



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

SAN FRANCISCO DISTRICT

Regulatory Division, Eureka Field Office
601 Startare Drive, Box 13
Eureka, CA 95501

PUBLIC NOTICE

PROJECT: Eureka Flood Reduction and Sea Level Rise Resiliency Project

PUBLIC NOTICE NUMBER: SPN-2023-00436
PUBLIC NOTICE DATE: December 13, 2023
COMMENTS DUE DATE: January 12, 2024

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1. INTRODUCTION: The City of Eureka (POC: Kelly Allen (707) 268-5253), 531 K Street, Eureka, California 95501, through its agent, Brett Vivyan, GHD, Inc. (707) 267-2275), P.O. Box 1010, Eureka, California 95502, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to implement the City of Eureka Flood Reduction and Sea Level Rise Resiliency Project within urbanized coastal areas to reduce flooding, increase sea level rise resiliency, and improve water quality entering Humboldt Bay. The Project would increase the storage capacity and conveyance of the storm drain network, implement flow attenuation, and water quality improvements, reduce trash conveyance into waterways, and enhance tidal circulation to provide flood reduction and sea level rise resiliency. 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 in the western portion of the City of Eureka along the edge of Humboldt Bay, in areas of commercial, residential, and industrial development. The Project is generally bordered to the east by E Street, to the south by Henderson Street, and to the north and west by Humboldt Bay. Project areas located within Corps jurisdiction include Palco Marsh, south of the intersection of Del Norte Street and the Eureka Waterfront Trail, at 40.788878° Latitude, -124.185790° Longitude, and Clark Slough, north of

the intersection of Koster Street and Washington Street at 40.798437° Latitude, -124.17898° Longitude, in the City of Eureka, Humboldt County, California. The Project’s staging area is proposed just north of the Del Norte Street Pier at 40.791421° Latitude, -124.185935° Longitude.

Project Site Description: Clark Slough and the City’s storm drainage network are within paved urban streets. These areas are hydrologically connected to Humboldt Bay either directly or via tide gates which drain Palco Marsh and the wetland ditch west of the marsh to Humboldt Bay. The tidal channel and all aquatic resources connected to it within Palco Marsh and the adjacent wetland ditch experience two daily high and low tides. Water levels draw down considerably during low tide and expose the mudflat or channel bottoms with small, shallow, isolated pools remaining. This daily tidal extreme does not provide consistent aquatic habitat due to the absence of a connected water column within Palco Marsh and the tidal channel during low tide that creates isolated pools within Palco Marsh at low tide. A tide gate exists between Clark Slough and Humboldt Bay, located approximately 0.25 miles downstream of the project portion of Clark Slough. Prior to and during construction, the contractor would mobilize resources to a staging area located just north of the Del Norte Street Pier and west of Railroad Avenue in Eureka. The proposed staging area is a paved, vacant lot, contiguous with an industrial storage area to the north, with no natural habitat present.

Project Description: The applicant proposes to improve tidal circulation and tidal marsh habitat by

increasing the capacity of Palco Marsh to receive both freshwater through the existing channel and salt water through a larger diameter siphon, and adjustable tide gate, thereby increasing sediment exchange. This would be accomplished through excavation of approximately 700 feet of new channel located in the northern extent of Palco Marsh and connecting it to the existing channel, which will be deepened and enhanced. Placement of fill material in areas of mudflats within Palco Marsh to augment sediment exchange, restore salt marsh elevation, and create greater salt marsh habitat diversity.

Additional enhancements at Palco Marsh includes replacement of the existing hydraulic conveyance structure located between Palco Marsh and Humboldt Bay with two larger capacity culverts and adjustable flap gates. The new culverts would increase the lower tidal range, match existing tidal inundation duration, store peak water levels within the marsh area and avoid offsite flooding, enhance sediment exchange from the Bay to Palco Marsh, reduce velocities within the crossing, and enhance sediment deposition on the marsh plain.

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 flood and sea level rise risk management.

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 reduce localized flooding to private and public infrastructure in the western portion of the City of Eureka adjacent to Humboldt Bay while protecting water quality and sensitive biological resources.

Project Impacts: In the Palco Marsh/Humboldt Bay area, permanent impacts of 1,760 square feet (0.04 acre) would occur to install a Trash Capture Device (TCD) and siphon/apron. Channel excavation and construction access would also cause temporary impacts to 50,730 square feet (1.16 acres) of Palco Marsh. In the Clark Slough area, permanent impacts

to 392 square feet (0.009 acre) would occur for the TCD installation and placement of rock to stabilize the TCD and protect the banks from erosion.

There would be temporary impacts to 640 square feet (0.015 acre) of Palco Marsh/Humboldt Bay for construction access to install the TCD. Dewatering would occur to accommodate work at the Humboldt Bay siphon, Palco Marsh, and, if not dry, within Clark Slough. Dewatering would occur in tandem with the low tide, i.e. the construction work area would be isolated during low tide which may preclude or significantly reduce the need to use pumps or other methods of dewatering except to dewater small, shallow, isolated areas. The tidal inlet into Palco Marsh would be blocked at low tide with a cofferdam to prevent tidal water from entering the marsh during construction. A similar cofferdam would be installed on the upstream and downstream sides of Clark Slough, if needed to keep the area dry during construction.

Proposed Mitigation: Protection of Special Status Aquatic Species and Aquatic Habitat using silt fences and other erosion control measures would be deployed along construction areas adjacent to Humboldt Bay, Palco Marsh tidal wetlands, and other waters to prevent sediment input into these resources. Silt fencing would be placed adjacent to wetlands, such as around the edge of Palco Marsh. Additionally, to minimize impacts to wetland and waterways, construction materials, debris, or dredge material would not be placed or stored where it could enter aquatic resources and fueling and equipment maintenance would occur at least 100 feet away from wetlands and waterways. The Project would seek coverage under State Water Resources Control Board Order No. 2009-0009-DWQ, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities and the City will submit Construction General Permit to the RWQCB. The SWPPP would address pollutant sources, best management practices, and other requirements specified in the Order. The SWPPP would include erosion and sediment control measures, dust control practices to prevent wind erosion, sediment tracking, and dust generation by construction equipment to minimize impacts to waters and waterways. Following construction, the contractor would demobilize and remove equipment, supplies, and construction wastes. The disturbed areas would be restored to

pre-construction contours and are expected to revegetate naturally.

Project Alternatives: 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 has recently applied 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, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403, 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 has applied for a Consistency Determination from the California Coastal Commission to comply with this requirement.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, North Coast District Office, 710 E Street, Suite 200, Eureka, California 95501, by the close of the comment period.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project:

A shoreline development permit with the Humboldt Bay Harbor, Recreation & Conservation District.

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 or 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 reach of Humboldt Bay may contain Green Sturgeon (*Acipenser medirostris*), Tidewater Goby (*Eucyclogobius newberryi*), Coho Salmon (*Oncorhynchus kisutch*), Chinook Salmon (*Oncorhynchus tshawytscha*), Steelhead trout (*Oncorhynchus mykiss irideus*). Designated critical habitat for Green Sturgeon is present in the project reach of Humboldt Bay. This designation includes Humboldt Bay up to the mean higher high water (MHHW) line. Within the project are this designation includes the Humboldt Bay tidal channel adjacent to Palco Marsh. These species and critical habitat may be affected during implementation of the proposed activities due to temporary dewatering to isolate the work. All work will be conducted during low tide and only isolated pools will be present.

To address project related impacts to these species and designated critical habitat for Green Sturgeon, USACE will initiate informal consultation with NMFS and USFWS, 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 National Marine Fisheries Service (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. *The Pacific Groundfish FMP, the Coastal Pelagics FMP, and the Pacific Coast Salmon FMP* occur in Humboldt Bay. The project would result in short-term loss of habitat within the tidal channel, short-term increase to turbidity and suspended sediment, and potential for contaminant release. However, the Project activities would be of a short duration and located on the bank of Humboldt Bay and not within the channel bottom, and conservation measures would be implemented to ensure that the project avoids and/or minimizes any adverse effects. 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. 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 there is a less environmentally damaging practicable alternative to the project that does not require the discharge of dredged or fill material into special aquatic sites..

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 Stephen Ryan, San Francisco District, Regulatory Division, Eureka Field Office, 601 Startare Drive, Box 13, Eureka, California 95501; 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: <http://www.spn.usace.army.mil/Missions/Regulatory>.