



US Army Corps
of Engineers.

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

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Regulatory Branch
333 Market Street

San Francisco, CA 94105-2197

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1. Introduction: Mr. Eric Keller, as a representative of Shea Homes, through his agent, Dr. Patrick Boursier, H.T. Harvey & Associates, 3150 Almaden Expressway, Suite 145, San Jose, CA 95118 (408) 448-9450 x 301, has submitted an application for a Department of the Army permit to excavate and fill 0.45 acre of waters of the United States, composed entirely of tributary waters (Fisher Creek) in association with the construction of the Madrone Ranch Project in the City of Morgan Hill, Santa Clara County, California (see Figures 1 and 2). The permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

A delineation of the waters of the United States for the site was verified by the Corps. Vegetation on the project site is comprised primarily of non-native, annual grasses and forbs. The bed of this seasonal reach of Fisher Creek is intermittently vegetated with species typical of moist habitats; however, wetlands are not present within this reach of the Creek. Riparian vegetation is also not present.

2. Project Description: The applicant proposes to construct an 82-unit residential development project that will include roadway widening, the construction of a hundred-year flood retention pond with recreational facilities, a trail and open space, and a seasonal wetland mitigation site (see Figure 3). All impacts to tributary waters will be due to road widening and storm drain improvements requested by the City of Morgan Hill. For clarification, the entire parcel is approximately 66 acres; of this, only 33 acres are to be developed as part of the current project. Shea Homes does not control the balance of the site (33 acres). It is

anticipated that the remainder of the site will be improved for residential housing in future phases.

3. State Approval: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must obtain a State water quality certification or waiver before a Corps permit may be issued. The applicant indicates that he will be submitting a request for certification to the Regional Water Quality Control Board, San Francisco Bay Region. No Corps permit will be granted until the applicant obtains the required certification or waiver. A waiver shall be explicit, or it will be deemed to have occurred if the State fails or refuses to act on a valid request for certification within 60 days after receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act. Those parties concerned with any water quality problems that may be associated with the project should write to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California, 94612.

The project is outside the San Francisco Bay Conservation and Development Commission (BCDC) and the California Coastal Commission (CCC) jurisdictional boundaries, therefore, no BCDC or CCC permits are required.

The applicant will need to enter into a California Department of Fish and Game (CDFG) Section 1603 Streambed Alteration Agreement for project impacts to the bed and banks of Fisher Creek.

4. Environmental Assessment: The Corps has assessed the environmental impacts of the action proposed in accordance with the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190), and pursuant to Council on Environmental Quality's Regulation, 40 CFR 1500-1508, and USACE Regulations, 33 CFR 230 and 325, Appendix B. Unless otherwise stated, the preliminary Environmental Assessment describes the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of the Corps.

The preliminary Environmental Assessment resulted in the following findings:

4 a. IMPACTS ON THE AQUATIC ECOSYSTEM

(1) Physical/Chemical Characteristics and Anticipated Changes

Substrate - The project site is relatively level and minimal surface grading will be required for the development of housing. The road widening, storm drain improvements, and the creation of an on-site seasonal wetland mitigation area will involve some grading and fill. However, most of the work within jurisdictional waters will involve the reconfiguration of portions of Fisher Creek and placement of the one reach into a culvert. The material used to fill the existing waters of the U. S. will be native soils from within the boundaries of the project site. Due to seasonal flows and lack of wetland and riparian vegetation, the reach of Fisher Creek to be filled provides marginal habitat for wildlife species. Therefore, adverse impacts to the aquatic substrate are considered to be minor.

Since the permeability of the *in situ* subsoils at the design grade for the wetland mitigation site is too high to ensure an adequate duration of ponding, the proposed mitigation area will be over-excavated to approximately 4.25 feet (1.25 feet below design grade). Then a 3-inch thick compacted native-soil liner will be installed and topped with a 1-foot thick layer of stockpiled clay loam topsoil as a rooting medium for wetland vegetation.

Drainage Patterns - Fisher Creek flows in a northern direction and receives runoff from the nearby hillsides. The road widening and storm drain improvements will alter the existing drainage channels, but flow patterns will remain relatively the same. Construction of the project will impact the entire reach of Fisher Creek that occurs on site (approximately 2,320 linear feet). Approximately 1,280 feet of channel will be placed into culverts while the remaining channel reach on site will be realigned. On-site mitigation for project impacts comprises both the earthen portion of the realigned Fisher Creek channel and a side-channel seasonal wetland. Adverse impacts to drainage patterns are considered to be minor.

Erosion/Sedimentation Rate - The road widening and storm drain improvements will alter the existing ground surface and vegetation, alter patterns of surface runoff and infiltration, and could result in short-term erosion and sedimentation during construction of the project. These potential impacts can be reduced by timing grading activities to avoid the rainy season. Also, a desiltation basin will be constructed approximately 500 feet upstream of the wetland mitigation site and will minimize sedimentation at the mitigation site. Implementation of mitigation measures will reduce these potential impacts to a minimal level.

Water Quality - The reach of Fisher Creek that occurs in the project vicinity and crosses the southwest portion of the project site is a seasonal drainage. During the construction of Hale Avenue in the 1960s, the County of Santa Clara apparently modified and deepened Fisher Creek as evidenced by the uniform channel cross-section and adjacent berms of side cast soils. Proposed changes in site topography and land use will alter the existing hydrology pattern and water quality.

Project site development will increase the rate and volume of storm water leaving the site and resultant urbanization of the area would introduce non-point pollutants that could degrade local runoff quality. The conversion of the project site from its present state to that of an urbanized development would likely result in slight short-term adverse impacts to water quality from sediment loading and minor

long-term adverse impacts to water quality due to runoff from streets, parking lots and other impervious surfaces. The applicant will file a notice of intention to adhere to the conditions of the general statewide construction National Pollutant Discharge Elimination System (NPDES) permit with the Regional Water Quality Control Board.

The proposed storm drain improvement and creation of an on-site wetland mitigation area and a desiltation basin are expected to mitigate post construction water quality issues. Implementation of these measures and adherence to existing regulations would not result in long-term adverse effects on water quality.

Flood Control- More impervious surfaces will be created due to paved streets and development. The proposed storm drain improvements are designed to control 100-year flood events. The project is not expected to measurably increase flooding of areas downstream of the project site, therefore impacts to flood control are not expected to occur.

(2) Biological Characteristics and Anticipated Changes

Waters of the United States - A total of approximately 0.45 acre of Waters of the U.S. occurs on-site (see Figure 4); these jurisdictional waters are limited to the tributary waters of Fisher Creek. The proposed project will impact the entire 0.45 acres of tributary waters on-site. Approximately 2,320 linear feet of Fisher Creek will be impacted due to the proposed project.

The bed of the Creek is intermittently vegetated with species typical of moist, habitats, however, no wetlands are present on the project site. Herbaceous upland species are found within the channel bed and dominate the channel banks. No riparian habitat is present along the reach of Fisher Creek that occurs on site. This reach of Fisher Creek is generally of low habitat value due to the lack of riparian vegetation and seasonality of stream flows. Habitat for special-status plant species does not exist on-site.

Figures 5 and 6 show the locations of the on-site mitigation sites. Impacted Corps jurisdictional areas will be mitigated at a ratio of 2:1 (mitigation area : impact area). Approximately 0.80 acre of new wetlands will be created within the side-channel seasonal wetland mitigation site. The realigned creek channel will generate approximately 0.14 acre of new tributary waters. The realigned earthen creek channel will be approximately 560 linear feet with a bed width of approximately 8-feet. Figures 7 and 8 show the conceptual design details of the proposed mitigation sites.

Endangered Species - At this time the Corps has determined that no Federally listed threatened or endangered species will be impacted by the proposed project. Should impacts to listed species be identified, the Corps will consult with the appropriate Federal resource agency under Section 7 of the Endangered Species Act.

Habitat for Fish, Other Aquatic Organisms and Wildlife- Relatively few species of aquatic organisms are present within this reach of Fisher Creek owing to both the lack of riparian vegetation and the intermittent nature of the drainage on the site. During the wet season, the Creek provides marginal breeding habitat for amphibians such as the Pacific treefrog (*Hyla regilla*) and western toad (*Bufo boreas*).

Waterfowl that can utilize areas providing little water such as the mallard (*Anas platyrhynchos*) might forage in this small flow channel, and migrants such as the White-crowned and Golden-crowned Sparrow (*Zonotrichia leucophrys* and *Z. atricapilla*) are expected to forage along the banks of this drainage. Impacts to fish and wildlife from the proposed project are considered to be minor.

4. b. IMPACTS ON RESOURCES OUTSIDE THE AQUATIC ECOSYSTEM

(1) Physical Characteristics and Anticipated Changes

Air Quality- Construction activity is likely to result in local, short-term increases in organic vapor emissions from such construction materials as

adhesives, solvents, paints and fresh asphalt. These short-term increases in emissions would result in short-term, moderate, adverse impacts. Clearing and earth moving activities, wind erosion, and traffic at the project site will result in fugitive dust emissions. Additionally, increased vehicular traffic would increase air pollutant levels locally and regionally.

Dust emission during construction phases of the project will be mitigated in the following ways: (1) Water and dust palliatives will be applied to exposed and disturbed soils; (2) Dust creating activities will be suspended during high winds if visible dust plumes are generated; (3) Construction areas and adjacent streets will be swept of mud and debris; and (4) Construction traffic will be limited to 15 mph on unpaved surfaces. With implementation of these measures, impacts to local air quality from dust emissions would be minimal.

Noise Conditions- Project construction will occur over a single construction season. Major noise associated with construction includes truck activity, pile driving, heavy equipment used in grading and paving, and impact noise, and noise associated with construction activities. Construction impacts are most severe when they occur near existing residential uses. The applicant will implement mitigation measures enforced at the local level to minimize noise level impacts on the local community.

(2) Biological Characteristics and Anticipated Changes

The current project will result in the loss, degradation, or disturbance of 33 acres of primarily grasslands or agricultural lands. The remaining 33 acres of the site will likely be improved for residential housing in future phases.

No plant or animal species currently listed as State or Federally threatened or endangered, and no species currently considered candidate species, have been documented on the project site. The project site does not support suitable habitat for special-status plant species.

A number of surveys have been conducted for special-status wildlife species on the site. These surveys have determined that a number of special-status species are not present on the site. For example, no breeding habitat exists on site for the California tiger salamander (*Ambystoma californiense*). In addition, the project site does not support suitable habitat for the California red-legged frog (*Rana aurora draytoni*), and the site does not lie within its proposed critical habitat.

Reconnaissance-level surveys in October 1997, protocol-level surveys in June 1998 and additional reconnaissance-level surveys in Spring 2000 failed to detect Burrowing Owls (*Athene cunicularia*) on site. Although the Burrowing Owl has not been observed on the project site, this species has been recorded in the region. Since the site has been routinely disked, the habitat value to Burrowing Owls is low. California ground squirrel (*Spermophilus beecheyi*) burrows were observed along the eastern edge of the project site during the 1997 surveys and provide potentially suitable nesting and roosting sites. Therefore, pre-construction surveys are recommended if site construction does not commence 1-2 seasons from the date of the letter report summarizing the 1998 protocol-level surveys to ensure that no active Burrowing Owl burrows are lost or disturbed during project activities. If Burrowing Owls are found nesting on the site during these surveys, the loss of occupied habitat will be mitigated by the set-aside of suitable off-site habitat.

Reconnaissance-level surveys by H. T. Harvey & Associates have also identified a number of special-status wildlife species that could occur on the site. However, most of these species occur only as occasional visitors or transients on the site, and the project is therefore not expected to impact these species significantly. While a few other species (e.g., Loggerhead Shrike [*Lanius ludovicianus*], White-tailed Kite [*Elanus caeruleus*]) could breed on the site, populations of and habitat for these species are sufficiently abundant on a regional scale that project impacts to habitat and populations of these species are deemed less-than-significant.

Although species of raptors could utilize the site for foraging habitat, no raptors (except for possibly the White-tailed Kite) are expected to breed on site. Although populations of and habitat for the White-tailed Kite are sufficiently abundant on a regional scale that project impacts to habitat and populations of this species are not deemed significant, the loss or disturbance of an active nest of any raptor species as a result of project activities would be considered a significant impact. Tree removal during the non-breeding season, initiation of construction during the non-breeding season, and pre-construction surveys for any work initiated during the breeding season will prevent impacts to active raptor nests.

In light of the above mentioned biological surveys, the Corps has determined the adverse impacts to biological resources at the proposed project site would be minor.

(3) Socioeconomic Characteristics and Anticipated Changes

Aesthetic Quality- The project site is currently comprised of an open ditch (Fisher Creek) and vacant fields dominated by invasive grasses and forbs. Few mature trees exist on the site. The project will change the rural, agricultural character of the area, and this change is considered an unavoidable, long-term adverse impact.

Economics- The proposed project will result in economic benefits to the applicants, the applicants' vendors and contractors, and future residents. The project will provide short-term employment related to construction. The project will provide tax revenues to the City of Morgan Hill. This is considered a long-term beneficial impact.

Public Health and Safety- The project will increase demand for police and fire protection services. No hazardous wastes or substances were found during the environmental assessment. The project will have minimal impacts to public health and safety.

Employment/Housing- The current project will provide short-term employment related to construction of 82 residential units on approximately 33 acres of the project site.

Ultimately, approximately 155 units (up to 128 single family units and up to 19 condominium units) will be constructed on the entire 66 acre project site. The project will help to improve the current jobs:housing imbalance currently in place throughout Santa Clara County which is considered a short-term, minor beneficial impact.

Traffic/Transportation- A traffic analysis completed for the Initial Study under the California Environmental Quality Act outlines the potential traffic impacts of this project and the mitigation measures required to make the impacts to a minimal level.

(4) Historic – Cultural Characteristics and Anticipated Changes

The applicants have submitted an assessment of possible archaeological resources within the project area and a recommendation addressing the unanticipated discovery of cultural resources should this occur. The Corps will coordinate with the State Historic Preservation Officer should impacts to cultural resources be identified, however, at this time no cultural resources are known to occur on-site.

4. c. SUMMARY OF INDIRECT IMPACTS

Development of the project would result in secondary, or indirect, impacts. These impacts would include further growth in the southern section of Santa Clara County. Longer term impacts could include further development of businesses, such as retail goods and service establishments within the nearby area and immediate region.

4. d. SUMMARY OF CUMULATIVE IMPACTS

Project development may contribute to future cumulative impacts on traffic and circulation, community services and facilities, solid waste, sewer, water and storm drainage, demand for water, storm drainage, soils, geology and seismicity, biological resources, visual resources, noise, and air quality. These potential impacts and mitigations have been identified and addressed in the city and county General Plans.

4. e. CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis of the above identified impacts, a preliminary determination has been made that it will not be necessary to prepare an Environmental Impact Statement (EIS) for the subject permit application.

5. Alternatives Analysis: Evaluation of the proposed action includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act [33 U.S.C. 1344(b)].

6. 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 that the proposed activity may have on the public interest requires a careful consideration of all factors that become relevant in each particular case. The benefits that may reasonably 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 that 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.

7. 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.

8. Submission of Comments: Interested parties may submit in writing any comments concerning this activity. Comments should include the applicant's name and the number and 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: San Francisco District Corps of Engineers Attention: Regulatory Branch at the address presented above. It is Corps of Engineers' 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 Public Notice, or by contacting Mark D'Avignon of our office at (415) 977-8446. Details on any changes of a minor nature that are made in the final permit action will be provided on request.