public park that provides shoreline access and amenities, involving in-water and upland improvements. Activities within jurisdictional waters include constructing two new piers, a floating dock, and gangway structures to replace dilapidated piers that previously provided private San Francisco Bay access. Additional activities include modifications to a stormwater outfall, recontouring and installing plants along the northwest shoreline. Additional upland area amenities include pedestrian trails, multipurpose restored buildings, native and wetland plantings, benches, drinking fountains, picnic tables, paving, fences, utilities, the Innes Edge, a Food Pavilion, a rehabilitated Shipwright's Cottage, and a Maintenance Building.

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 provide a shoreline public park.

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 restore and enhance the 900 Innes site into an integrated park network for public access, using the restored historic Shipwright's Cottage as the anchor for the other proposed elements.

Project Impacts: Proposed activities would result in impacts within Section 404 waters and Section 10 waters. Impacts include grading and discharging fill within 0.1 acre of Section 404 jurisdictional waters (HTL), and overwater structures (pile-supported piers) that would be placed over 0.1 acre of Section 10 jurisdictional waters (below the MHW).

Proposed Mitigation: The project has been designed to avoid fill within waters of the U.S. to the extent feasible, and best management practices (BMPs) are proposed to avoid and minimize water quality impacts and impacts to sensitive species in the project vicinity. These measures include a plan for isolation and containment of any contaminated soils, though the project does not anticipate encountering any contaminated soils; dust control BMPs; sediment control measures (hay bales or straw wattles); environmental work windows for in-water work; protection measures for avoiding trash, debris or other construction-related materials or wastes entering waters; sound monitoring plan for any pile driving to avoid species impacts; biological monitoring; and the development and implementation of a construction quality assurance plan. The RPD is currently implementing a remediation project at the project site that includes approximately 0.38 acre of solid fill removal from Section 404 jurisdictional waters that would, in part, mitigate for the 0.1 acre of unavoidable fill impacts of this proposed project.

Project Alternatives: The project alternatives that were considered included the "no-build alternative", and two on-site alternatives. On-site alternative 1 is referred to as the "proposed project alternative," and on-site alternative 2 is referred to as the "modified proposed project alternative." The main features of the two alternatives are the same, but certain design changes were made. USACE

has not endorsed the submitted alternatives analysis at this time. USACE will conduct an independent review of the project alternatives prior to reaching a final permit decision.

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 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, 375 Beale St., Suite 510, San Francisco, CA 94105, by the close of the comment period.

Other Local Approvals: The applicant will be applying for the following additional governmental authorizations for the project: a grading permit from the City of San Francisco, and approval of the Project's Stormwater Control Plan by the San Francisco Public Utilities Commission.

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: California Ridgway's rail (*Rallus longirostris obsoletus*), North American green sturgeon southern DPS (*Acipenser medirostris*), Central California Coast DPS steelhead (*Oncorhynchus mykiss*) and designated critical habitat for these species; Central Valley DPS steelhead (*O. mykiss*), Sacramento winter-run ESU Chinook salmon (*O. tshawytscha*), and Central Valley spring-run ESU Chinook (*O. tshawytscha*). To address project related impacts to these species and designated critical habitat, USACE has initiated 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. EFH for Pacific Groundfish Fishery Management Plan (FMP), Coastal Pelagics FMP, and Pacific Coast Salmon FMP is present in the project area and may be temporarily affected by the project construction. 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.

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. The Shipwright's Cottage has been evaluated previously as eligible for listing as an individual resource in the National Register. 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 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 in 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, 450 Golden Gate Avenue, 4th Floor, 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: <https://www.spn.usace.army.mil/Missions/Regulatory>.