

Chapter 7

Consultation and Coordination

This chapter provides an overview of the history of public involvement, consultation, and other requirements for the proposed Big Lagoon project, as well as describes the progress made in meeting those requirements. It also provides a list of preparers and a list of Final EIS/EIR recipients.

History of Public Involvement

Between December 2002 and December 2004, 17 public meetings were held, as well as a variety of site visits and meetings with representatives of various agencies. On December 3, 2002, a NOI to prepare an Environmental Impact Statement was published in the Federal Register, beginning the formal scoping process for the project. The NOI identified goals for the project, and public scoping meetings were held on October 22, October 29, and November 2, 2002, with a site visit for the public held on November 9, 2002, to solicit input on the project and its potential impacts. Following these meetings, a Big Lagoon Working Group consisting of interested individuals, agencies, and organizations was formed to help develop project alternatives. The working group convened regularly in meetings that were open to the public. In addition, two alternatives workshops were held for the public on September 30 and October 4, 2003. The results of those workshops, as well as a more detailed summary of the scoping process, are presented in the Alternatives Public Workshops Report (National Park Service 2004). Marin County circulated a Notice of Preparation of an Environmental Impact Report on April 27, 2004, soliciting comments on the specific issues to be included in the scope of CEQA environmental review. All of these activities informed the alternatives formulation process.

Following release of the Draft EIS/EIR, NPS and Marin County held two public meetings to present the project to interested parties and to answer questions about the project. These meetings were held on January 18 and 31, 2007. NPS and Marin County also conducted a public hearing at the Marin County Planning Commission in San Rafael, California, on February 26, 2007, to receive comments on the draft document.

Compliance Status

Documentation of NPS compliance with federal and state laws and regulations is incorporated into the text of the Final EIS/EIR. Compliance with ten of the major federal laws, executive orders, and associated state regulations is summarized here.

National Environmental Policy Act (NEPA) of 1970 (PL 91-190, 83 Stat. 852, 42 USC §4341 et seq.)

The Final EIS/EIR provides disclosure of the planning and potential environmental consequences of the proposed action and alternatives, as required by NEPA. A Notice of Availability for the Draft EIS/EIR was published in the Federal Register and the document made available for public review and comment. The NPS also provided the Notice of Availability of the Draft EIS/EIR through a direct mailing and posting on the park's web site. The Draft EIS/EIR was made available for review at park headquarters, park visitor centers, local and regional libraries, and on the park's web site. The comment period extended for 75 days from the date of EPA's notice of filing published in the Federal Register. A public hearing to receive comments on the Draft EIR/EIR was held on February 26, 2007, at the Marin County Planning Commission in San Rafael, California. The Final EIS/EIR was filed with the EPA's Office of Federal Activities, and a notice was published in the Federal Register. Public review of the Final EIS/EIR will continue for 45 days from the date of EPA's notice of filing published in the Federal Register.

Endangered Species Act of 1973 As Amended (PL 93-205, 87 Stat. 884, 16 USC §1531 et seq.)

The Endangered Species Act protects threatened and endangered species, as listed by the U.S. Fish and Wildlife Service (USFWS), from unauthorized take, and directs federal agencies to ensure that their actions do not jeopardize the continued existence of listed species. Section 7 of the act defines federal agency responsibilities for consultation with the USFWS and NMFS and requires preparation of a Biological Assessment to identify any threatened or endangered species that are likely to be affected by the proposed action. Species occurring on the project site that are listed as threatened under the federal ESA include coho salmon, steelhead, and CRLF. One other listed species has been observed at the project site, California brown pelican (federally endangered).

The NPS has engaged in informal consultation with the USFWS and NMFS throughout in the project planning process. Upon request, the USFWS sent the NPS a species list for the Big Lagoon site. NMFS sent a list of threatened and endangered fish under its jurisdiction that may be affected by the project. These

lists include plant and animal species that may occur within, or be affected by activities within, the project area.

Formal consultation with USFWS and NMFS will begin concurrent with following completion of the public comment period on the Final EIS/EIR, and will be completed concurrent with the preparation of the ROD.

The Magnuson-Stevens Fishery Conservation and Management Act As Amended by the Sustainable Fisheries Act of 1996 (PL 104-267)

This requires all federal agencies to consult with NMFS on all actions or proposed actions permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). NMFS would provide recommendations to conserve EFH to federal or state agencies for activities that would adversely affect EFH. Consultation with NMFS is still underway and will be completed concurrent with the preparation of the Record of Decision. Redwood Creek is designated as EFH for coho salmon.

Section 404 of the Clean Water Act (33 USC 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403)

All proposed work and/or structures extending bayward or seaward of the line on shore reached by (1) mean high water in tidal water, or (2) ordinary high water in nontidal waters designated as navigable water of the United States must be authorized by USACE pursuant to Section 10 of the Rivers and Harbors Act. Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. The permit process with the Corps has formally begun, but will be completed concurrent with the preparation of the Record of Decision. As discussed elsewhere, most of the project site is considered jurisdictional.

Archeological Resources Protection Act of 1979 (PL 96-95, 93 Stat. 712, 16 USC §470aa et seq. and 43 CFR 7, subparts A and B, 36 CFR)

This act secures the protection of archeological resources on public or American Indian lands and fosters increased cooperation and exchange of information among the private, government, and professional community in order to facilitate the enforcement and education of present and future generations. It regulates excavation and collection on public and American Indian lands. It requires

notification of American Indian tribes who may consider a site of religious or cultural importance prior to issuing a permit. The NPS will meet its obligations under this act in all activities proposed as part of the Big Lagoon project.

National Historic Preservation Act of 1966 As Amended (PL 89-665, 80 Stat. 915, 16 USC §470 et seq. and 36 CFR 18, 60, 61, 63, 68, 79, 800)

36 CFR 800 is the set of regulations through which Section 106 is implemented. Section 106 of the National Historic Preservation Act requires that agencies evaluate potentially historic properties for their eligibility for listing in the National Register of Historic Places and take into account the effects of the undertakings on properties listed in or eligible for listing in the National Register of Historic Places. The NPS has developed a Programmatic Agreement in consultation with the California State Historic Preservation Officer (SHPO) under which NPS has conducted identification of historic properties for the proposed undertaking and subsequently shares the findings with SHPO.

Under the Programmatic Agreement, the NPS can comply with Section 106 without SHPO consultation when no historic properties are adversely affected and there is therefore no impact. For the proposed undertaking, NPS will develop a Finding of Effect document under its 1992 Programmatic Agreement or according to the regulations set forth in 36 CFR 800 and submit it to SHPO for concurrence.

NPS has consulted with SHPO on an ongoing basis regarding historic properties at the project site, and will complete historic property identification efforts as well as the Finding of Effect document prior to filing of the ROD.

Native American Graves Protection and Repatriation Act Compliance

This project will require compliance with the Native American Graves Protection and Repatriation Act (NAGPRA). NAGPRA specifies the procedures that federal agencies must follow when burials of Native American origin are found on federal land (43 CFR, Part 10, Subpart B, Section 10.4). The NPS has responsibility for complying with NAGPRA for all areas within the area of potential effect (APE).

If human remains of Native American origin are discovered within the APE during archaeological excavation or during construction-related ground-disturbing activities, the following provisions will be followed to comply with NAGPRA regulations:

- Notify, in writing, the responsible federal agency, and

- Cease activity in the area of discovery and protect the human remains.

Upon notification that human remains have been discovered on federal land, NAGPRA requires that the responsible federal agencies:

- Certify receipt of the notification;
- Take steps to secure and protect the remains;
- Notify the Native American tribes or tribes likely to be culturally affiliated with the discovered human remains within 1 working day; and
- Initiate consultation with the Native American tribe or tribes in accordance with regulations described in 43 CFR, Part 10, Subpart B, Section 10.5.

If Native American human remains are encountered during excavation in the APE, work in the vicinity of the remains will halt immediately. The ultimate disposition of the remains will be determined in consultation with Native American representatives.

American Indian Religious Freedom Act (PL 95-341, 92 Stat. 469, 42 USC §1996)

This act declares policy to protect and preserve the inherent and constitutional right of the American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express, and exercise their traditional religions. It provides that religious concerns should be accommodated or addressed under NEPA or other appropriate statutes.

Executive Order 11988: Floodplain Management

This executive order requires federal agencies to avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplains, and to avoid development in floodplains whenever there is a practical alternative. If a proposed action is found to be in the applicable regulatory floodplain, the agency shall prepare a floodplain assessment, known as a Statement of Findings. All of the actions evaluated in the Big Lagoon Final EIS/EIR are consistent with this executive order.

Executive Order 11990: Protection of Wetlands

This executive order established the protection of wetlands and riparian systems as the official policy of the federal government. It requires all federal agencies to consider wetland protection as an important part of their policies; to take action to minimize the destruction, loss, or degradation of wetlands; and to preserve and enhance the natural and beneficial values of wetlands. All of the actions

evaluated in the Big Lagoon Final EIS/EIR are consistent with this executive order.

Executive Order 13112: Invasive Species

This executive order prevents the introduction of invasive species and directs federal agencies not to authorize, fund, or carry out actions that they believe are likely to cause or promote the introduction or spread of invasive species. Actions evaluated in the Big Lagoon Final EIS/EIR include measures to prevent the introduction and spread of invasive species.

California Coastal Zone Management Act

This act protects coastal environments. While the act transferred regulatory authority to the states and excluded federal installations from the definition of the “coastal zone,” it requires that federal actions be consistent with state coastal management plans. Activities taking place within the coastal zone under the definition established by the California Coastal Management Plan require a federal consistency determination. The Final EIS/EIR will be submitted to the California Coastal Commission for federal consistency determination. Actions taken by Marin County, and possibly federal actions on lands in private, local or state ownership, will need to apply for a coastal development permit.

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A Final EIS/EIR will be sent to any agency, organization, or individual that provided a substantive comment on the Draft EIS/EIR, or to anyone who requests a copy. Notification that the Final EIS/EIR is available will be widely publicized. Limited printed paper copies will be available for distribution; however, paper copies will be available for review at the lead agencies offices or in local libraries. A complete list of Final EIS/EIR recipients is available from the issuing office.