



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: Palo Alto Tide Gate Replacement Project

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1. **INTRODUCTION:** The Santa Clara Valley Water District (Valley Water) (POC: Mr. Alex Hunt, 408-630-3007, ahunt@valleywater.org), 5750 Almaden Expressway, San Jose, California, 95118, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to replace an aging tide gate structure with a new structure that would have expanded capacity for protection against flooding and anticipated sea level rise. 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 area is located near 2375 Embarcadero Road, along the San Francisco Bay shoreline in the City of Palo Alto, Santa Clara County, California (37.4554°N, 122.1008°W; APN 008-05-005). The site's tide gate structure serves as the outlet of the Palo Alto Flood Basin into the bay. It falls within the Baylands Nature Preserve on property owned by the City of Palo Alto, for which Valley Water has an easement to construct and maintain flood control structures and levees. Situated east of the Palo Alto Municipal Airport and Byxbee Park, the project area is bordered by the bay to the north, west, and east and by the Palo Alto Flood Basin to the south.

Project Site Description: The project area comprises approximately 25.5 acres of an existing tide gate, levees on either side of the tide gate, two staging areas, and surrounding limits of the dewatering area determined by a 100-foot buffer. A portion of the Adobe Creek Loop Trail runs across the levee. The levee and tide gate create a

barrier between the San Francisco Bay and the Palo Alto Flood Basin, which totals approximately 600 acres and collects discharges from Adobe, Barron, and Matadero Creeks and the City of Mountain View's Coast Casey Pump Station. The total tributary drainage area of the basin is approximately 32 square miles. The aforementioned tributary creeks flow through highly urbanized areas in the City of Palo Alto, and the Towns of Los Altos and Los Altos Hills, thereby furnishing outfalls for the municipal storm drains systems.

Within the 25.5-acre project area, there is an estimated 20.97 acres of jurisdictional waters of the U.S. These waters include 9.45 acres of wetlands, consisting of 6.35 acres of intertidal salt marsh wetlands and 3.10 acres of non-tidal palustrine wetlands, and 11.52 acres of open waters, of which 4.01 acres are part of the San Francisco Bay and 7.51 acres are part of the Palo Alto Flood Basin subject to muted tidal action because of the tide gate. The Palo Alto Flood Basin supports relatively undisturbed wetlands that provide habitat for several species of fish, birds, and mammals. Historically tidal marsh prior to the installation of the tide gate and levees in the mid-twentieth century, this area is now muted tidal wetland that has largely been cut off from daily tidal influence but retains salt marsh characteristics. The approximately 36-acre island north of the tide gate, Hooks Island, and land southwest of the tide gate consist of undisturbed tidal salt marsh.

Project Description: As shown in the attached drawings, Valley Water proposes to replace a deteriorating, 113-foot-long tide gate structure with a new 132-foot-long tide gate structure that would be situated slightly upstream and southeast of the existing structure, in addition to removing the existing tide gate structure and levee and constructing a new levee that ties into the new

tide gate structure. Construction of the project would occur in two phases based largely on the dewatering approach. The first phase would involve the installation of the first dewatering system, construction of the new tide gate structure and new east levee approach with ground improvements, removal of the existing levee in front of the new structure, and removal of the first dewatering system. It would be followed by a second phase consisting of the installation of the second dewatering system, construction of the west levee approach with ground improvements, removal of the existing tide gate structure, and removal of the second dewatering system.

The project would convert 0.09 acre of salt marsh wetlands and 0.97 acre of non-tidal other waters of the U.S. into additional tidal waters of the San Francisco Bay that would total the same area of 1.06 acres. There would also be temporary impacts to a total of 1.88 acres of waters of the U.S., including 0.14 acre of wetlands, 0.88 acre of tidal waters, and 0.86 acre of non-tidal waters. A total of 24,640 cubic yards of material would be permanently dredged from waters of the U.S. and 30,930 cubic yards would be discharged as permanent fill. The permanent impacts to waters of the U.S. would result from the removal of the existing levee east of the existing tide gate, installation of a new levee approach on each side of the new tide gate structure, and the new levee and tide gate structure footprint in the Palo Alto Flood Basin. Temporary impacts would result from the dewatering of the work area and keying in of the new levee below the finished grade at the existing elevations.

Following completion of the project, regular maintenance inspections of the new tide gate structure and levees would continue to be performed by Valley Water and the City of Palo Alto, but maintenance would occur less frequently. This maintenance would involve the clearing of debris from the trash racks, debris boom, or removal of debris that is stuck in the tide gates. Valley Water is seeking two years of coverage under this permit to authorize maintenance activities until USACE renews the Regional General Permit (RGP) for Valley Water's Stream Maintenance Program (SMP), which may cover the authorization of future maintenance actions.

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 maintain flood protection in the communities surrounding the Palo Alto Flood Basin and along the US-101 corridor.

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 prevent failure of the existing tide gate structure to avoid an increased risk of tidal and fluvial flooding, upsize the tide gate structure to function with two feet of projected sea level rise, and maintain or improve the level of flood protection for Matadero, Adobe, and Barron Creeks that discharge into the Palo Alto Flood Basin.

Project Impacts: There would be permanent impacts within 1.06 acres of waters of the U.S. involving the dredging of 24,640 cubic yards and fill discharge of 30,930 cubic yards. The permanent fill impacts would convert 0.09 acre of wetlands and 0.97 acre of non-tidal waters into additional tidal waters of the San Francisco Bay that would total the same area of 1.06 acres. There would also be temporary impacts within 1.88 acres of waters of the U.S., including 0.14 acre of wetlands, 0.88 acre of tidal waters, and 0.86 acre of non-tidal waters.

Proposed Mitigation: As compensatory mitigation for the permanent loss of 0.09 acre of salt marsh wetlands that would be converted to open waters of the San Francisco Bay, Valley Water has proposed to purchase 0.2 acre of credits from the San Francisco Bay Wetland Mitigation Bank at a greater than 2:1 mitigation ratio. USACE has not endorsed the submitted compensatory mitigation proposal at this time and will conduct an independent review before reaching a final mitigation decision.

Project Alternatives: The applicant has submitted an alternatives analysis consisting of a no-action alternative and five action alternatives. Under the no-action alternative (Alternative A), the existing tide gate would not be replaced and Valley Water would continue routine maintenance of the tide gate structure consistent with current practice. Alternative B would replace the tide gate structure in its current location to avoid and minimize additional impacts to the surrounding environment. Alternative C would replace the tide gate structure adjacent to the east side of the existing tide gate, a proposal that would be very similar to the proposed project outlined above but with the new tide gate structure in a different location. This third alternative would require excavation of a large pilot channel adjacent to Hooks Island to connect the flow from the new tide gate structure

to the existing tidal channel. Alternative D would relocate the tide gate structure to Charleston Slough in the southeast, which would require lowering the existing ground elevation on both sides of the levee by excavating to facilitate flows through the new tide gate structure. Lastly, Alternative E would raise existing floodwalls or levees and/or construct additional floodwalls and levees to protect the adjacent communities from flooding, rather than replacing or relocating the tide gate structure. Valley Water has identified their proposed project outlined above as Alternative F.

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 will be submitting 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 is hereby advised to apply for a Consistency Certification from the San Francisco Bay Conservation and Development Commission.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 375 Beale Street, Suite 510, San Francisco, California, 94105, by the close of the comment period.

Other Local Approvals: The applicant will be applying for the following additional governmental authorization for the project: a Lake or 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 Database, digital maps prepared by the 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 Federally-listed species of Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) distinct population segment (DPS), green sturgeon (*Acipenser medirostris*) southern DPS, longfin smelt (*Spirinchus thaleichthys*), Ridgway's rail (*Rallus obsoletus obsoletus*), western snowy plover (*Charadrius nivosus* ssp. *nivosus*), California least tern (*Sterna antillarum browni*), salt marsh harvest mouse (*Reithrodontomys raviventris*), and California seablite (*Suaeda californica*) and designated critical habitat for the CCC steelhead DPS, green sturgeon southern DPS, and western snowy plover may be present within the project location or in its vicinity and may be affected by project implementation.

The listed fish species may be temporarily affected during construction by disturbances of tidal waters, dewatering, increases in sedimentation and turbidity, underwater sound and acoustic pressure, and alterations to tidal migratory cues, flow velocities, and temperature and salinity gradients, all of which could impede fish passage. The Ridgway's rail, salt marsh harvest mouse, and California seablite occur in pickleweed-dominated salt marshes, whereas the California least tern may be present within the open waters of the bay and the western snowy plover may occur in the tidal flats. Though the marsh-dwelling species would experience a loss of 0.09 acre of potential wetland habitat that would be converted to open waters of the bay, most of the project's impacts to listed species would be temporary and localized during construction. Valley Water would utilize standard best management practices (BMPs) that would include a fish relocation plan designed by a qualified biologist, and the project would ultimately create an expanded 1.06 acres of tidal habitat for the fish species. Work would occur outside of the nesting seasons of the three avian species. Valley Water would also implement conservation measures specific to the salt marsh harvest mouse, such as non-mechanized hand removal of vegetation.

To address project-related impacts to the aforementioned species and designated critical habitat, USACE has initiated informal consultation with the 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, Coastal Pelagics FMP, or 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 for species managed under the Pacific Groundfish FMP, Coastal Pelagics FMP, and Pacific Coast Salmon FMP is present at the project location or in its vicinity and that the critical elements of EFH may be adversely affected by project implementation. This determination is based on the proposed project's temporary dewatering, construction to reconfigure the tide gate and levees, dredge and fill activities, and expected increases in turbidity and suspended sediment during installation of the sheet piles. However, the impacts to EFH are expected to be temporary and localized during construction, and the project would ultimately expand EFH by creating an additional 1.06 acres of open-water, estuarine habitat.

To address project-related impacts to EFH, USACE has initiated 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 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 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 practicable alternative to the project that would result in less adverse impacts to the aquatic ecosystem while not causing other major adverse environmental consequences. The applicant has submitted an analysis of project alternatives that 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 Daniel Breen, 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>.