



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

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

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Montezuma Wetlands

PUBLIC NOTICE NUMBER: SPN-1992-194050

PUBLIC NOTICE DATE: January 11, 2024

COMMENTS DUE DATE: February 12, 2024

PERMIT MANAGER: Zachary Simmons

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1. INTRODUCTION:

Montezuma Wetlands, LLC (POC: James Levine, 1900 Powell Street, Floor 12, Emeryville, California 94608-1811) through its agent, Vollmar Natural Lands Consulting (POC: Cassie Pinnell, 625 11th Street, Arcata, California 95521-5802), has applied to the U.S. Army Corps of Engineers (Corps), San Francisco District, for a Department of the Army Permit to discharge fill material within wetlands for beneficial reuse of dredged material and to restore tidal wetlands, located in Solano County, California. This DA 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 2,400-acre project is located in diked and subsided former baylands within the Suisun Marsh along the east side of Montezuma Slough, northwest of the confluence of the Sacramento and San Joaquin Rivers, Solano County, California; Latitude 38.093902°, Longitude -121.874708°. See Figure 1.

Project Site Description: The proposed activities are a continuation of the Montezuma Wetlands project permitted in 2001. To-date the project has received approximately 10 million cubic yards (Mcy); nine Mcy in Phase 1 and one Mcy in Phase 2. Approximately 550 acres in Phase 1 were restored to tidal action on October 27, 2020, and more than two years of post-breach monitoring show that the restoration successfully achieved the performance criteria. Phase 2 is currently active and consists of eight cells that will accept an estimated 15-20 Mcy of dredged material over the next 15-20 years. The current permit expires April 1, 2024.

Project Description: The applicant proposes to discharge dredged material into 992 acres of waters of the U.S. to complete Phase 2 (787 acres) and Phase 3 (205 acres) of the three-phase tidal wetland restoration project (see Figure 2). Current operations allow material dredged from San Francisco Bay-Delta region to be barged to the site, off loaded, and placed into cells (surrounded by constructed levees) until elevations suitable for marsh establishment are reached. Upon completion, the project would result in the restoration of approximately 1,820 acres of tidal, seasonal, and managed wetlands (see Figure

3). The project also includes a sediment rehandling facility used to dry additional incoming dredged sediments (Surface cover sediment only) for both on-site use in levee construction and for off-site sale.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by the Corps to determine whether the project is water dependent. The basic project purpose is to dispose of dredged material.

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, scope, and project area remain unchanged from the originally-issued permit. The overall project purpose is to reuse dredged material for wetland restoration within Suisun Marsh.

Project Impacts: The applicant proposes to discharge dredged material into 992 acres of waters of the U.S. to complete Phase 2 (787 acres) and Phase 3 (205 acres) of the three-phase tidal wetland restoration project. Approximately 50 acres of fill in Phase 2 have already been completed.

Proposed Mitigation: The permittee would continue to implement the approved Mitigation Monitoring Reporting Plan (MMRP) for the Montezuma Wetlands Project dated July 2019.

Project Alternatives: Since the applicant is proposing to continue the approved project, no alternatives have been submitted at this time. The Corps will conduct an independent review of potential 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 DA 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.*). A water quality certification was issued for this project on November 27, 2012, (R2-2012-0087) and remains valid for this application.

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. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant has obtained a Consistency Determination 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 obtained the appropriate authorizations for the project from Solano County and the California Department of Fish and Wildlife.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): Upon review of the DA permit application and other supporting documentation, the Corps 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, the Corps 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 Corps 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 the Corps and other non-regulated activities the Corps 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 DA 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, the Corps has consulted with USFWS and NMFS regarding the proposed project. USFWS issued a Biological Opinion (BO) on March 21, 2001, and amended the BO in 2002, 2004, 2010, and 2022. NMFS issued a BO on December 28, 2000, and amended the BO in 2001, 2011, and 2020. Based on a review of the BO's, the Corps determined that the project is in compliance with Section 7 of the ESA. To address potential project related impacts, the Corps will initiate additional consultation pursuant to Section 7(a) of the Act as required.

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 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, the Corps has consulted with NMFS and the BO includes a review of effects to EFH for the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. The Corps will initiate additional consultation with NMFS, pursuant to Section 305(b)(2) of the Act as required.

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 DA 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 the Corps 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 (SHPO) 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 Native American tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Native American tribes attach historic, religious, and cultural significance. As the Federal lead agency for this undertaking, the Corps has completed consultation with appropriate Native American tribes and the California SHPO. A Memorandum of Understanding between the Corps and the California SHPO was signed in July 2003. The Corps will review the current project proposal and consult with the California SHPO, as appropriate.

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 not 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. An alternatives analysis has been conducted for this project during the previous permit review. The Corps will consider the proposed impacts and potential alternatives during the permit review.

6. PUBLIC INTEREST EVALUTION:

The decision on whether to issue a DA 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:

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Native American tribes or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by the Corps will be considered in the decision on whether to issue, modify, condition, or deny a DA 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:

Zachary Simmons
San Francisco District, Regulatory Division
450 Golden Gate Avenue, 4th Floor
San Francisco, California 94102-3404
Zachary.M.Simmons@usace.army.mil

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 DA 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 Corps website: <https://www.spn.usace.army.mil/Missions/Regulatory>