

Chapter 6

Scoping, Consultation, and Other Requirements

This chapter provides an overview of the scoping process, consultation, and other requirements for the proposed BMKV expansion, as well as describes the progress made in meeting those requirements.

Scoping

The process of determining the scope, focus, and content of an EIR/EIS is known as scoping. The scoping process assists the lead agencies in determining the substantive issues to be addressed in an EIR/EIS. Tools used in scoping for the BMKV expansion included early consultation with governmental agencies and the public, an NOP/NOI, and a scoping meeting.

Through a series of workshops in fall 2002, the lead agencies informally consulted with representatives from the USFWS, DFG, MCFWCWD, NSD, City of Novato, County of Marin, BMK CSD, ABAG/Bay Trail, and local residents.

The NOI/NOP for this SEIR/EIS was published in the Federal Register on November 27, 2001. Agency and public comments received by the Conservancy and the Corps during the scoping process have been assembled in a scoping report, which is included as appendix G.

The Conservancy and the Corps conducted a scoping meeting on December 5, 2001, in Novato, California, near the project site. The comments received at this meeting are summarized in the scoping report.

Key issues of public concern about the proposed BMKV expansion that were identified during the scoping process include the following.

- Flood protection
- Drainage easements and agreements
- Effects on Pacheco Pond
- Public access/Bay Trail alignments
- Novato Creek sedimentation/dredging/navigation

- Levee protection and stability
- Existing wildlife habitats
- Buffers between residential and restoration area
- Compatibility of habitat and access components
- Novato Sanitary District outfall alignment
- Use/quality/handling of dredged material
- Hazardous waste

The lead agencies have also informally consulted with representatives of the aforementioned agencies during the preparation of this draft document through a series of stakeholder meetings, site visits, and agency meetings.

Appendix G describes the public involvement and scoping process and results in greater detail.

Consultation and Requirements

Federal Endangered Species Act

The federal ESA requires a federal agency to consult with USFWS and NMFS when a federal action has the potential to effect listed federal threatened or endangered species under the jurisdiction of these agencies. The Corps has been informally consulting with USFWS and NMFS regarding the BMKV expansion. USFWS representatives were consulted during design charettes conducted in 2001, as part of the conceptual design. On behalf of the Corps, Jones & Stokes requested a list of threatened, endangered, and candidate species in the project area. USFWS and NMFS responded with lists of such species, which are included in appendix D. The *Biological Resources* section of chapter 4 describes the potential for listed, proposed, or other sensitive species to occur in the area affected by the alternatives. The Corps is currently consulting with USFWS on a programmatic level for both the authorized HWRP and the proposed BMKV expansion to determine the scope of required consultation, identify species of concern, and develop an appropriate approach to addressing listed and proposed species as part of the Section 7 consultation.

National Historic Preservation Act

Federal involvement in the BMKV project triggers the requirement to comply with NHPA Section 106. Compliance with Section 106 requires the Corps to inventory historic properties and evaluate the eligibility of those properties for listing in the NRHP. The effects of the proposed BMKV expansion on properties that may be eligible for listing or are already listed on the NRHP was addressed

during that process. The *Cultural Resources* section of chapter 4 describes the potential effects of the restoration alternatives on cultural resources and identifies measures that may be necessary in order to avoid or reduce impacts on these resources. A Section 106 report is currently being prepared and will be submitted to the State Historic Preservation Office for review.

Farmland Protection Policy Act

The Farmland Protection Policy Act (FPPA) of 1981 requires federal agencies to consider project alternatives that minimize or avoid adverse impacts on prime and unique farmland. As described in the *Land Use and Public Utilities* section of chapter 4, farmland will be affected by the restoration alternatives. The No-Action Alternative is the alternative that would best preserve the existing farmland at the site. However, none of this farmland is considered prime and unique farmland or statewide important farmland. Because of the quality of the existing farmland, the overall impact due to its loss through implementation of one of the restoration alternatives is expected to be less than significant. To fulfill the requirements of the FPPA, the Corps will consult with NRCS regarding this farmland.

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (FWCA) requires equal consideration of wildlife resource values in federal water-resource project planning, approval, and implementation. Compliance with the equal consideration mandate requires: consultation between action agencies and wildlife agencies or measures necessary to conserve wildlife in project planning, construction, and operation; reporting by wildlife agencies on the effects of the project and its alternatives upon wildlife resources and on measures recommended to conserve wildlife resources in connection with the project and its alternatives; full consideration by the action agencies of measures recommended to conserve wildlife resources, both with regard to the proposed project and its alternatives; and implementation of justifiable conservation measures.

The Corps, as federal lead, is consulting with USFWS on the preparation of a Coordination Act Report (CAR) for the proposed BMKV expansion. As one of the goals is to provide a diverse array of wetland and wildlife habitats at HAAF and BMKV that benefits a number of endangered species and other migratory and resident species, it is expected that, with implementation of any other justifiable conservation measures, the proposed BMKV expansion will be in compliance with the FWCA.

Executive Order 11988—Floodplain Management

Executive Order 11988, “Floodplain Management,” requires federal agencies to prepare floodplain assessments for proposed projects located in or affecting floodplains. An agency proposing to conduct an action in a floodplain must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the only practicable alternative involves siting in a floodplain, the agency must minimize potential harm to or development in the floodplain and explain why the action is proposed in the floodplain.

As described in the *Surface Water Hydrology and Tidal Hydraulics* section of chapter 4, the entire BMKV expansion site is within the 100-year floodplain due to the subsided elevations of the site and the deterioration of surrounding perimeter levees. Because the objective of the proposed BMKV expansion is to restore tidal wetlands, the area within the expansion boundaries would be flooded. Secondary impacts involving the potential for flooding surrounding parcels as a result of the proposed BMKV expansion are addressed by design features included in the restoration alternatives and are discussed in the *Surface-Water Hydrology* section of chapter 4. This SEIR/EIS concludes that, through restoration design and implementation of mitigation measures, the BMKV expansion will not increase the potential for flooding on surrounding parcels.

Executive Order 11990—Protection of Wetlands

Executive Order 11990, “Protection of Wetlands,” requires federal agencies to prepare wetland assessments for projects located in or affecting wetlands. Agencies must avoid undertaking new construction in wetlands unless no practicable alternative is available and the proposed action includes all practicable measures to minimize harm to wetlands.

One of the primary goals of the proposed BMKV expansion is to restore wetlands in the HAAF, SLC, and BMKV parcels. As described in the *Biological Resources* section of chapter 4, the expansion would result in the loss of some of the existing tidal wetlands outside the perimeter levees and all of the existing wetlands within the perimeter levees. However, this loss would be substantially offset by the creation of both tidal wetland and seasonal wetlands under all the restoration alternatives. By returning the site to tidal action and favoring the ultimate formation of tidal wetlands, the end result of the proposed BMKV expansion would be a net benefit to the wetland ecosystems of the expansion site, Novato Creek, and San Pablo Bay.

Executive Order 12898—Environmental Justice

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority and Low-Income Populations,” requires federal agencies to identify and

address disproportionately high and adverse human health or environmental effects of their actions on minorities and low-income populations and communities. Because no permanent or temporary residences are located on the site, the proposed BMKV expansion would not result in disproportionately high or adverse human health or environmental effects on minority or low-income populations.