

Baseline levels for the Covered Species will be determined by completing the Baseline Habitat Worksheet (Attachment 4 of the Agreement), which will be completed by a person approved by the Service. The Service will review each baseline determination prior to the Applicant issuing a Certificate of Inclusion to the Cooperator. The Agreement also contains a monitoring component that requires the Applicant to ensure that the Cooperators are in compliance with the terms and conditions of the Agreement and maintaining baseline levels of habitat for the Covered Species. Results of these monitoring efforts will be provided to the Service by the Applicant in an annual report.

Upon approval of this Agreement, and consistent with the Service's Safe Harbor Policy (64 FR 32717), the Service would issue an Enhancement of Survival permit to the Applicant. This permit will authorize Cooperators issued a Certificate of Inclusion to take the Covered Species incidental to the implementation of the management activities specified in the Agreement, incidental to other lawful uses of the property including normal, routine land management activities, and incidental to return to baseline conditions if desired. Although take of listed plant species is not prohibited under the Act, and therefore cannot be authorized under an enhancement of survival permit, plant species may be included on a permit in recognition of the net conservation benefit provided to them under a safe harbor agreement. An applicant would receive assurances under our "No Surprises" regulations (50 CFR 17.22(c)(5) and 17.32(c)(5)) for all species included in the Enhancement of Survival permit. In addition to meeting other criteria, actions to be performed under an Enhancement of Survival permit must not jeopardize the existence of federally listed fish, wildlife, or plants.

#### Public Review and Comments

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement that is also available for public review.

Individuals wishing copies of the Environmental Action Statement, and/or copies of the full text of the Agreement, including a map of the proposed permit area, should contact the office and personnel listed in the ADDRESSES section above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Service will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If the Service determines that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the Covered Species incidental to otherwise lawful activities in accordance with the terms of the Agreement. The Service will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

August 21, 2009.

**Susan K. Moore,**

*Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS-R8-ES-2008-N0201; ABC Code: 1261-0000-80230-W2]**

### Sears Point Wetland and Watershed Restoration Project, Sonoma County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments: draft environmental impact statement and environmental impact report.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Game (CDFG), in cooperation with the Sonoma Land Trust (SLT), have prepared a draft environmental impact report and environmental impact statement (DEIR/EIS) on the restoration of approximately 2,300 acres (ac) of

former farm land located in Sonoma County, California near the San Pablo Bay. The proposed restoration project, which would be implemented by the SLT, would restore natural estuarine ecosystems on diked baylands, while providing public access and recreational and educational opportunities compatible with ecological and cultural resources protection. In accordance with National Environmental Policy Act of 1969 (NEPA), this notice advises other agencies, Tribes, and the public that the DEIR/EIS on the proposed Sears Point Wetland and Watershed Restoration Project is now available for review. We invite and encourage interested persons to review the document and submit written comments to identify issues related to the alternatives we address in the DEIR/EIS.

**DATES:** We must receive written comments at the address below on or before October 13, 2009. You may submit comments by any one of the methods we describe under **ADDRESSES**. We will hold a public meeting in the fall of 2009, to solicit comments. See **SUPPLEMENTARY INFORMATION** for more details.

**ADDRESSES:** The Draft EIS/EIR is available for review at:

- Refuge Headquarters Office, San Pablo Bay National Wildlife Refuge, 2100 Highway 37, Petaluma, CA 94954; (707) 769-4200.

- San Francisco Bay National Wildlife Refuge Complex, 9500 Thornton Avenue, Newark, CA 94560; (510) 792-0222.

- John F. Kennedy Public Library, 505 Santa Clara, Vallejo, CA 94590.

- <http://www.sonomalandtrust.org>.

*Written comments and requests for information may be mailed to:* Christy Smith, Refuge Manager, San Pablo Bay National Wildlife Refuge, 7715 Lakeville Highway, Petaluma, California, 94954. Alternatively, you may fax written comments to (707) 769-8106, or send them by electronic mail to [christy\\_smith@fws.gov](mailto:christy_smith@fws.gov). Please include the heading "Sears Point NEPA comments in your response."

**FOR FURTHER INFORMATION CONTACT:** Christy Smith, Refuge Manager, San Pablo Bay NWR, (707) 769-4200 (phone); [christy\\_smith@fws.gov](mailto:christy_smith@fws.gov) (e-mail), or John Brosnan, Baylands Program Manager, at (707) 526-6930 x109 (phone); [john@sonomalandtrust.org](mailto:john@sonomalandtrust.org) (e-mail).

#### SUPPLEMENTARY INFORMATION:

##### Location

The project site is located at Sears Point near the intersection of Lakeville-Reclamation Road and State Route 37

(SR 37) in southern Sonoma County, California. The site is also traversed from east to west by an inactive rail line owned by the Sonoma-Marine Area Rail Transit (SMART) District.

The project site is a total of 2,327 ac owned by the Sonoma Land Trust (SLT) and is comprised of two large properties, the North Point Joint Venture (NPJV) parcel and the Dickson Ranch parcel, which are situated on the edge of San Pablo Bay between the mouth of the Petaluma River and Tolay Creek. The 1,679-ac NPJV parcel extends both north and south of SR 37. It is bounded on the north by the Infineon Raceway property, on the east by Cougar Mountain (north of SR 37) and Paradise Vineyards (south of SR 37), on the south by the SMART rail line, and on the west by Lakeville-Reclamation Road. The 648-ac Dickson Ranch parcel is located entirely south of Highway 37, and is bounded on the north by the SMART rail line, on the west by Tolay Creek, on the south by San Pablo Bay, and on the west by the outboard levee as it veers bayward from the SMART rail line. The entire Dickson Ranch parcel and 858 ac of the NPJV parcel are located within the approved acquisition boundary of the San Pablo Bay National Wildlife Refuge. The SLT proposes to transfer a 350-acre parcel of this land bounded by Highway 37 and the SMART rail line, to the Service, and the remainder of the land to CDFG.

#### Alternatives

We identified and analyzed a total of eight alternatives. The alternatives were analyzed based on a set of criteria, including (1) ability to meet the project purpose and need, (2) technical, logistical, and financial feasibility, and (3) ability to avoid or substantially reduce one or more significant impacts. We removed five of these alternatives from further consideration because they did not meet the purpose and need, were not feasible, or did not provide substantial variation in environmental impacts. The lead agencies carried forward three possible alternatives for environmental analysis: the No-Action Alternative, the Partial-Tidal (Preferred) Restoration Alternative, and the Full-Tidal Restoration Alternative.

#### No-Action Alternative

Under the No-Action Alternative, there would be no wetland restoration or enhancement, no new trails, and no new habitat creation. The Sonoma Land Trust (SLT) would still move forward with the transfer of title of the Sears Point properties to the Federal and State agencies. SLT will honor existing

agricultural and commercial leases on the property through June 2010.

#### Partial-Tidal (Preferred) Restoration Alternative

The Partial-Tidal Restoration Alternative would restore 970 acres of tidal marsh; improve tidal exchange in Tolay Creek along the eastern edge of the project boundary; preserve and enhance a 106-acre area of non-tidal seasonal wetland while maintaining existing agriculture between the SMART line and Highway 37; provide public recreation access south and possibly north of Highway 37; enhance 40 acres of non-tidal seasonal wetland north of Highway 37; and create 15.5 acres of additional breeding habitat for the California red-legged frog, including 0.5 acres of excavation in the floodplain near the northern project boundary.

#### Full-Tidal Restoration Alternative

The Full-Tidal Restoration Alternative would restore 1,335 acres of tidal marsh; improve tidal exchange in Tolay Creek along the eastern edge of the project boundary; provide public recreation access south and possibly north of Highway 37; enhance 40 acres of non-tidal seasonal wetland north of Highway 37; and create 15.5 acres of additional breeding habitat, including 0.5 acres of excavation in the floodplain, for the California red-legged frog near the northern project boundary.

#### NEPA Compliance

The entire Dickson Ranch parcel and 858 acres of the NPJV parcel are located within the approved acquisition boundary of the San Pablo Bay NWR. Federally owned lands within the Refuge boundary are adjacent to these properties. In order to implement the action alternatives described above, some activity (channel dredging and levee breaching) within the San Pablo Bay NWR is necessary. We will use the EIR/EIS to determine whether to authorize activities within the San Pablo Bay NWR in order to accomplish project goals.

The EIR/EIS discusses the direct, indirect, and cumulative impacts of the alternatives on biological resources, cultural resources, land use, air quality, water quality, water resources, and other environmental resources. It also identifies appropriate mitigation measures for adverse environmental effects.

We are conducting public review of the EIR/EIS in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and our

procedures for compliance with those regulations. The EIR/EIS meets the requirements of both NEPA and the California Environmental Quality Act (CEQA). The California Department of Fish and Game is the CEQA lead agency. We provide this notice under regulations implementing NEPA (40 CFR 1506.6).

#### Public Meeting

We will hold one public meeting to solicit comments on the DEIR/EIS. We will mail a separate notice to the public and local publications that identifies the time, date, and location of the meeting.

#### Public Comments

We invite the public to comment on the DEIR/EIS during the comment period. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will use the comments to prepare a final EIR/EIS. A decision will be made no sooner than 30 days after the publication of the final EIR/EIS. We anticipate that a Record of Decision will be issued by the Service in 2010.

Dated: August 20, 2009.

**Margaret T. Kolar,**

*Acting Regional Director, Pacific Southwest Region.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Final Environmental Impact Statement for the Mandan, Hidatsa, Arikara (MHA) Nation's Proposed Clean Fuels Refinery, Fort Berthold Indian Reservation, Ward County, ND

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** This notice advises the public that the Department of Interior, Bureau of Indian Affairs (BIA) and the U.S. Environmental Protection Agency (EPA) as co-lead agencies; and the Mandan, Hidatsa and Arikara (MHA) Nation and the U.S. Army Corps of Engineers as cooperating agencies, intend to file a Final Environmental Impact Statement (FEIS) with the EPA for the proposed