



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

PUBLIC NOTICE

PROJECT: Breuner Marsh Restoration and Public Access Project

PUBLIC NOTICE NUMBER: 1999-24530S

PUBLIC NOTICE DATE: 03-1-2013

COMMENTS DUE DATE: 03-30-2013

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1. **INTRODUCTION:** East Bay Regional Park District (POC: Mr. Brad Olson, 510-544-2622), through its agent, WRA Associates, Inc., (POC: Geoff Smick, 415-454-8868) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit for the Breuner Marsh Restoration and Public Access Project. 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 is located at the northern terminus of Goodrick Avenue, in the City of Richmond, Contra Costa County, California (37°58'51.8"N, -122°21'39.2"W). The 150 acre project site is bounded by Rheem Creek to the south, Union Pacific railroad to the east, Giant Marsh and Point Pinole Regional Shoreline to the north, and San Pablo Bay to the west (Figure 1).

Project Site Description: Historically the project site was a tidal marsh with several creeks and grasslands. However, between the 1950's to 1980's the site was graded and filled for agricultural and light industrial uses. Currently, the project site is dominated by non-native grassland comprised of uplands, seasonal non-tidal wetlands (45.7 acres), tidal wetlands (48.68 acres), tidal mudflats (25.2 acres) and two streams. One stream is Rheem Creek that has been re-located and channelized. The second unnamed stream is in the eastern portion of the project site. In total the project site has 94.38 acres of jurisdictional wetlands and 50.23 acres of jurisdictional other waters (Figure 2). Tidal marsh areas below the high

tide line (HTL), wetland areas and the streams are jurisdictional waters of the U.S. pursuant to Section 404 of the Clean Water Act. Tidal areas below mean high water (MHW) are jurisdictional waters of the U.S. pursuant to Section 10 of the Rivers and Harbors Act.

The grassland areas are dominated by the non-native wild oats (*Avena fatua*), Italian rye grass (*Festuca perennis*), rigput brome (*Bromus diandrus*), false brome (*Brachypodium distachyon*), fennel (*Foeniculum vulgare*), wild radish (*Raphanus sativa*), and Italian thistle (*Carduus pycnocephalus*). The eastern portion of the project site is dominated by the upland species of silver hairgrass (*Aira caryophylla*), English plantain (*Plantago lanceolata*), cat's ear (*Hypochaeris radicata*), narrowleaf cottonrose (*Logfia gallica*), and blue-eyed (*Sisyrinchium bellum*). Tidal wetlands include low marsh zone dominated by cordgrass (*Spartina* spp.), a mid-marsh zone dominated by pickleweed (*Salicornia virginica*), and a high marsh zone with pickleweed, marsh gumplant (*Grindelia stricta*) and alkali heath (*Frankenia salina*).

Project Description: The proposed project would entail the following: 1) establishment of 5.62 acres of tidal wetlands and 4.04 acres of seasonal wetland within upland areas; 2) restoration of 21.12 acres of tidal wetlands within seasonal wetlands and other waters; 3) enhancement of 9.02 acres of existing tidal wetlands and 4.04 acres of existing seasonal wetlands; 4) removal of box culvert structure and bank stabilization within Rheem Creek; and 5) development of public access infrastructure (restrooms, parking lot, picnic area, overlooks) and extension of the San Francisco Bay Trail (paved trail, boardwalks, and fencing) (Figure 3).

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 restore and enhance tidal and seasonal wetlands and other waters at the Breuner Marsh project site.

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 tidal and seasonal wetlands and other waters at the Breuner Marsh Project site and provide public access.

Project Impacts: The proposed project would result in the permanent discharge of fill material into 0.19 acre of other waters, 6.57 acres of seasonal wetlands and 0.42 acre of tidal wetlands. The proposed project would result in the temporary discharge of fill material into 2.23 acre of seasonal wetland and 0.52 acre of tidal wetland area (Figure 4).

Proposed Mitigation: The proposed project will restore, enhance, and establish wetlands, resulting in a net increase in the area wetlands and the functions and services of wetland acreage.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver 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 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, 50 California Street, Suite 2600, San Francisco, California 94111, by the close of the comment period.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project: California Department of Fish and Game for Section 1602 Lake and Streambed Alteration Agreement.

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. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 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, are present at the project location or in its vicinity, and may be affected by project implementation: California clapper rail (*Rallus longirostris obsoletus*), salt marsh harvest mouse (*Reithrodontomys raviventris*), green sturgeon (*Acipenser medirostris*), steelhead (*Oncorhynchus mykiss*), and Chinook salmon (*Oncorhynchus tshawytscha*). The loss of tidal marsh associated with the boardwalk construction is a direct effect on salt marsh harvest mouse habitat. Construction noise and disturbance associated with the project may temporarily impact California clapper rail and salt marsh harvest mouse. In addition, the public access trail has been designed to limit the potential indirect effects from pedestrians and pets to both these species. The applicant is proposing avoidance and minimization measures to limit potential direct and indirect effects on these species. The overall net increase in tidal wetland area and enhancement of tidal areas will provide an overall beneficial effect to both species. The project is not likely to affect the listed fish species due to the project design

and construction methods. The impacted tidal wetland areas are connected to Bay waters only during the highest tides. In addition, the applicant will be implementing water quality control measures to prevent degradation to water quality and indirect impacts to the listed species. Furthermore, the slough will be constructed with positive drainage and without any low-points reducing the likelihood of fish stranding at low tides. To address project related impacts to these species and critical habitat for Central California Coast steelhead and green sturgeon, USACE will initiate consultations 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*, and 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 will not 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.

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 the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely 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 will review the applicant's study of 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. 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. 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.

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 impact to the aquatic ecosystem, while not causing other major adverse environmental consequences applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines. The applicant shall submit an analysis of project alternatives which will be 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 of the project.

8. **SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Katerina Galacatos, San Francisco District, Regulatory Division, 1455 Market Street, 16th 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 *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/regulatory/>.