



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: Moller Ranch Residential Development

PUBLIC NOTICE NUMBER: 2005-29639S

PUBLIC NOTICE DATE: May 15, 2013

COMMENTS DUE DATE: June 15, 2013

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1. **INTRODUCTION:** Braddock and Logan Services, Inc., 4155 Blackhawk Plaza Circle, Suite 201, Danville, CA 94506, (POC: Mr. Jeff Lawrence, 925-736-4000), through its agent, H.T. Harvey & Associates (POC: Mr. Patrick Boursier, 408-458-3204) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to construct the Moller Ranch residential development, located in the City of Dublin, 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.*).

2. PROPOSED PROJECT:

Project Site Location: The Moller Ranch project site is located in the foothills of the Diablo Range, northeast of Tassajara Road, in the City of Dublin, Alameda County, California (Figure 1).

Project Site Description: The 181.85 acre Moller Ranch Project site has steep rolling hills of undeveloped, grassland that have been in active grazing for many years. Only a small 4.12 acre area has been developed as a residence and building associated with the ranching activity. Non-native grasses of wild oats (*Avena fatua*), Italian rye grass (*Festuca perennis*), and soft chess brome (*Bromus hordeaceus*) are the dominant vegetation. The project site has 3.48 acres of seasonal wetlands and 0.92 acre of other waters that are jurisdictional pursuant to Section 404 of the Clean Water Act (Figure 2). The seasonal wetlands are mainly seeps associated with the onsite streams. Wetland vegetation is dominated by

Mediterranean barley (*Hordeum marinum*), Mexican rush (*Juncus mexicanus*), iris leaved juncus (*J. xiphioides*), rabbitsfoot grass (*Polygonum monspeliensis*), and saltgrass (*Distichlis spicata*). Over 8,000 linear feet of streams flow within the project site including the perennial stream, Moller Creek. Moller Creek receives the flow from all the other onsite streams and has two patches of riparian woodland and an instream wetland area.

Proposed Project: The proposed project would construct up to 381 single-family homes, a 1.1 acre neighborhood park, staging areas and trails, transportation and utilities infrastructures within 92.93 acres. The applicant is also proposing a single crossing over Moller Creek, and a system of bio-retention cells for water quality and hydromodification. Work within Corps jurisdiction would include the residential development and several creek stabilization measures involving willow plantings along banks and at the toe of slopes, the removal of an existing culvert, and the installation of three subdrains (Figure 3).

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 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 housing within the city of Dublin.

Project Impacts: The proposed project would require the placement of fill into 0.19 acre of perennial streams, 0.73 acre of ephemeral and intermittent streams, and 3.48 acres of wetlands, totaling 4.40 acres of impacts to waters of the U.S. (Figure 4).

Proposed Mitigation: The applicant is proposing off-site mitigation at the 37.65 acre proposed Cayetano Creek Preserve. This mitigation site is located approximately 2.5 miles northeast of the proposed Moller Ranch project site. The Cayetano Creek Preserve is intended to provide mitigation for two separate projects (the Moller Ranch Development Project and Tassajara Road Culvert Replacement Project). This site is currently grazed grassland and the West Branch of Cayetano Creek flows through the site. The applicant is proposing to establish 7.88 acres of seasonal wetland area and to plant 1.53 acres of riparian woodland to mitigate for the 4.40 acres of impacts to waters of the U.S) (Figure 5).

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 California 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.

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 proposed 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.

Other Local Approvals: The applicant has also applied for 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 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 the project may affect the federally listed San Joaquin kit fox (*Vulpes macrotis mutica*), California tiger salamander (*Ambystoma californiense*) and the California red-legged frog (*Rana draytonii*) and designated critical habitat for the California red-legged frog.

The proposed project site occurs within the East Alameda County Conservation Strategy study area and the applicant has proposed that the project be amended to the May 31, 2012, Programmatic Biological Opinion. Furthermore, the applicant is proposing to establish the 551.5 acre Moller Ranch Conservation area to provide mitigation at a 3:1 mitigation ratio to compensate for impacts to all three listed species (Figure 6). To address project related impacts to these species and designated critical habitat for California red-legged frog, USACE has initiated formal consultation with the 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.

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 MPRS 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 will review of information provided

by the applicant that includes latest published version of the *National Register of Historic Places* and survey information, to determine the presence or absence of historic and archaeological resources within the permit area. 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. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. 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 EVALUATION: 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.

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 Katerina Galacatos, 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 public notice may be viewed under the *Public*

Notices tab on the USACE website:
<http://www.spn.usace.army.mil/Missions/Regulatory>.