



US Army Corps
of Engineers®
San Francisco District

Regulatory Division
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SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Regional General Permit for U.S. Fish and Wildlife Service,
Don Edwards San Francisco Bay National Wildlife Refuge Salt Pond Maintenance

PUBLIC NOTICE NUMBER: SPN-2023-00559

PUBLIC NOTICE DATE: January 31, 2024

COMMENTS DUE DATE: February 29, 2024

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1. **INTRODUCTION:** The U.S. Fish and Wildlife Service (USFWS) Don Edwards San Francisco Bay National Wildlife Refuge (POC: Anne Spainhower, ann_spainhower@fws.gov, 1 Marshlands Road, Fremont, California 94555), through its agent Ducks Unlimited (POC: Nicholas Torrez, ntorrez@ducks.org, 1175 Nimitz Avenue, Suite 110, Vallejo, California 94592), 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 salt ponds owned and managed by the USFWS 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 Alviso and Ravenswood pond complexes in the Don Edwards San Francisco Bay National Wildlife Refuge (Figure 1). The Alviso complex consists of 25 ponds (A1 thru A23) on the shores of the South Bay in Fremont, San Jose, Sunnyvale and Mountain View, in Santa Clara and Alameda Counties. The complex is bordered by the Palo Alto Baylands Nature preserve and Charleston Slough to the west, by Moffett Field, Mountain View Shoreline Park, Sunnyvale Treatment Plant, Sunnyvale Baylands Park, and Pond A4 to the south,

and by the City of Fremont, Pond A18, and New Chicago Marsh to the east and northeast. The Ravenswood complex consists of 7 ponds (R1 - R5, S5, and SF2) on the bayside of the Peninsula, along both sides of Highway 84 at the west end of the Dumbarton Bridge, and on the bayside of the City of Menlo Park in San Mateo County.

Project Site Description: Salt ponds within the project area were previously owned and operated by Cargill for salt production, and were sold or donated to USFWS in 2003. Additional salt ponds at Eden Landing were transferred to the California Department of Fish and Wildlife (CDFW) at the same time. Since acquiring the ponds, USFWS and CDFW have managed them under an Initial Stewardship Plan which was designed to maintain open water and unvegetated pond habitats with enough water circulation to preclude salt production and maintain habitat values and conditions until long-term restoration actions of the South Bay Salt Pond Restoration Program (SBSRP) can be fully implemented. Phase 1 and Phase 2 restoration projects have been implemented in some of the Salt Ponds, but remaining “legacy” ponds continue to require maintenance of existing infrastructure (levees, water control structures, etc) until future restoration can be completed. Operation and maintenance of the USFWS and CDFW salt ponds was previously authorized under a joint permit to both agencies (SPN-2008-00103). Phase 1 and 2 restoration activities have been authorized under separate permits (SPN-2007-277030).

Project Description: Under this RGP, USFWS 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. Salt pond maintenance would generally include the following categories:

1. Repair and replacement of existing infrastructure (figures 2, 3, and 4):

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 silts 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 would be disposed of onto levee tops above the high tide line (HTL) or hauled off-site to a non-jurisdictional area.

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

d) Repair and replacement of other infrastructure such as existing fences, tide gates, siphons in non-tidal areas, power lines, boat launches, 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 fill material on the pond side of salt pond levees below the HTL or ordinary high water mark (OHWM) for the purpose of raising and fortifying the levees to prevent degradation. The material, either dredged mud from the salt pond or

imported fill, would be placed along the inside and the top of the salt pond levee 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 salt ponds for the purpose of placing the dredged material on existing levees.

c) Dredging in salt ponds to allow a dredge to cross a pond. This includes the placement/sidecasting of dredged material within the pond adjacent to the dredged channel.

d) 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.

e) Construction of new pumping donuts, internal coffer dams, and internal salt pond levees.

f) 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 topped with bay mud where feasible to promote tidal marsh vegetation. Riprap placed on top of non-eroding tidal marsh would not be authorized under this RGP.

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

h) Dredging and placement of bay muds 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.

i) 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 and placement of materials on internal levees and nesting islands as needed to maintain 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 develop an efficient permitting process for USFWS to conduct routine maintenance of its salt pond infrastructure.

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 efficient permitting for USFWS to conduct routine maintenance of salt pond infrastructure within the Ravenswood and Alviso complexes.

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. As such, 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 USFWS and CDFW O&M activities and Phase 1 restoration, as well as USFWS Phase 2 restoration.

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 Consistency Determination concurrence (# CN 2003, 010.06) on February 8, 2012 for USFWS salt pond O&M and Phase 1 restoration 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 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 adversely modify designated critical habitat. As the Federal lead agency for this project, the applicant will be responsible for determining the presence or absence of Federally-listed species and designated critical habitat and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. 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), defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth for 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, the applicant is responsible for determining the presence or absence of EFH and the need for consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary

supporting documentation from the applicant concerning the consultation process. 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 project, the applicant will be responsible for determining the presence or absence of historic properties or archaeological resources and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. 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 the applicant 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 is required to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

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 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 may be viewed under the *Public Notices* tab on the USACE website:

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