



**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: Fairview at Northgate

PUBLIC NOTICE NUMBER: SPN-2016-00350

PUBLIC NOTICE DATE: January 9, 2024

COMMENTS DUE DATE: February 8, 2024

PERMIT MANAGER: Zachary Simmons

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## 1. INTRODUCTION:

Lewis Land Developers, LLC (POC: Danny Luu, 916-403-1719), 9216 Keifer Boulevard, Sacramento, California 95826, through its agent, Madrone Ecological Consulting (POC: Ginger Fodge, 916-822-3226), 8421 Auburn Boulevard, Suite 248, Citrus Heights, California 95610, has applied to the U.S. Army Corps of Engineers (Corps), San Francisco District, for a Department of the Army (DA) Permit to discharge fill material within 2.49 acres of seasonal wetland swales and 0.05 acre of non-jurisdictional wetlands to develop a 178-unit residential development, located in Solano County, California. This DA 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.*).

## 2. PROPOSED PROJECT:

**Project Site Location:** The 29.5-acre project site (APN: 087-490-010) is located south of Turner Parkway and east of Admiral Callaghan Lane and Interstate 80 (I-80), in Vallejo, Solano County, California; Latitude 38.12866°, Longitude -122.22206°.

**Project Site Description:** The 29.5-acre project site is located in the eastern portion of the 51.3-acre Fairview at Northgate development site. The western portion of the site is a planned commercial development that is not a part of this application. The site is bordered by commercial development to the north, residential development to the east and south, and the I-80 corridor to the west. The site is a vacant, undeveloped lot ranging in elevation from approximately 120 feet above mean sea level in the southeast corner to approximately 90 feet in the northwest corner. The site is primarily characterized by nonnative annual grassland and disturbed soils. Plant species present on the site are predominantly nonnative annual grasses and herbaceous species typical of disturbed sites.

**Project Description:** As shown in the attached drawings, the applicant proposes to discharge fill material within 2.49 acres of seasonal wetland swales and 0.05 acre of non-jurisdictional wetlands to develop a 29.5-acre residential development. The proposed development consists of 178 residential units and a 5.7-acre designated open space. Approximately 2.53 acres of seasonal wetland

swales would be avoided within the designated open space.

**Basic Project Purpose:** The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by the Corps to determine whether the project is water dependent. The basic project purpose is to construct housing.

**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 single-family housing development within the City of Vallejo.

**Project Impacts:** The proposed project would discharge fill material within 2.49 acres of seasonal wetland swales and 0.05 acre of non-jurisdictional wetlands. Approximately 2.53 acres of seasonal wetland swales would be avoided within the designated open space.

**Proposed Mitigation:** The applicant proposes to mitigate for 2.54 acres of seasonal wetlands through permittee-responsible wetland establishment at an off-site location. Proposed options include Lower Austin Creek and the Lynch Creek Preserve. A final mitigation plan must be approved by the Corps prior to issuing a DA permit.

**Project Alternatives:** The applicant submitted a preliminary analysis of potential project alternatives. The list of alternatives includes five off-site alternatives, three on-site alternatives, and a no-project alternative. The Corps has not endorsed the submitted alternatives analysis at this time. The Corps 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 DA 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 DA Permit may 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 120 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. The project does not occur in the coastal zone, and a *preliminary* review by the Corps indicates the project is not likely to affect coastal zone resources.

**Other Local Approvals:** The applicant indicated that approval has been received from the City of Vallejo for the tentative development map. The proposed project may also require a Lake and Streambed Alteration Agreement 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 DA permit application and other supporting documentation, the Corps 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, the Corps 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 the Corps 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 the Corps and other non-regulated activities the Corps 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 DA 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, the Corps has conducted a review of the California Natural Diversity Database, 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, the Corps has made a *preliminary* determination that Federally-listed species and designated critical habitat are not present at the

project location or in its vicinity and that consultation will not be required. The Corps will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by USFWS and/or NMFS.

**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, the Corps 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, the Corps has made a *preliminary* determination that EFH is not present at the project location or in its vicinity and that consultation will not be required. The Corps will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by NMFS.

**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 DA 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 the Corps 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, the Corps 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, the Corps has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area and that the project either has no potential to cause effects to these resources or has no effect to these resources. The Corps will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. If is determined applicable, the Corps will initiate consultation with the State Historic Preservation Officer and native American tribes pursuant to Section 106 of the Act to address potential effects to historic or archeological resources. Any required consultation must be concluded prior to the issuance of a DA Permit for the project. If unrecorded archaeological resources

are discovered during project implementation, those operations affecting such resources will be temporarily suspended until the Corps 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 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 the Corps.

#### **6. PUBLIC INTEREST EVALUATION:**

The decision on whether to issue a DA 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:**

The Corps 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 the Corps will be considered in the decision on whether to issue, modify, condition, or deny a DA 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:

Zachary Simmons  
San Francisco District, Regulatory Division  
450 Golden Gate Avenue, 4<sup>th</sup> Floor  
San Francisco, California 94102-3404  
[Zachary.M.Simmons@usace.army.mil](mailto:Zachary.M.Simmons@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 DA 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 Corps website: <https://www.spn.usace.army.mil/Missions/Regulatory>