



**US Army Corps  
of Engineers**®  
San Francisco District

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

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

**PROJECT: West Bay Sanitary District Flow Equalization and Resource Recovery Facility  
Protection Project**

PUBLIC NOTICE NUMBER: SPN-2018-00371

PUBLIC NOTICE DATE: August 29, 2022

COMMENTS DUE DATE: September 28, 2022

PERMIT MANAGER: Frances Malamud-Roam

TELEPHONE: (415) 503-6792

E-MAIL: Frances.P.Malamud-Roam@usace.army.mil

**1. INTRODUCTION:** West Bay Sanitary District (District) (POC: Sergio Ramirez), 500 Laurel Street, Menlo Park, California 94025, through its agent, SWCA Environmental Consultants (POC: Lauren Huff, 650-713-4886), 60 Stone Pine Road, Half Moon Bay, California 94019, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to install the Flow Equalization and Resource Recovery Facility Levee Improvements Project, located in San Mateo 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.*) and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*). A Public Notice for this project was issued on February 14, 2022, but the project design has changed substantially. Therefore, a second Notice is being issued.

## **2. PROPOSED PROJECT:**

**Project Site Location:** The project is located at the Flow Equalization and Resource Recovery Facility (FERRF) site, at 1700 Marsh Road, Assessor's Parcel Number (APN) 055-400-101, adjacent to Bedwell Bayfront Park, in the City of Menlo Park, San Mateo County, California, (Lat. 37.49581027°N, Long. -122.175889°W). Flood Slough is located immediately west of the site, and West Point Slough flows along the north edge of the project.

**Project Site Description:** The site is in a FEMA 100-year flood zone, and is surrounded on the north-east and west sides by San Francisco Bay (Flood Slough on the west edge, West Point Slough along the north-east), and Bedwell

Bayfront Park abuts the site's southern boundary. The site is also adjacent to the Don Edwards San Francisco Bay National Wildlife Refuge. The FERRF contains three wastewater detention ponds that provide a combined 23.5 million gallons (MG) of wastewater storage for District flows when the conveyance system to the plant is at capacity (e.g., during wet weather events, when the conveyance system to the plant is undergoing maintenance or repairs). The FERRF site also contains the decommissioned Menlo Park Wastewater Treatment Plant (WWTP; in service 1952–1980). The District currently uses the FERRF site as extra office space and an auxiliary corporation yard for equipment and material storage, training exercises, a pump repair workshop, and a Capital Improvement Project staging area. In addition, the District provides space for Save the Bay to operate raised nursery beds for salt marsh plant propagation.

**Project Description:** As shown in the attached revised drawings, the applicant proposes to discharge fill within Section 10 and Section 404 waters of the U.S. in order to construct a living shoreline, consisting of an ecotone levee and oyster reef habitat. The ecotone levee would be a component of the District's improvements to their levees surrounding the facility, bringing them up to Federal Emergency Management Agency (FEMA) standards for protection of the facility and the adjacent San Francisco Bay. Using existing dredge material that is stockpiled on-site or locally sourced sand or clay, the District would place fill within existing tidal marsh for the ecotone levee along approximately 598 linear feet on the northeast edge of the site, which would extend at a roughly 20:1 slope from the improved levee, and within the mudflat to create oyster reef

habitat and new tidal marsh habitat (at the northwest point of the site). In addition, the project proposes to remove approximately 85 linear feet of an existing 30-inch inactive storm drainpipe and capping the line. The proposed storm drain outfall is above the high tide line and outside Corps jurisdiction. Sheet piles are proposed to be installed for a cofferdam system during low tide to isolate the area proposed for the ecotone levee and would be removed after the project is completed.

**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 flood protection.

**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 protect the flow equalization capacity provided by the District's existing facilities at the FERRF site from being lost to inundation under current and future sea level rise. The District intends to use methods that incorporate natural design features to meet the FEMA levee certification requirements; prevent sewage contamination of the San Francisco Bay and of nearby communities; and provide shoreline resiliency and long-term benefits to wetland habitats that support listed species.

**Project Impacts:** The project would place fill within up to 1.19 acre of waters of the U.S. for placement of the ecotone levee and oyster reef structures. However, most of the fill placement would not result in loss of waters of the U.S. Permanent impacts would be limited to loss of 0.06 acre of tidal marsh habitat and conversion of 0.05 acre of mudflat habitat to tidal marsh habitat. Gradually, over a fifty-year period, the entire area would be inundated, reverting back to waters of the U.S.

**Proposed Mitigation:** The project is placing fill primarily as a nature-based design feature to provide sea level rise resiliency for the aquatic habitats and listed species at the site. However, the placement of the ecotone levee would result in permanent impacts to tidal marsh and mudflat habitat. Therefore, the District is proposing to create approximately 0.65 acre of new tidal marsh habitat adjacent to the improved levee, and southeast of the proposed

ecotone levee as compensatory mitigation. Fill associated with the placement of oyster reef structures would not result in the loss of waters of the U.S.

**Project Alternatives:** The alternatives considered include the A) a No Build Alternative; B) an Off-Site Alternative and the following six On-Site Alternatives: C) sheet pile levee enhancement only; D) sheet pile levee enhancement with living shoreline and habitat enhancement at the northwest point; E) sheet pile levee enhancement and living shoreline only; F) reduce the size of Ponds 1 and/or 2 to accommodate the living shoreline; G) construct the living shoreline along Flood Slough; and H) sheet pile levee enhancement with living shoreline and marsh creation area in uplands. 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 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.

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 General Lease Agreement to be issued by the California State Lands 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. The project site contains habitat for the following federally endangered or threatened species which are known to occur within the vicinity of the site: California least tern (*Sterna antillarum brownii*), California Ridgway's rail (*Rallus obsoletus obsoletus*), salt marsh harvest mouse (*Reithrodontomys raviventris*), western snowy plover (*Charadrius nivosus nivosus*), North American green sturgeon, southern Distinct Population Segment (DPS) (*Acipenser medirostris*) and designated critical habitat for this species, and Central California Coast steelhead DPS (*Oncorhynchus mykiss*). To address project related impacts to Federally-listed species, USACE has initiated 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. Pacific Groundfish FMP, the Coastal Pelagics FMP, and the Pacific Coast Salmon FMP. 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 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.

**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 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, 4<sup>th</sup> 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>.