



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, CA 94103-1398

# PUBLIC NOTICE

PROJECT: East-West Connector Project

PUBLIC NOTICE NUMBER: 2008-00012S

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COMMENTS DUE DATE: June 3, 2011

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**1. INTRODUCTION:** The Alameda County Transportation Commission through its agent, ICF International (POC: Mr. Dustin Joseph, 408-216-2818, 75 East Santa Clara Street, Suite 300, San Jose, California, 95113) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to construct a 3 mile roadway that would provide improved east west access between Interstate 880 on the west and Mission Boulevard on the east in south Alameda County. 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 project alignment is located in the Cities of Fremont and Union City in Alameda County California. The alignment extends from the Decoto Road/Cabrillo Court intersection (located just northeast of the Interstate 880/Decoto Road ramps) in the west to the Mission Boulevard/Appian Way intersection in the east (figure 1). Affected water bodies would include Old Alameda Creek, Alameda Creek Flood Control Channel, Crandall Creek, Line M Channel, Detention Basin 2C (basin for the Park Ridge residential development), and New Basin (between Green Street and the BART tracks).

**Project Site Description:** According to a verified jurisdictional determination the project area contains a total of 10.14 acres of wetlands and 3.22 acres of jurisdictional other waters of the United States. Old Alameda Creek is an ancestral stream channel that rarely demonstrates stream flow. The former channel contains emergent and herbaceous wetlands. Alameda Creek Flood Control Channel is the major hydrologic feature in the

project area. The trapezoid-channel is characterized by a gentle gradient and variable dense herbaceous vegetation along the banks. Crandall Creek is a native stream that is routed underground and is unvegetated within the project area. The Line M Channel is a flood control drainage system that contains engineered side slopes, continuous gradient and uniform grassy vegetation. Basin 2C was constructed within an existing seasonal wetland and now serves as a stormwater detention basin. The remaining areas not subject to USACE jurisdiction (including New Basin). Most of these areas are maintained vacant lots dominated by ruderal weedy vegetation or agricultural land.

**Project Description:** As shown in the attached drawings (figures 2 – 6), the applicant proposes to improve existing roadways including widening of Decoto Road (from Cabrillo Court to Paseo Padre) and Paseo Padre Parkway (from Decoto Road to Isherwood Way) to six lanes. Intersections along both Decoto Road and Paseo Padre Parkway would be modified to improve safety and operation. The Applicant also proposes to construct 1.3 miles of four lane (84 feet wide) new roadway from Paseo Parkway to Mission Boulevard. This would require crossing the Alameda Flood Control Channel. A seven span bridge supported by six bents and two abutments on pile foundations is proposed for this crossing. Old Alameda Creek would be crossed in two locations. One crossing would require a 110 to 150-foot four-span structure. The second crossing would require a single span structure supported by abutments on pile foundations. Quarry Lakes Drive would be realigned to increase the distance between two intersections (Quarry Lakes Drive/new roadway and Alvarado-Niles Road/ new roadway). The Silva Farmhouse located southwest of the intersection with Alvarado-Niles Road would be demolished. The new roadway alignment would be

depressed below the existing BART tracks, UPRR Oakland Subdivision track, Green Street Bridge, and UPRR Niles Subdivision track, resulting in three new grade separation structures. The Line M Channel would be modified to accommodate the new roadway and to provide additional flood capacity. The Line M Channel would discharge into Old Alameda Creek via three 42-inch culverts. Also, three existing 48-inch overflow pipes connecting Old Alameda Creek and the Alameda Creek Flood Control Channel would be replaced with three 72-inch pipes. New roadway alignment would replace a short stretch of 7<sup>th</sup> Street (500 feet). The proposed new project would also provide bike lanes and sidewalks or trails along its entire length, so upon completion there would be a continuous bike and pedestrian corridor from east of I-880 to Mission Boulevard. Construction is planned between 2012 and 2015.

**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 alleviate traffic congestion.

**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 reduce local traffic congestion and travel time, and to provide a more direct east-west link in the transportation network in Fremont and Union City.

**Project Impacts:** The proposed project would directly affect a total of 2.19 acres of wetlands and other waters of the United States of which 0.932 acres would be permanently filled and 1.258 acres would be temporarily disturbed during project construction. The majority of wetland impacts would occur within detention basin 2C which represents 0.8 acre of impact.

**Proposed Mitigation:** A wetlands mitigation site, on Old Alameda Creek, is proposed to compensate for riparian vegetation and wetlands affected by the proposed project. Mitigation components would include (1) creating in-set benches for additional aquatic features on the upstream end of the creek; (2) planting native wetland and riparian vegetation; and (3) creation of a linear aquatic feature. In total approximately 1.696 acres of seasonal wetlands, 0.084 acre of other waters, and 2.98 acres of

riparian vegetation community would be created (figure 7).

### 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 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.

**Other Local Approvals:** The applicant has applied for a Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Game.

### 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 insure 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. Federally-listed species may be present at the project location or in its vicinity, and may be affected by project implementation. Species that may occur within the vicinity of the project area include California tiger salamander (*Amybystoma californiense*), California red-legged frog (*Rana aurora draytoni*), and Central California cost steelhead (*Oncorhynchus mykiss*). *Effects to these species could include direct mortality or injury as a result of construction related activities, however the Applicant proposes suitable avoidance and*

*minimization measures to insure that take does not occur.* To address project related impacts to these species, USACE will initiate informal consultation with USFWS and NMFS, 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 National Marine Fisheries Service (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 has conducted a review of information provided by the Applicant including the latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information, to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. 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.

**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 been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

**6. PUBLIC INTEREST EVALUTION:** 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 Paula Gill, San Francisco District, Regulatory Division, 1455 Market Street, 16<sup>th</sup> Floor, San Francisco, California 94103-13978; 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 *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/regulatory/>.