



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

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

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Deer Island Basin Complex Tidal Wetland Restoration Design Project

PUBLIC NOTICE NUMBER: SPN-2021-00072S
PUBLIC NOTICE DATE: October 27, 2023
COMMENTS DUE DATE: November 27, 2023

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1. INTRODUCTION:

Marin County Flood Control and Water Conservation District (POC: Roger Leventhal, 415-473-3249), 3501 Civic Center, Ste 304, San Rafael, California 94903, through its agent, ESA associates (POC: Stephanie Bishop, 415-262-2371), 775 Baywood Drive, Suite 100, Petaluma, California 94954, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to implement the Deer Island Basin Complex Tidal Wetland Restoration Design Project (Project), located in Marin 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.*).

2. PROPOSED PROJECT:

Project Site Location: The Deer Island Basin Complex is within the incorporated limits of the City of Novato in Marin County and spans Novato Creek and former connected tidal marsh between the Sonoma Marin Area Rail Transit (SMART) rail line on the upstream end to the north and west [parallel to

Rowland Boulevard] and then south and eastward to State Route (SR) 37 and adjacent rail bridge. The project occurs in an un-sectioned area in Township 3N, Range 6 West, on various parcels (153-170-46, 153-170-44, 153-200-57, 153-200-38, 153-200-37, 153-200-34, 153-200-31, 153-200-28, 153-200-27, 153-200-26, 153-200-25) at the approximate center latitude/longitude coordinates: 38.0969805555556, -122.545975.

Project Site Description: The project consists of three main areas along Novato Creek: Duck Bill and Heron's Beak Ponds (collectively referred to as Bird Ponds), and Farmers Basin. Duck Bill Pond typically fills with rainwater, and can be filled via pumps from the Lynwood and Cheda Pump stations to augment rainfall. Duck Bill Pond has no outlet, though if the water level is high enough, water can spill over a rocky weir into Novato Creek. Heron's Beak Pond has a 30-inch culvert with slide gate that can partially drain to Novato Creek when water levels in the creek are low. Following placement of sediment from the 2020 sediment removal in the pond, a fish screen was placed between the culvert and Novato Creek. The fish screen allows the culvert to remain open from June to February, allowing the flow of brackish

waters from Novato Creek into Heron's Beak Pond, to create muted tidal wetlands within the pond. The culvert is currently eroding at the bottom, which allows some tidal exchange during high tides even when the slide gate is closed. Per requirements of the National Marine Fisheries Service (NMFS), the culvert is closed and a plug is in place from February to June, when water conditions are safe enough to install the plug, to protect fish from getting into Heron's Beak Pond

Project Description: As shown in the attached drawings, the applicant proposes to restore ecologically valuable tidal wetlands for endangered species and improve tidal connectivity to the diked areas that were historically tidal wetlands along Novato Creek. In the Bird Ponds, approximately 49 acres of tidal channels tidal pond and tidal wetland habitat would be enhanced or restored. Over time, tidal pond habitat within the Bird Ponds is anticipated to evolve into a mosaic of tidal wetland and channel habitat. In conjunction with the Bird Ponds restoration, the Novato Creek Left Bank Levee adjacent to Farmers Basin would be raised to provide improved flood protection. About 6 acres of the roughly 55-acre area that comprises Farmers Basin would be modified to improve the levees.

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 tidal habitats and improve 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 restore ecologically valuable tidal wetlands for improved endangered species habitat and tidal connectivity to the diked areas that were historically tidal wetlands along Novato Creek and to contribute to long term flood control goals for the lower Novato Creek Baylands.

Project Impacts: The project will have impacts within waters of the U.S. within Section 10 jurisdiction and Section 404 jurisdiction. All impacts are considered permanent, and most of the impacts are restoration related, thus converting the resources from one aquatic resource to another, as shown in Table 1, Summary of Existing and Post-Project Habitat Conditions. The County proposes to excavate (cut) approximately 8,048 cubic yards of material from within 1.26 acre of Section 10 waters (tidal areas below the Mean High Water), and to discharge fill within approximately 10.42 acres of Section 404 waters, including 3.13 acres of wetland waters and 7.27 acres of non-wetland waters.

Proposed Mitigation: The project is designed to result in net increases in waters of the U.S. of approximately 3 acres, and would restore and enhance tidal habitats providing an increase in approximately 8 acres of tidal marsh and 6 acres in tidal waters. The proposed project has been designed to minimize impacts to aquatic resources, and would implement conservation measures to avoid and minimize impacts to water quality and aquatic species. Because the project is providing improvements to aquatic conditions, and would result in a net gain of waters of the U.S., no compensatory mitigation is proposed.

Project Alternatives: The project alternatives include the No Project alternative, leaving the area under its current management conditions; the Reduced Project alternative which would eliminate an ecotone slope proposed along the Lynwood Levee, and the current Proposed Project. 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 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. Â§ 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 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, 375 Beale St., Suite 510, San Francisco, CA 94105, by the close of the comment period.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project: Lake and Streambed Authorization Agreement from 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 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: salt marsh harvest mouse (*Reithrodontomys raviventris*), California Ridgway's rail (*Rallus obsoletus obsoletus*), Central California Coast steelhead (*Oncorhynchus mykiss*) and critical habitat for this species. The project has the potential to affect these species during project construction, but has proposed avoidance and minimization measures to reduce the potential for adverse effects. The project would provide net benefits to these species by improving the overall conditions within the project area, and providing increased habitat resilience to sea level rise. To address project related impacts to Federally-listed species and designated critical habitat, USACE will initiate formal consultation with USFWS, and informal consultation with 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. 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 may be present in the permit area and that such resources may be adversely affected by the project. Six archaeological sites and seven architectural resources (levees) occur within the project area. 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. 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 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>