



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

Regulatory Division
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SAN FRANCISCO DISTRICT

PUBLIC NOTICE

**PROJECT: Regional General Permit for California Department of Fish and Wildlife,
Eden Landing Ecological Reserve Maintenance and Management**

PUBLIC NOTICE NUMBER: SPN-2023-00560

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COMMENTS DUE DATE: March 8, 2024

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1. INTRODUCTION: The California Department of Fish and Wildlife (CDFW) Eden Landing Ecological Reserve (POC: John Krause, john.krause@wildlife.ca.gov, 2825 Cordelia Road, Suite 100, Fairfield, California 94555), through its agent Ducks Unlimited (POC: Nicholas Torrez, ntorrez@ducks.org, 1175 Nimitz Avenue, Suite 110, Vallejo, California 94534), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, to reissue a Department of the Army Permit to authorize ongoing, routine operations and maintenance of levees and other existing infrastructure within former salt ponds owned and managed by the CDFW in San Francisco Bay. USACE proposes to issue a Regional General Permit (RGP) which would be used for annual authorization of maintenance activities subject to USACE jurisdiction. 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: Maintenance activities would occur in the Eden Landing Ecological Reserve (ELER) pond complex (figure 1), consisting of approximately 19 ponds and associated sloughs and tidal marsh areas along the East Bay shoreline, in the City of Hayward, Alameda County, California (37.5960 °N, -122.1202 °W). ELER is bordered on the north by Hwy 92, on the south by the Alameda Creek

Flood Control Channel, and on the east by developed areas of the Cities of Hayward and Union City.

Project Site Description: Former salt ponds within the project area were previously owned and used by Cargill for salt production, and were sold or donated to CDFW in 2003. Additional salt ponds at Alviso (Santa Clara County) and Ravenswood (San Mateo County) were transferred to the U.S. Fish and Wildlife Service (USFWS) at the same time. Since acquiring the ponds, CDFW and USFWS have managed water circulation within the ponds to preclude salt production and promote habitat values and conditions until long-term restoration actions of the South Bay Salt Pond Restoration Program (SBSRP) can be fully implemented. Phase 1 restoration projects have been implemented in some of the Eden Landing ponds, and Phase 2 restoration is planned for the near future, but ponds continue to require maintenance of existing infrastructure (levees, water control structures, etc.) until future restoration can be completed. Operation and maintenance of the CDFW and USFWS ponds was previously authorized under a joint permit to both agencies (SPN-2008-00103). Phase 1 and 2 restoration activities have been or will be authorized under separate permits (SPN-2003-277030 and SPN-1999-246270).

Project Description: Under this RGP, CDFW would submit an annual workplan or pre-construction notification (PCN) to USACE and other agencies for approval of proposed maintenance activities for the following 12-month period. Pond maintenance would generally include the following categories of activities:

1. Repair and replacement of existing infrastructure (figures 2-6):

a) repair and replacement of existing bay intake/outlet structures and related facilities such as pumps, gates, pipelines, siphons, open channels and culverts, and removal of silt and algae from these structures. Excavated material would be placed in identified upland areas (e.g., levee tops above the high tide line) unless specified otherwise in the workplan.

b) Excavating, clearing, and retrenching existing intake/outlet structures and conveying ditches, provided the existing configuration is not altered substantially. Excavated material may be disposed of onto levee tops above the high tide line (HTL), hauled off-site for upland disposal elsewhere, or, if approved for beneficial reuse, may be used to create habitat mounds and/or islands within marsh or managed ponds.

c) Repair and replacement of existing bridges, bridge foundations, and abutments within the network of pond levees.

d) Repair and replacement of other infrastructure such as existing fences, tide gates, siphons in non-tidal areas, power lines, boat launches, docks, etc., provided such repair and maintenance does not deviate from the as-built plans of the original structure.

e) Repair of existing and new authorized reaches of riprap. The authorized riprap areas would be designed to have approximately 3:1 slope. If new riprap would extend beyond existing riprap by more than 10 linear feet, then the proposed design would be submitted in the workplan.

2. On-going and new work: (Activities qualifying as new work may require additional site-specific review and approval by the Corps and other regulatory agencies, pursuant to notification procedures and best management practices (BMPs) to be developed and described in the final permit).

a) Placement of dredged and/or fill material on habitat islands or the inboard side of levees to prevent degradation from erosion or subsidence, or along the pond bottom to strategically re-direct water to

enhance ecological functions or reduce erosion on adjacent levees or islands. The material, either dredged mud from the pond or imported earthen fill approved for beneficial reuse, would be placed along the levee, island, or pond bottom in accordance with BMPs. Alternatively, where possible, slough mud from outside the ponds may be used if the dredge has sufficient reach.

b) Dredging of existing and new borrow ditches within the ponds for the purpose of placing the dredged material on existing levees.

c) Dredging in ponds to allow access by water-based maintenance equipment. This includes the placement/side-casting of dredged material within the pond adjacent to the dredged channel.

d) Dredging and placement of dredged material at existing dredge locks to allow water-based maintenance equipment to access ponds from adjacent sloughs if land-based equipment access to pond interiors is not feasible. The use of a floating clamshell dredge has been phased out at ELER, but may be needed in rare instances.

e) Installation of new intake/outlet structures, new pumps, siphons, culverts, power transmission lines, channels/ditches, channel crossings, in conjunction with new work, or relocation of existing structures.

f) Construction of new internal coffer dams and internal levees.

g) Placement of new riprap along outboard and inboard levees as needed to fortify slopes and prevent erosion, provided the permittee provides adequate justification for new riprap placed below the HTL or OHWM. New riprap would be placed to minimize voids between rocks that might be used by red fox or other predators, and where feasible topped with bay mud or other approved earthen material to promote tidal marsh vegetation. Riprap placed on top of non-eroding tidal marsh would not be authorized under this RGP.

h) Repair and placement of siphons that cross tidal marsh, sloughs, and channels, which may require extensive trenching and side-casting of mud.

i) Dredging and placement of bay muds or other approved earthen material into eroded areas along selected outboard levees with the purpose of encouraging the expansion of established tidal marsh vegetation to diffuse wave energy and prevent levee erosion. The quantities of dredging material to be moved would depend on site-specific conditions and would be included in the notification procedures. The height of constructed mounds would approximate the high-tide elevation.

j) General maintenance activities as described above, to maintain the Phase 1 and/or Phase 2 habitat restoration projects once completed (construction of Phase 1 and Phase 2 project elements is covered under separate authorizations). This also includes repair of water control structures, placement of substrate to enhance habitat, repair/enhancement of nesting islands and habitat transition zones, and scientific survey activities and devices as needed to maintain and monitor ecological functions.

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 an efficient permitting process for CDFW to conduct routine infrastructure maintenance and habitat management of the ELER property.

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 an efficient permitting process for CDFW to conduct routine infrastructure maintenance and habitat management of the ELER property.

Project Impacts: Impacts to waters of the U.S. would consist mostly of repair and maintenance of water control structures, including sediment removal, and repair of levee erosion with soil and/or riprap. Maintenance activities would generally not result in a loss of waters of the U.S.

Proposed Mitigation: The proposed project would not result in a loss of waters of the U.S.; therefore, no mitigation is proposed.

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 San Francisco Bay Regional Water Quality Control Board (RWQCB) issued a combined 401 certification (Order No. R2-2018-0020) on May 15, 2018, for all CDFW and USFWS salt pond O&M activities and Phase 1 restoration, as well as USFWS Phase 2 restoration projects.

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 an applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification (non-Federal applicant), or concurrence with a Consistency Determination (Federal applicant), 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 concurred with a Consistency Determination, or has waived its right to do so. The San Francisco Bay Conservation and Development Commission (BCDC) issued an amended permit (# 2003.007.00) on March 23, 2021, for CDFW salt pond O&M activities.

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.

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 clapper rail (*Rallus longirostris obsoletus*), western snowy plover (*Charadrius alexandrinus nivosus*), California least tern (*Sterna antillarum browni*), central California coast steelhead (*Oncorhynchus mykiss*), green sturgeon (*Acipenser medirostris*), and designated Critical Habitat for snowy plover, steelhead, and green sturgeon. In addition, the longfin smelt (*Spirinchus thaleichthys*), a federal candidate species, may also occur in the project area. ESA consultation with NMFS and USFWS was completed in 2008 for a previous iteration of this permit, and consultation with NMFS has recently been initiated for the current proposed RGP. USACE is currently assessing the need for additional ESA consultation with USFWS. Any required consultations 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 for species managed under the Pacific Groundfish FMP, the Coastal Pelagics FMP, and the Pacific Coast Salmon FMP is present at the project location or in its vicinity and that the critical elements of EFH may be adversely affected by project implementation due to temporary decreased water quality following construction. To address project related impacts to EFH, USACE has initiated 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, previous Section 106 consultations for this area, 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 present in the permit area and may be affected by the permitted activities, but that potential impacts have been addressed in prior consultations. USACE will determine the need for any additional consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. If required, additional consultation with the State Historic Preservation Officer would be conducted for individual projects prior to authorization under this RGP. If unrecorded archaeological resources are discovered during project implementation, any work affecting such resources would be temporarily suspended until additional Section 106 consultation with the State Historic Preservation Officer could be completed.

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 is required to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

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.

may be viewed under the *Public Notices* tab on the USACE website:
<https://www.spn.usace.army.mil/Missions/Regulatory>

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 Greg Brown, 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