



US Army Corps
of Engineers®
San Francisco District

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: GATEWAY STATION WEST RESIDENTIAL DEVELOPMENT

PUBLIC NOTICE NUMBER: 2014-00055S

PUBLIC NOTICE DATE: March 14, 2016

COMMENTS DUE DATE: April 14, 2016

PERMIT MANAGER: Mr. Gregory Brown

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1. **INTRODUCTION:** Dumbarton Area 2, LLC (500 La Gonda Way Suite 102, Danville, California 94526), through its agent, Johnson Marigot Consulting, LLC (88 North Hill Drive, Brisbane California 94005, POC: Ms. Paula Gill, 415-317-4941), 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 United States associated with the construction of a residential subdivision, located in the City of Newark, 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 proposed project is located within the Dumbarton Transit Oriented Development (TOD) Specific Plan area at the western edge of the City of Newark in southwestern Alameda County. The proposed project is located at the southwest corner of the intersection of Hickory Street and Enterprise Drive (formerly Wells Avenue (Figure 1)). The site is within Section 11 of Township 5 South and Range 2 West of the U.S. Geological Survey (USGS) 7.5-minute Newark, California quadrangle map. The project site consists of the 54.53-acre Gateway Station West property (APNs 537-0852-009, -010, and -011), and 2.28 acres of adjacent off-site improvement areas. Off-site improvements would take place within portions of the adjacent or nearby Hickory Street, Enterprise Drive, and 'A' Avenue right-of-way corridors, as well as at a culvert near the southwestern corner of the property.

Project Site Description: Terrain of the proposed project site is characterized by a series of natural hills, soil stockpiles placed in upland areas, and constructed industrial settling basins. The surface elevations on the project site range from about 8 to 10 feet above mean sea level (amsl), with the exceptions of a rock outcrop that extends to approximately 26 feet amsl, and stockpiles that reach 30 to 35 feet amsl. Vegetation communities and habitat types on the project site include non-native grassland, disturbed habitat, settling basins, coyote brush scrub, serpentinite rock outcrop, seasonal wetland, drainage ditch, an unvegetated ponded depression, and developed areas. The site contains approximately 14.88 acres of wetlands and 1.04 acres of unvegetated waters subject to USACE jurisdiction (Figure 2). This includes approximately 0.03 acre of a tidally influenced channel in the off-site improvement area at the southwest corner of the project site that drains to the Plummer Creek slough approximately 1500 feet to the south. This constructed channel extends north into the Gateway Property, but a sheet pile barrier across the channel near the property boundary has severed its connection with the tidal channel and Plummer Creek.

Project Description: As shown in the attached drawings (Figures 3-8), the applicant proposes construction of approximately 589 single- and multi-family residential units (within seven villages) and associated infrastructure (e.g., open space, parking, parks, trails, storm water facilities, roadways, and utility infrastructure). Additional proposed site improvements include on- and off-street parking, drive aisles, underground utilities, drainage structures, lighting, trails, sidewalks, parks and landscaping. The project would also include removal of the sheet pile barrier and replacement of the culvert crossing

across the channel in the off-site improvement area at the southwest corner of the project site (Figure 9).

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 to construct residential housing; the project is therefore not water dependent.

Overall Project Purpose and Need: 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 develop an economically feasible, smart growth (transit-oriented) residential development to serve the housing needs in southwestern Alameda County (Cities of Newark and Fremont).

Additional project objectives include:

- Locate housing within walking and cycling distance of a regional transportation corridor station facilitating the construction of a transit-oriented development (TOD) as defined within the Dumbarton TOD Specific Plan and the City of Newark General Plan;
- Prioritize infill and redevelopment of remediated sites within the urban footprint;
- Set aside land for open space preservation and recreation; and
- Avoid the loss of farmland or natural lands.

Project Impacts: Project implementation would include mass grading over approximately 41 acres of the 54.5-acre property, and would result in permanent fill within 6.28 acres and temporary fill within 0.41 acre of wetlands and other waters of the U.S. This estimate includes 0.3 acre of permanent wetland fill from offsite roadway improvements already permitted for the adjacent Torian Development.

Proposed Mitigation: A total of 9.6 acres of wetlands would be avoided, approximately 5.93 acres of which have been donated to a non-profit conservation entity, and 3.67 acres of which would be preserved and managed on site. The applicant proposes to compensate for impacts to wetlands and other waters through the purchase of credits

at the San Francisco Bay Mitigation Bank or other approved mitigation bank with a service area that includes the project site.

Project Alternatives: A preliminary analysis that evaluates off-site and on-site alternatives was provided by the applicant. Five (5) alternative locations were evaluated. According to the applicant's submitted materials three (3) represent potentially higher adverse effects to waters of the U.S., all five (5) represent higher adverse effects on federally listed species, and one (1) may adversely affect other sensitive resources. Two (2) have designated land uses inconsistent with the project purpose.

Further, the analysis considers five on-site alternatives. Implementation of two (2) would require fill of more waters of the U.S. compared to the proposed project. One alternative would require fill of a similar acreage of waters of the U.S. but would result in a significantly reduced number of constructed units; and would fail to meet the project purpose. Two additional alternative designs would result in higher overall percent profit however both require unacceptably high impacts to waters of the U.S. One Alternative represents a project with too few units that would result in an economic loss.

USACE has not approved the submitted alternatives analysis at this time. Prior to reaching a final permit decision, USACE will conduct an independent review of the submitted alternatives, and any additional alternatives that may be required, to ensure compliance with the Section 404(b)(1) Guidelines (40 C.F.R. Part 230).

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver 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 San Francisco Bay 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. 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 USACE indicates the project would not likely affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by the San Francisco Bay Conservation and Development Commission.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111, by the close of the comment period.

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. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 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 Federally-listed species and designated critical habitat are not present at the project location or in its vicinity.

The likelihood of the occurrence of the salt marsh harvest mouse (SMHM, *Reithrodontomys raviventris*) was carefully studied by the applicant. Based on live trapping surveys it was demonstrated that the species does not occur on the Gateway Station West site nor does the site provide any of the primary constituent elements (i.e., thick, dense stands of perennial pickleweed intermixed with other halophytic plants that are mid-range in salinity level) necessary to support SMHM. Implementation of the project, which includes reintroduction of tidal flows into an existing channel adjacent to preserved wetland, may result in enhancement of tidal marsh habitat, making the area more suitable for SMHM. To address the potential for beneficial effects to SMHM USACE will initiate informal consultation with USFWS, 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.

Although a preliminary determination has been made that consultation with NMFS will not be required due to the presumed absence of ESA listed marine or anadromous fish species from the Plummer Creek system, USACE 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.

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*, and 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 not present at the project location or in its vicinity, and that consultation will not be required. USACE 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 Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely 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 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 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. USACE 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 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 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 USACE.

6. PUBLIC INTEREST EVALUTION: 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.

public notice may be viewed under the *Public Notices* tab on the USACE website:
<http://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 of the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Mr. Greg Brown, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; 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