



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

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

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

PROJECT: India Basin Shoreline Park Project

PUBLIC NOTICE NUMBER: SPN-2016-00417  
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COMMENTS DUE DATE: April 12, 2024

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## 1. INTRODUCTION:

San Francisco Recreation and Parks Department (POC: David Froelich, 628-652-6649), 49 Van Ness Avenue, Suite 1220, San Francisco, California 94103) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to conduct work in, and discharge fill within waters of the United States associated with the development of a public park on San Francisco Bay. The project is located in the Bayview-Hunters Point neighborhood in the City and County of San Francisco, 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:** 401 Hunters Point Boulevard, San Francisco, California; State Tax Parcel 4646003, on the Hunters Point, California U.S.G.S quadrangle; Latitude 37.73421, Longitude -122.37605.

**Project Site Description:** The site is currently a public park with two play structures, a basketball

court, landscaping, a portion of the Blue Greenway/Bay Trail, artwork by local artists and students, barbeque grills, seating, educational signage, and a portable restroom. Many of the amenities at IBSP are outdated, require maintenance, and are used only minimally. Existing habitats in the uplands are maintained landscaping; along the shoreline, there are limited, fragmented patches of marsh, providing minimal habitat for wildlife, and approximately 750 linear feet of the existing 900 linear feet of shoreline consists of riprap protection. The shoreline morphology includes steep frontal slopes due to high wave exposure; waves in this area can be greater than 2 feet. Intertidal mudflat or tidal flat habitat is adjacent to the park, supporting marine invertebrates, fish and birds.

**Project Description:** As shown in the attached drawings, the applicant proposes to develop a public shoreline park, comprised of a series of terraces, supported by retaining walls, extending from the sidewalk along Hunters Point Boulevard into the Bay, with a lawn and a gravel shore at the terminus of the lawn; a pier and floating dock for recreational boating (kayak); wetland tidal habitat creation; and additional shoreline protection where needed. Restored marsh

edge would replace the existing hard riprap edge along much of the shoreline to create a soft, vegetated buffer, providing habitat for birds and animals and allowing the park to better adapt to sea level rise and storm surges. Work within Waters of the U.S. would include placement of retaining walls, a portion of which would extend into the Bay and are referred to as marineway walls and which support pathways extending out into the Bay beyond the mean high water line, the installation of the gravel shore and the pier and floating dock.

**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 construct a community shoreline park.

**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 construct a shoreline park that would be part of an integrated park network for public access to the San Francisco Bay and would provide improved recreational amenities and cultural space for the greater Bayview Hunters Point area of San Francisco.

**Project Impacts:** Approximately 1,609 cubic yards of fill would be placed within 0.302 acre of open water along the Bay shoreline and 0.095 acre of tidal wetlands would be permanently filled for the construction of this project; in addition, approximately 1.084 acre of open water and 0.019 acre of tidal wetland would be temporarily affected. The new pier and floating dock structures would displace 0.11 acre of open waters.

**Proposed Mitigation:** The applicant proposes to create 0.306 acre of tidal wetland habitat and 0.07 acre of Bay waters. The applicant believes that fill removal performed during an earlier phase of the India Basin Shoreline Development project (Phase 1:

Remediation at 900 Innes Avenue) combined with the excess tidal wetland created should off-set the balance of the permanent loss of Bay waters.

**Project Alternatives:** The applicant has considered alternatives with larger floating docks, and larger shoreline features with more public access and more habitat features. 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. Â§ 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 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 will be applying for the following additional governmental authorizations for the project: N/A.

#### **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. Â§ 4321-4347), the Council on Environmental Quality's regulations at 40 C.F.R. Â§ 1500-1508, and USACE regulations at 33 C.F.R. Â§ 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. Â§ 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 vicinity has the following federally-listed species and habitat: Central California Coast steelhead DPS (*Oncorhynchus mykiss*), North American green sturgeon Southern DPS (*Acipenser medirostris*), and designated critical habitat for these species; Longfin smelt (*Spirinchus thaleichthys*) and California Ridgway's rail (*Rallus obsoletus obsoletus*). Project activities may disturb these species during the construction activities, including pile-driving, and the project would result in an increase in over-water structures that would result in and increased shade affecting the benthic habitat utilized by fish species for foraging. To address project related impacts to Federally-listed species, USACE will initiate formal consultation with NMFS, and informal consultation with 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. Â§ 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. Pacific Coast Groundfish, Coastal Pelagic Species, and Pacific Coast Salmon FMPs, based in disturbance of the substrate during project construction, conversion of aquatic habitats, and increased overwater shading, which may result in short term and long-term minor losses in benthic foraging habitat, and short term disturbance that would dissuade species from utilizing the area for foraging or sheltering. 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. Â§ 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. Â§ 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 present in the permit area and that such resources may be adversely affected by the project. The remains of an unevaluated shipping dock are 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. Â§ 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. 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, 4<sup>th</sup> Floor  
San Francisco, California 94102-3404  
Frances.P.Malamud-Roam@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 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>