



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: San Francisco Bay Area Rapid Transit District Hayward Maintenance Complex
(Phase 2) Project

PUBLIC NOTICE NUMBER: 2020-00284S
PUBLIC NOTICE DATE: December 21, 2021
COMMENTS DUE DATE: January 31, 2022

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1. **INTRODUCTION:** San Francisco Bay Area Rapid Transit (BART) District (POC: Aidin Sarabi, 510-817-5960), 300 Lakeside Drive, 17th Floor, Suite 1725-F, Oakland, California, 94612), through its agent, Jacobs (POC: Kevin Fisher, 530-304-2719), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to implement the Hayward Maintenance Complex Phase 2 Project at the Hayward Maintenance Yard located in the City of Hayward, Alameda 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.*).

2. PROPOSED PROJECT:

Project Site Location: The site is an approximately 54-acre site located at 951 Whipple Road, in the City of Hayward City, California, Section 12, Township 042S, Range 02W on the Newark, CA 7.5 minute quadrangle (Lat. 37.62281, Long. -122.048614).

Project Site Description: The site is located within an industrial and commercial area, and most of the site consists of urban land uses, including various buildings, such as vehicle maintenance facilities serving the BART system, with train storage, train washing, and general maintenance facilities for the BART fleet.

Project Description: As shown in the attached drawings, the applicant proposes to construct a vehicle storage yard, the East Vehicle Storage Yard, capable of storing approximately 250 BART vehicles, and ancillary wayside and maintenance facilities needed for a fully functional, electrified, storage yard. Key features of the storage yard include: replacement of an existing drainage

channel, a car cleaning platform, an overcrossing structure, an extension of the existing Whistle Stop Structure, a traction power substation (TPSS), and a two-story administrative building for car cleaners and train operators. The project also proposes to provide a new trackway connection between the vehicle storage yard and the BART mainline trackway. This new trackway, the Northern Mainline Connector, would be located on approximately 6 acres of undeveloped property on the northeast corner of the project site. The key features of the Northern Mainline Connector include: extension of the BART tracks by approximately 3,600 feet from the vehicle storage yard north to Industrial Parkway, with turnouts and crossovers; a retained fill embankment to support the connecting tracks, a new bridge structure over Industrial Parkway; a 600-foot long, 10-foot high soundwall along the east side of the connector tracks north of Industrial Parkway; underground culvert pipes to replace existing open culvert/linear ditch; a bioretention basin, approximately 580-feet long by 50-feet wide by 4-feet deep, located between the retained fill embankment and the BART test tracks; stormwater storage consisting of four side-by-side box culverts that would be cross-connected to act as a single storage volume approximately 40-feet wide by 8-feet deep by 500-feet long; a 30-inch storm drain to be jack and bored; embedded electrical conduit for traction power, and communications circuits; two gap breaker stations; a train control house, a new 20-foot wide paved access road along the east side of the storage tracks; relocation of a fence between the BART property and the neighboring Mission Hills of Hayward Golf Course Driving Range; light poles for security lighting; and a 9-foot-high security fence along the new site perimeter.

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 more frequent and reliable public transit service through the San Francisco and Oakland area.

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 provide a vehicle storage yard and connecting track-work to allow the BART to store and efficiently dispatch 250 vehicles towards San Francisco and Oakland.

Project Impacts: The project would discharge fill resulting in the permanent loss of 0.614 acre of jurisdictional wetlands.

Proposed Mitigation: The project cannot avoid the wetland features on the project site and achieve the project purpose. The project applicant is currently working on a mitigation proposal to provide either mitigation bank credits, off-site permittee-responsible mitigation, or a combination package to offset the impacts of the project on wetland waters of the U.S.

Project Alternatives: The alternatives considered include the no-build alternative, off-site alternatives and on-site design alternatives. The no-build alternative would not meet the purpose of the project and would jeopardize BART's regional plans to provide more frequent and reliable service through Oakland and San Francisco. The off-site alternatives considered three other existing BART-owned yards and one an extension of track at one station to accommodate the additional train storage need. All of the existing yards are surrounded by fully-developed land with the exception of the Richmond Yard. An expansion of the Richmond yard would involve an extensive relocation and grade separation of the existing Burlington Northern Santa Fe Railroad track, acquisition of an adjacent property, and extensive reconfiguration and regrading of the existing Richmond Yard. The many challenges at each off-site alternative location out-weighed any value gained through increased train storage. Various design alternatives for the main components of the project have been considered, including a northern flyover (design alternative 1), northern mainline connection at the A75 interlocking (design alternative 2); northern mainline connection alignments with a modified northern storage yard ladder track

arrangement closer to the westerly side of the East Side Vehicle Storage Area (design alternative 3); a ladder track arrangement north of the East Side Vehicle Storage Yard that converges to two transfer tracks which elevate in grade as they progress to the north where they cross over the Union Pacific Railroad atop an existing tunnel (design alternative 4); a similar track alignment, but supported on embankment/fill material with a retaining wall on the east side of the transfer tracks (design alternative 5); similar track alignment, with the northern transfer tracks supported on an aerial structure (design alternative 6). 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: The project does not occur in the coastal zone, and a *preliminary* review by USACE indicates the project is not likely to affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by 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 St., Suite 510, San Francisco, CA 94105.

Other Local Approvals: The applicant will be applying for the following additional governmental authorizations for the project: a Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife; a permit for jack-and-bore for the culvert under Union Pacific Railroad (UPRR) tracks; a construction easement from UPRR; a construction easement from the City of Hayward; and a revision to the easement granted to the Hayward Area Recreation District to relocate a boundary separating the BART tracks from the golf course driving range.

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, the Federal Transit Administration will be responsible for determining the presence or absence of Federally-listed species and designated critical habitat and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. 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, the Federal Transit Administration will be responsible for determining the presence or absence of EFH and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. 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 project, the Federal Transit Administration will be responsible for determining the presence or absence of historic properties or archaeological resources and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. 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 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 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>.