



US Army Corps  
of Engineers®

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

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RESPONSE REQUIRED BY: August 23, 2004

Regulatory Branch  
333 Market Street

San Francisco, CA 94105-2197

PROJECT MANAGER: Philip Shannin TELEPHONE: (415) 977-8445 Email: pshannin@spd.usace.army.mil

**1. INTRODUCTION:** Mr. Kevin Pohlon, Vast Oak Properties, 500 LaGonda Way, Suite 100, Danville, CA 94526 [Contact: Ted P. Winfield, Ph.D., Ted Winfield & Associates, 925-371-6379] has applied for a Department of Army permit, to place fill into 17.51 acres of Waters the United States, for the purpose of constructing a master-planned, mixed use development known as the Vast Oak project. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

The Vast Oak project site is approximately 224.41 acres, within the University District Specific Plan Area, and abuts the eastern limit of the City of Rohnert Park (Figure 1). The Vast Oaks site is bound on the south by Rohnert Park Expressway, on the north by Keiser Avenue, on the east by Petaluma Hill Road, and on the west by the City of Rohnert Park (Figure 2). Adjacent properties are shown in Figure 2, with land owners identified in Figure 3.

## 2. PROPOSED PROJECT:

**Project Site:** The Vast Oak project site has been in active agricultural production for over a century. The project site contains approximately 18.73 acres of jurisdictional waters of the United States. Hinebaugh Creek makes up 0.72 of these acres, with the rest comprised of wetlands.

Most of the site is designated prior converted cropland (PCC). In accordance with our regulations, the PCC fields were delineated using the Farm Service Agency (FSA) Manual, instead of the Corps Wetland Delineation Manual. Many wetlands that are jurisdictional under the Corps manual are not jurisdictional under the FSA manual.

Swampbuster, a law aimed at protecting wetlands, declares that a PCC designation exists only so long as land is put to agricultural use. Once a landowner urbanizes PCC fields, the land reverts to USACE jurisdiction and becomes subject to the Corps delineation manual, absent significant investment in reliance upon a USACE Jurisdictional Determination. The applicant made a case that they incurred investment expenses of over three million dollars, based upon reliance on their 2000 wetland delineation, and the Corps could not now revoke the PCC designation. The Corps concurred with this conclusion, based upon significant investment of resources, but maintains that in most cases PCC fields will lose their PCC designation if they are to be urbanized, and a new delineation shall be required, using the Corps wetland delineation manual.

The resulting wetland delineation, verified in 2000, identifies 18.01 acres of jurisdictional wetlands, including seasonal wetlands, farmed wetlands, and farmed wetland pasture (Figure 4, see also Figures 5 through 10). The on site wetlands, that are not jurisdictional by the Corps, are jurisdictional by the State. The applicant has identified an additional 6.11 acres of wetlands, which shall be regulated by the State but not by the Corps. The Corps has not verified the applicant's delineation, identifying these non-jurisdictional wetlands.

Seasonal wetlands occur on both sides of Hinebaugh Creek, between the edge of the riparian canopy and the adjacent fields and a wooded, unfarmed parcel along Keiser Avenue. These wetlands are dominated by ryegrass (*Lolium perenne*), sedges, including dense sedge (*Carex densa*) and slough sedge (*Carex obnupta*), and

rushes such a slender rush (*Juncus tenuis*) and brown-head rush (*Juncus phaeocephalus*). Common species in the wetlands in the ditches and defined drainages include ryegrass, curly dock (*Rumex crispus*), spikerush (*Eleocharis macrostachya*), and the sedges and rushes listed above as elements of the seasonal wetland vegetation.

Farmed wetlands on the Vast Oak site are, functionally, seasonal wetlands. The most common plant species, in the farmed wetlands, are ryegrass (*Lolium perenne*), bird's foot trefoil (*Lotus corniculatus*), velvet grass (*Holcus lanatus*), toad rush (*Juncus bufonius*), curly dock, and purple loosestrife (*Lythrum hyssopifolium*). Straight-beaked buttercup (*Ranunculus orthorhynchus*) and Douglas meadowfoam (*Limnanthes douglasii*) are locally abundant or dominant. Other native wetland species that occur in the farmed wetlands, as subdominant species, include vernal pool fireweed (*Epilobium cleistogamum*), flowering quillwort (*Lilaea scilloides*), fringed downingia (*Downingia concolor*), and water starwort (*Callitriche* sp.). A number of upland species also occur in these wetlands. Among them are annual lupine (*Lupinus nanus*), cutleaf geranium (*Geranium dissectum*), vetch (*Vicia sativa*), and mustard (*Sisymbrium irio*). These species germinate and develop later, generally coming to maturity, while the wetland species are in the drying phase.

Farmed wetland pastures occur in two fields between Hinebaugh Creek and Rohnert Park Expressway. The wetter area (less than an acre) supports rushes and sedges (dense sedge, slough sedge, slender rush, brown-head rush) but most of the wetland area in the two fields is dominated by perennial ryegrass, bird's foot trefoil, bristly oxtongue (*Picris echioides*), velvet grass, and vetch (primarily *Vicia sativa*).

The riparian habitat, along Hinebaugh Creek, is dominated by willow (*Salix laevigata* and *S. lasiandra*). California buckeye (*Aesculus californicus*) is an occasional co-dominant. Where a woody understory is present it is, typically, a thick, impenetrable tangle of blackberry (*Rubus procerus*, *Rubus californicus*) and poison oak (*Toxicodendron diversiloba*). Herbaceous or ground-layer vegetation is virtually absent from the Hinebaugh Creek riparian corridor except in openings and at the margin of the canopy.

**2. Project Description:** The Vast Oak Project site constitutes a major portion of the University District Specific Plan Area for the City of Rohnert Park. The proposed project will provide a full range of housing types, a compact commercial center, and a linear park. In addition, the project proponent will provide a trail network, that will link existing neighborhoods and the new development to Sonoma State University, Rancho Cotate High School, Creekside Middle School and open space areas east of the City. As shown in the attached drawings (Figures 4 through 10), the applicant plans to construct a mixed-use master planned community consisting of between 1,155 (without secondary units) to 1,219 residential units (with secondary units), to include 100 mixed-use units and 162 affordable units. Mixed-use units will occur in and around the commercial center. Each mixed-use unit will provide various uses, such as businesses, retail stores, institutions, service organizations, and high - density residences, combined in a single building or series of buildings. The proposed Vast Oak project constitutes a major portion of the University District Specific Plan Area, for the City of Rohnert Park. The project will be developed in five phases, with each phase covering between 23 and 75 acres.

The Vast Oak project will address storm water quality management and detention, through construction of detention basins and vegetated swales (bioswales). Bioswales will be constructed

along the Hinebaugh Creek terrace, approximately 80 feet outside the creek channel, and as low-flow bio-channels, within the series of detention basins along the northwestern property line. The swales function as permanent, structural best management practices (BMPs) and reduce pollutant runoff, from storm water flows in the residential community they service. All low-flow storm events will be routed through these water quality facilities, before discharging to Hinebaugh Creek or being re-routed to the project area storm water system. Approximately three outfalls, into Hinebaugh Creek, will be provided from the bioswales. These outfalls will be jointly used for general project discharge. Outfall protection (energy dissipation) will be provided, where these discharges enter the creek, and will meet the specifications of the Sonoma County Water Agency.

Construction of the project will also result in temporary impacts to the eastern end of Hinebaugh Creek (Figure 6). At the eastern end of the project site, sediment has accumulated in Hinebaugh Creek, beneath Petaluma Hill Road, to a depth of approximately three feet above the culvert. This condition restricts flows and increases the risk of overflow onto Petaluma Hill Road.

There are two channels, which merge just downstream of the culvert. The southern channel is the main channel. The northern channel functions as an overflow channel, because of its higher elevation flow line and lower gradient. Sediment accumulation from the southern channel will be removed. To reduce impacts to the channel and the riparian vegetation, an excavator, located outside of the channel, will remove the sediment. Pruning of vegetation will be limited to vegetation that interferes with the operator's line of sight to the channel bottom. Sediment would be removed over approximately 280 feet of channel such that there is an approximately 0.5 percent grade, extending from the culvert through the cleared portion of the

channel. Sediment removed from the channel would be used as fill at the project site or carried off-site, to an appropriate landfill.

**Purpose and Need:** The applicant states that the overall purpose of the project is to provide a viable, master-planned, mixed-use community, with housing, office, commercial, recreation and open-space uses serving the needs of the City of Rohnert Park and Sonoma State University. The basic purpose is residential and commercial development. The applicant further states that the project has been designed to meet local and regional land use needs, providing a centrally located commercial center, infrastructure, recreational areas, and housing, available to individuals, students, and families of various socioeconomic backgrounds, adjacent to Sonoma State University.

**Impact:** Development of the proposed Vast Oak project would result in permanent filling of approximately 17.51 acres of jurisdictional wetlands. The applicant has not stated how much of the non-jurisdictional wetlands shall be impacted by the project. In addition, there will be an additional 0.57 acres of temporary impacts, to the riparian habitat along the eastern end of Hinebaugh Creek.

**Proposed Mitigation:** The applicant is proposing to mitigate project impacts to jurisdictional waters of the United States (see Figure 11 for typical fill profile) by constructing and restoring seasonal wetlands at a ratio of at least 1.3:1. Mitigation includes creation of 26.22 acres of wetlands, plus preservation and enhancement of 6.41 acres of seasonal wetlands. Approximately 13.64 wetland acres are proposed to be constructed on-site, with 12.58 constructed off-site (within one-quarter mile of the project site). Additionally, the applicant proposes to restore and enhance approximately nine acres of riparian habitat along both sides of Hinebaugh Creek (Figure 12). The proposed riparian mitigation would provide a buffer between

the surrounding development and the creek, provide continuous wildlife habitat, and stabilize surface soils to reduce creek sedimentation.

The applicant has submitted a draft mitigation and monitoring plan, which is available for review at the Corps's office in San Francisco. The onsite creation component is in an area that does not contain jurisdictional wetlands, but which may or may not contain non-jurisdictional wetlands. The offsite property under consideration was been analyzed for suitable soils. Approximately, twelve out of the 48 acres were not found to contain suitable soil for wetland construction. Therefore the amount of wetlands, which may be created at this location, would be reduced approximately 25% from the 12.58 acres originally proposed.

### 3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

**National Environmental Policy Act of 1969 (NEPA):** The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and Corps' Regulations, 33 C.F.R. Part 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197.

**Endangered Species Act of 1973 (ESA):** Section 7 of the Endangered Species Act requires formal consultation with the United States Fish and Wildlife Service (FWS) and/or the National Marine

Fisheries Service (NMFS), if a Corps permitted project may adversely affect any federally listed threatened or endangered species or its designated critical habitat. Federally listed species reported to occur in the project area and potentially impacted by the proposed project include three species of plants (Sonoma sunshine [*Blennosperma bakeri*], Sebastopol meadowfoam [*Limnanthes vinculans*], and Burke's goldfields [*Lasthenia burkei*]), the California freshwater shrimp (*Syncaris pacifica*), the California tiger salamander (*Ambystoma californiese*) and Central California Coast steelhead (*Oncorhynchus mykiss*). The project site is outside the recognized range of the threatened California red-legged frog (*Rana aurora draytonii*).

Although potentially suitable habitat is present for several special plant species, no federally listed species of plants have been observed on the Vast Oaks project site during six years of surveys. The applicant has presented evidence that these species do not occur on clay soils on the Santa Rosa Plain, such as those found at the Vast Oak project site.

Habitat for the California freshwater shrimp is absent along Hinebaugh Creek along its route through the project site. Surveys for listed wildlife species were conducted on the Vast Oak site in 1994, 1995, 1996, 2000, 2001, 2002, and 2003, including a protocol survey for the endangered California tiger salamander. The FWS has determined development of the proposed project will not result in a take of any individual of the California tiger salamander. The section of Hinebaugh Creek that occurs across the project site and upstream of the project site does not provide habitat for the Central California Coast steelhead. The in-channel materials are predominantly clay, or angular rocks on top of clay and the creek is usually dry by late spring. No spawning and rearing opportunities are considered to be available for steelhead in the reach of Hinebaugh Creek that crosses the project site or the upstream watershed.

**5. 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 to determine whether to issue, 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 in the proposed activity.

**6. 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 the date of

this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public 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 name and address are indicated in the first paragraph of this Public Notice or by contacting Philip Shannin of our office at 415-977-8445 or [pshannin@spd.usace.army.mil](mailto:pshannin@spd.usace.army.mil). Details on any changes of a minor nature, which are made in the final permit action, will be provided upon request.