



US Army Corps
of Engineers®

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

NUMBER: 24450N

DATE: December 23, 2002

RESPONSE REQUIRED BY: January 23, 2002

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

PERMIT MANAGER: Bryan Matsumoto Phone: 415-977-8476

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1. **INTRODUCTION:** Mr. William Saks, William A. Saks & Co., 383 First Street West Sonoma, California 95476, (707) 996-7257, and Mr. David Faris, Schell Investments, INC., 13250 River Road, Guerneville, California 95446, (707) 824-7225, have applied to the U.S. Army Corps of Engineers (USACE), through their agent The Huffman-Broadway Group, INC. (HBG) (Contact: Dr. Jonathan Lilien; 415-925-2000), for a Department of the Army after-the-fact individual permit to develop the Carneros Business Park, a 17-lot light industrial subdivision on a 53-acre project site located at 21988 8th Street East in the City of Sonoma, Sonoma County, California (APN 128-381-032) (Enclosure 1). This project will cause the permanent loss of 0.32 acres of "waters of the U.S." The duration of authorization, should it be accepted, would be for 5 years from the date of permit issuance. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. **PROJECT DESCRIPTION:** As shown in the attached drawings, the applicant plans to develop 53-acres into a 17-lot light industrial subdivision. The project will create over 750,000 square feet of office, warehouse, and other light industrial floor space. Site preparation began on July 1, 2002, without USACE authorization, and resulted in the rough grading and de-vegetating of approximately 0.58 total acres of "waters of the U.S.," which included the northwest drainage (Drainage A), the central drainage (Drainage B), and the northeast drainage (Drainage C) (Refer to enclosure 2). Fill was also placed in the lower section of Drainage B, and along various locations of Drainage A and Drainage B to create road crossings for construction vehicles, which totaled approximately

0.08 acres of fill into "waters of the U.S." Fire ponds and a flood plain volume zone were also constructed, but a USACE permit was not required. The applicant's agent notified the Corps about the unauthorized activity, and a visit to the site was conducted to verify the activities described above. Subsequently, on October 30, 2002 a letter was sent to the applicant stating that construction activities on the project site would need to be permitted by the Corps, and that corrective action measures to prevent on site soil erosion during the rainy season were authorized. On December 6, 2002 additional corrective action measures were authorized.

Proposed future construction includes filling of Drainage A (0.25 acres), three clear span bridges along Drainage B (Enclosure 3), roadways, and an underground storm drain system with outfall structures. The storm drain system includes the construction of 20 outfalls, 5 of which will be constructed into "waters of the U.S.," including 48 cubic yards of rock rip-rap.

Conceptual Mitigation Plan: The applicant has submitted a conceptual mitigation plan for the permanent loss of 0.32 acres of "waters of the U.S.," which involves the creation and restoration of 2.63 acres of stream/wetland habitat and 1.71 acres of riparian/buffer habitat on the project site (Enclosure 4). This would include the re-routing of Drainage A to accommodate the construction of 3 industrial lots, the restoration of the upper portion of Drainage B, and the creation of a large wetland basin in the lower portion of Drainage B. The final mitigation plan will be submitted at a later date.

3. **SITE DESCRIPTION:** The Carneros Business Park site is bordered by Sonoma Skypark Airport to

the north, 8th Street East to the west, and vineyards to the east and south. The site occupies 53 acres and before grading contained mostly non-native grassland vegetation. Approximately 0.72 acres of “waters of the U.S.” are inside the project boundary, and are tributaries of Schell Creek, which eventually flows to Sonoma Creek then San Pablo Bay. Over the years, it appears that Drainage A and B have been channelized. All experience intermittent flows.

4. PROJECT PURPOSE: The applicant indicates that the overall project purpose is to develop a larger than 50 acre commercial and industrial subdivision near the City of Sonoma.

5. STATE APPROVALS: 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 (33 U.S.C. 1341). The applicant is hereby notified that, unless the USACE is provided a valid request for water quality certification to the Regional Water Quality Control Board (RWQCB) within 30 days of the date of this Public Notice, the District Engineer may consider the permit application to be withdrawn. No Department of the Army Permit will be issued until the applicant obtains the required certification or waiver. A waiver will be explicit, or it may be presumed if the RWQCB fails or refuses to act on a valid request for water quality certification within 60 days after 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, Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, CA 94612, by the close of the public notice comment period.

Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)), requires a non-Federal applicant seeking a federal

license or permit to conduct any activity occurring in or affecting the coastal zone to furnish a certification that indicates the activity conforms with the State’s coastal zone management program. Generally, no federal license or permit will be issued until the appropriate State agency has concurred with the certification statement or has waived its right to do so. The project does not occur in the coastal zone, and a preliminary review by the USACE indicates that the project would not likely affect coastal zone resources. This presumption on effect, however, remains subject to a final determination by the California Coastal Commission.

6. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): At the conclusion of the public comment period, the USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190), the Council on Environmental Quality's Regulations at 40 CFR 1500-1508, and USACE Regulations at 33 CFR 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of the USACE and other non-regulated activities the 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.

Endangered Species Act of 1973 (ESA): The applicant’s agent, HBG, conducted a search, using the California Natural Diversity Data Base (CNDDDB), to determine potential for the project site to support federally listed threatened or endangered species. Searches were initiated for both the Sonoma and Petaluma Point U.S.G.S.

quadrangle maps, which encompass the project site and the surrounding area. Five species were found to occur within the quads: threatened northern spotted owl (*Strix occidentalis obsoletus*), endangered California freshwater shrimp (*Syncaris pacifica*), endangered Sonoma sunshine (*Blennosperma bakeri*), endangered California clapper rail (*Rallus longirostris obsoletus*), and endangered salt marsh harvest mouse (*Reithrodontomys raviventris*). None of these species are believed to inhabit the project site due to the lack of suitable habitat.

Although not found in the CNDDDB search, proposed endangered California tiger salamander (*Ambystoma californiense*), and threatened California red-legged frog (*Rana aurora draytonii*), are both known to occur in Sonoma County. There have been no known sightings of either of the species listed above in the City of Sonoma, and the project site does not occur within critical habitat for either species.

The USACE has made a preliminary determination that the project will not affect listed species or critical habitat. However, if new information suggests that federally listed threatened or endangered species are within the project boundary, the USACE will initiate informal consultation with U.S. Fish and Wildlife Service/National Marine Fisheries Service, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The consultation process must be concluded prior to the issuance of any Department of the Army Permit for the project.

Magnuson-Stevens Fishery Conservation and Management Act of 1996 (MSFCMA): The aforementioned Section 7 consultation process, should it be needed, will also address project-related impacts to essential fish habitat.

National Historic Preservation Act of 1966 (NHPA): A Corps of Engineers archaeologist is currently conducting a cultural resources

assessment of the permit area, involving review of published and unpublished data on file with city, State, and Federal agencies. If, based upon assessment results, a field investigation of the permit area is warranted, and cultural properties listed or eligible for listing on the National Register of Historic Places are identified during the inspection, the Corps of Engineers will coordinate with the State Historic Preservation Officer to take into account any project effects on such properties.

7. COMPLIANCE WITH THE 404(b)(1) GUIDELINES: Projects resulting in dredged or fill material discharges 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 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 practicable alternative to the project-related discharges into waters of the United States that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. The applicant is in the process of submitting an analysis of project alternatives to be reviewed for compliance with the Guidelines.

8. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all those factors which become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore

determined by the outcome of the general balancing process. That decision will reflect the national concern for both protection and utilization of important resources. All factors, which may be relevant to the proposal, must be considered including the cumulative effects thereof. Among those are 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.

9. CONSIDERATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

10. SUBMISSION OF COMMENTS: Interested parties may submit in writing any comments concerning this activity. Comments should include the applicant's name, the number, and the date of this notice and should be forwarded so as to reach this office within the comment period specified on page one of this notice. Comments should be sent to the Regulatory Branch. It is Corps policy to forward any such comments which include objections to the applicant for resolution or rebuttal.

Any person may also request, in writing, within the comment period of this notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose address is indicated in the first paragraph of this notice, or by contacting Bryan Matsumoto of our office at telephone 415-977-8476 or E-mail: Bryan.T.Matsumoto@spd02.usace.army.mil. Details on any changes of a minor nature, which are made in the final permit action, will be provided on request.

