



**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: Restore Hayward Marsh Project

PUBLIC NOTICE NUMBER: SPN-2020-00450
PUBLIC NOTICE DATE: October 18, 2024
COMMENTS DUE DATE: November 18, 2024

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1. INTRODUCTION:

The East Bay Regional Park District (District)(POC: Chris Barton, (510) 544-2627), 2950 Peralta Oaks Ct, Oakland, California 94605, through its agent, WRA, Inc. (POC: Liz Allen, (510) 721-8792), 2169-G Francisco Blvd E, San Rafael, California 94901, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill material into jurisdictional waters of the U.S. associated with the restoration and enhancement of the Hayward Marsh. The project is located on the Hayward shoreline, in Alameda 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 approximately 320-acre project area is located within the following Assessor's Parcel Numbers (APNs): 438-60-15-5, 438-80-7-2, 438-80-7-3, 438-80-8-2, 438-80-12-0, 438-80-13-2, 438-80-13-4, 438-80-13-6, 438-80-13-7, 438-80-13-8; adjacent to the San Francisco Bay

shoreline, north of Highway 92, in Alameda County, California, Latitude 37.62895°, Longitude -122.14913°.

Project Site Description: #Until recently, Hayward Marsh functioned as a wastewater treatment system. During its operation from 1984 to 2022, secondary-treated effluent entered the site at Pond 1 and was progressively mixed with saltwater as it flowed through the Hayward Marsh pond system before being released into San Francisco Bay as treated brackish water. The wastewater treatment plant that supplies the system with freshwater has ceased operations, allowing the District to redesign the Hayward Marsh system to enhance the area's ecological benefits. If left unchanged, Hayward Marsh's existing tidal marsh and nesting island habitats are predicted to be lost in the coming decades due to rising seas.

Project Description: As shown in the attached drawings, the applicant proposes to restore the former wastewater treatment facility to a more natural functioning marsh. Work activities include discharge of fill to improve existing levees, enhance existing islands and create new islands for use by

shorebirds; improvements to the channels within the Mouse Preserve to promote tidal flushing in the area, and the creation of a new upland area designed to transition into tidal marsh habitat as sea level rise progresses. The District would remove an existing levee road that bifurcates the marsh complex, and fill and grade the eastern portions of Pond 1 and Pond 2A, and all of Pond 2B, to form a continuous upland area sloping towards the Mouse Preserve at a gentle 60:1 slope. This slope would allow the upland area to gradually become tidal marsh as the existing tidal marsh habitat in the Mouse Preserve is drowned by rising sea level. The project would regrade the inboard side slopes on the western half of Pond 1 at a 10:1 slope to reduce erosion and provide additional transition zone habitat. On the San Francisco Bay-side levee, where the San Francisco Bay Trail currently crosses Hayward Marsh, the Project will widen the top of the existing levee to improve management access and create a variable 20:1-to-30:1 slope on the inboard side of the levee to allow for transitional marsh habitat to form. On the outboard (San Francisco Bay-side) of the levee, wave breaks such as woody material, large rock, and gravel bars will be installed to provide additional erosion protection to promote the re-establishment of marsh vegetation. Where there is existing fringe marsh, a rock berm will be constructed along the toe of the marsh to prevent further loss of this habitat from edge erosion. Beyond the existing marsh habitat in San Francisco Bay, the project would discharge fill to create "living breakwaters", constructed of large rock, to reduce wave energy and promote sediment deposition.

The project would create a breach between San Francisco Bay and Pond 3B through the Mixing Channel to restore full tidal flow to the pond, and would discharge fill within an existing Northwest Channel bordering Pond 3B to accommodate a larger pond with a 20:1 to 30:1 sloped levee along its margin. Additional fill may be placed in Pond 3B to raise the elevation of the pond to support tidal marsh habitat formation.

The project would raise the levee separating Pond 3A from Ponds 2A and 2B to 14.3 feet, and widen the crest to 16 feet to form an interim levee as a

nature-based climate adaptation feature allowing water levels to be managed for wildlife habitat while preventing flooding from impacting infrastructure along the urban interface. Where the Interim Levee runs adjacent to Pond 2A and Pond 3A, the levee's side slopes would be graded to create a 10:1 slope. In addition, to accommodate the design height of the new levee, the Project may expand the base of the existing levee into either the Hayward Area Recreation and Park District Marsh with a 5:1 to 10:1 side slope on the west side of the Interim Levee, or into the Mouse Preserve which may require relocating an existing channel within the Mouse Preserve that occurs alongside this levee.

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 habitat restoration.

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 voluntarily restore and enhance Hayward Marsh to a condition that enhances wildlife habitat, plans for sea-level rise, retains public access opportunities, and improves management capabilities.

Project Impacts: The project would discharge approximately 850,000 cubic yards of fill within the existing former treatment ponds, and would remove up to 60,000 cubic yards of existing fill material from portions of existing channel levees and select nesting islands. The project would also install 250 12" x 12" new steel H-piles for new water control structures and remove approximately 500 existing pilings (300 12" x 12" concrete piles and 200 6" x 6" steel piles). Indirect impacts include short-term increases in turbidity during construction, short-term loss of vegetative cover and habitat; long-term improved aquatic habitat supporting a variety of wildlife species, included protected species, and

enhanced sea level rise resiliency for this tidal habitat. The project would also result in additional over-water shading resulting from constructed walkways for the proposed new water control structures.

Proposed Mitigation: This project would result in long-term benefits to the aquatic habitat, and would expand sensitive habitat types that would be able to persist and expand as sea-level rise progresses. Specifically, the project would increase tidal marsh habitat by 10.88 acres, and muted marsh habitat by 12.47 acres created; finally, the project would create 18.64 acres of new tidal open water habitat. The project is proposing to implement general avoidance and minimization measures to minimize the indirect impacts of the project and protect aquatic resources. These measures include, but are not limited to, work windows, construction site and water quality best management practices, and sensitive species protection measures as required by the US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

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. § 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: a Lake and Streambed Alteration Agreement or a Restoration Management Permit, to be issued by the 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 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*), western snowy plover (*Charadrius alexandrinus nivosus*), green sturgeon, southern Distinct Population Segment (sDPS) (*Acipenser medirostris*), and Central California Coast steelhead (*Oncorhynchus mykiss*); and designated critical habitat for western snowy plover, green sturgeon, and CCC steelhead. To address project related impacts to designated critical habitat, USACE will initiate formal consultation with

USFWS and 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. The Pacific Coast Groundfish Fisheries Management Plan (FMP), the Coastal Pelagic Species FMP and the Pacific Salmon FMP are present in the project area and may be affected by the project. 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 are present in the permit area and that such resources may be adversely affected by the project. 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 been informed 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.

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:

Frances Malamud-Roam
San Francisco District, Regulatory Division
450 Golden Gate Avenue, 4th 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