



US Army Corps  
of Engineers®

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

NUMBER: 25658N      DATE: April 26, 2002

RESPONSE REQUIRED BY: May 26, 2002

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

PERMIT MANAGER Jennifer Gerhardt

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1. **INTRODUCTION:** The Patson Development Company, 340 Pine Street, Suite 700, San Francisco, California 94104, through its agent, LSA Associates (contact George Molnar; 510-236-6810), has applied for a Department of the Army permit to fill 1.2 acres of a “water of the United States” to facilitate the development of the Patson Development Senior Housing Project. The project site is an 8.1-acre parcel located at the southwest corner of Dover Avenue and Marigold Drive in the City of Fairfield, Solano County, California (APN 168-080-020). This individual permit 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, entitled “Patson Development Senior Housing Project” Figures 1 and 2, dated October 11, 2001, the Patson Development Company proposes to develop a currently vacant lot into a 200-unit senior housing complex. The complex will be comprised of 12 two-story apartment buildings, a separate community center with a pool, an open-space park, and attendant features (e.g. sidewalks, parking areas, landscaping). Access to the community will be gained from both Dover Avenue and Marigold Drive. Construction of the Patson Development Senior Housing Project will require the

filling of a 1.2-acre seasonal wetland to provide filled, compacted and graded surface area for construction of the project. Filling of the wetland will require the placement of an estimated 5000 cubic yards of clean native soil, which will be obtained from on-site. The applicant will use bulldozers and other heavy earth-moving equipment to place the fill material and grade the site. After the site has been prepared, construction of apartment buildings and accompanying utilities and features (drainage, plumbing, electric, roadways) will commence. To compensate for the loss of 1.2 acres of waters of the United States, Patson Development Co. plans to provide 2.0 acres of mitigation in the form of created/restored perched seasonal and alkaline seasonal wetlands on property owned by the Suisun Marsh Natural History Association (SMNHA). The mitigation location and proposal can be seen on the attached drawings entitled “Patson Development Senior Housing Project” Figures 3 and 4, dated October 16, 2001; Figure 5, dated October 17, 2001; and 6, dated October 11, 2001.

3. **SITE DESCRIPTION:** The 8.1-acre parcel was previously used as a construction staging and fill borrow/disposal area for various construction projects in the City of Fairfield. It is presumed that these activities are the primary cause for the topography on

the site and the resulting seasonal wetland. The site, at present, ranges widely in topography from low-lying depressions to high, mounded areas of 8-12 feet in height. The dominant vegetation throughout the upland areas of the site consists primarily of ruderal grasses including Italian ryegrass (*Lolium multiflorum*), ripgut brome (*Bromus diandrus*), wild oat (*Avena sp.*), and Mediterranean barley (*Hordeum marinum*). The parcel is densely surrounded by single-family homes and associated facilities and infrastructure. The current conditions of the parcel can be seen in the attached drawing entitled "Patson Senior Housing Development" Figure 7, dated October 11, 2001.

The 1.2-acre seasonal wetland on the southern portion of the site is the principal jurisdictional feature on the parcel and is considered a "water of the United States". The dominant vegetation within the wetland consists of slender popcorn flower (*Plagiobothrys sp.*), water pygmy-weed (*Crassula aquatica*), flowering quillwort (*Lilaea scilloides*) and rabbit's-foot grass (*Polypogon monspeliensis*). The wetland is situated alongside a channelized unnamed tributary to Laurel Creek which eventually discharges into the Suisun Slough. No known animal or plant species of special status are known to exist within or rely upon this wetland or the surrounding uplands within the parcel. It is also unlikely that the site provides suitable habitat for such species.

**4. OFF-SITE MITIGATION:** Mitigation for losses to open waters, a result of project completion, will occur at an off-site location within an 11.4-acre tract of land owned by the SMNHA. The property (located 3.3 miles to the south of the project site) is dedicated to wildlife rehabilitation and public environmental education, currently contains previously restored marshland (the location and extent of which will be verified by Corps staff prior to permit issuance), and is adjacent to the 231.0-acre Peytonia Slough Ecological Preserve (operated by the California Department of Fish and Game). The

applicant is under contract to purchase mitigation rights to 2.0 acres of land from the SMNHA. The purchase is part of a 3.0-acre total purchase from the SMNHA all of which will be converted to perched (1.9 acres) and alkaline (1.1 acres) seasonal wetlands. As part of the purchase agreement SMNHA will undertake preparation of the site, planting of wetland species and monitoring for a period of 5 years. The applicant's mitigation plan also includes continued enhancement and long-term management of the surrounding uplands to control erosion. The mitigation site also provides an opportunity for the possible establishment of a new Contra Costa goldfields (*Lasthenia conjugens*) population (a species listed as rare by the State of California and endangered by U.S. Fish and Wildlife Service).

Off-site mitigation is considered biologically superior to on-site mitigation due to the low-functional value (e.g. element cycling, water conveyance, etc.) of the existing wetland and the lack of significant water flow into the adjacent channel in comparison with the greater habitat dispersion and connectivity that mitigating at the SMNHA property offers.

**5. PURPOSE AND NEED:** The 1992-2020 City of Fairfield General Plan states that there is a need for affordable housing for seniors. The project is consistent with current zoning ordinances within the City of Fairfield. The existing wetland must be filled in order to allow sufficient housing density to make the project financially feasible.

**6. STATE APPROVALS:** State water quality certification or 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 by 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 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 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.

Those parties concerned with any water quality issues that may be associated with this 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, by the close of the comment period of this public notice.

The project is not subject to the jurisdictional purview of the San Francisco Bay Conservation and Development Commission or the California Coastal Commission.

## **7. COMPLIANCE WITH VARIOUS FEDERAL LAWS:**

**National Environmental Policy Act of 1969 (NEPA):** At the conclusion of the public comment period, the U.S. Army Corps of Engineers 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 230 and 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):** No federally-listed threatened or endangered animal or plant species are known to reside on-site or in the immediate project vicinity. It is also unlikely that the site provides suitable habitat for such special status species.

**Magnuson-Stevens Fishery Conservation and Management Act of 1996 (MSFCMA):** The project site does not occur within designated Essential Fish Habitat for the Pacific Salmon Fishery, since the drainage (seasonal wetland) at this location is inaccessible to salmonids due to its lack of surface connectivity with a tributary.

**National Historic Preservation Act of 1966 (NHPA):** Based on a review of survey data on file with various City, State, and Federal agencies, no historic or cultural resources are known to occur on site or in the project vicinity. Standard construction-related measures to preserve such resources would be employed if buried artifacts or other archaeological resources were exposed during excavation and grading operations. If unrecorded historic or cultural resources were discovered during construction, such operations would be suspended until the USACE concluded Section 106 consultation with the State Historic Preservation Officer to take into account any construction-related impacts to these resources.

**8. 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 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 to be reviewed for compliance with the Guidelines.

**Alternatives Analysis:** The Patson Development Company sought out alternative sites for the senior housing development throughout the City of Fairfield and surrounding area. Sixteen sites were located, however none of those sites passed all criteria (e.g. designated land use, availability for acquisition, physical condition, etc.) and thus none were found to be an acceptable and feasible alternative. The Patson Development Co. has formulated two plan alternatives to the proposed project at the original Dover-Marigold location. These alternatives can be seen on the drawings entitled "Patson Development Senior Housing Project" Figures 8 and 9, dated October 11, 2001. Alternatives 2 and 3, while technically preserving some or all of the wetland, would cause further isolation of the wetland and greatly reduce the available watershed necessary to feed the wetland, likely causing the minor functional value that currently exists to rapidly diminish.

**9. PUBLIC INTEREST EVALUATION:** The decision on whether to issue a 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.

**10. CONSIDERATION OF COMMENTS:** The USACE 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 the project. All comments received by the 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 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.

**11. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to the San Francisco District, Regulatory Branch, North Section, citing the applicant's name and public notice number in the letter. Comments may include a request for a public hearing on the project prior to a determination on the permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All comments will be forwarded to the applicant for resolution or rebuttal. Additional information may be obtained from the applicant or by contacting Ms. Jennifer Gerhardt of the Regulatory Branch at telephone 415-977-8454.

