



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: Grady Ranch Precise Development Plan

PUBLIC NOTICE NUMBER: 2009-00181N

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1. **INTRODUCTION:** Skywalker Properties Ltd. LLC (POC: Angelo Garcia, 415-746-5006), 1110 Gorgas Street, San Francisco, CA 94129, through its agent, CSW/Stuber-Stroeh Engineering Group, Inc.(POC: Georgia McDaniel, 415-883-9850), 45 Leveroni Court, Novato, CA 94949, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill in jurisdictional wetlands and other waters of the U.S. associated with the construction of a new commercial facility and large scale bank stabilization and riparian restoration of Miller Creek, located at 2828 Lucas Valley Road, San Rafael, Marin County, California. 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:** This project is located at Grady Ranch, 2828 Lucas Valley Road, in the City of San Rafael, California (APNs 164-310-15, 164-310 -17, 164-310-19). Section 2, Township 2N, Range 7W, USGS Quadrangle map Novato.

**Project Site Description:** Grady Ranch is currently sparsely developed private open space with previous grazing land use. Ranch and fire roads, and a bridge over Miller Creek are the existing impacts to the property. The property is a mosaic of open annual grassland with scattered patches of native oaks and hardwoods in hollows and on northerly and easterly aspects. Redwoods and other native plants have been planted at locations throughout the ranch. A grove of Monterey pines, has become established

east of the mouth of Grady Creek. Miller Creek is the most significant aquatic resource in the project area and is a relatively permanent water with seasonal flow. The project site straddles Miller Creek, which runs east-southeast down the valley between Big Rock Ridge and Loma Alta and its subsidiary hills. Six miles east of Grady Ranch, Miller Creek enters San Pablo Bay, near the northwestern end of San Francisco Bay. Several tributaries including Grady Creek and Landmark Creek flow into Miller Creek in the project area. These creeks also have seasonal flow except in some small, shallow pools in the steeper upstream areas that remain wet through the dry season. There are also a few small seep wetlands in the steeper areas of the site. The majority of aquatic habitat in the project area is in Miller, Grady, and Landmark Creeks.

**Project Description:** As shown in the attached drawings, the applicant proposes to construct commercial development for digital technology-based entertainment production; replace existing bridges and culverts; and restore and enhance the riparian habitat and function of Miller Creek. The attached drawings are available as an electronic document at [http://www.spn.usace.army.mil/regulatory/PN/2011/2009-00181\\_plans.pdf](http://www.spn.usace.army.mil/regulatory/PN/2011/2009-00181_plans.pdf).

The proposed Grady Ranch Project includes construction of the Main Building, Gate House Building, and Main Entry Road; realignment of Lucas Valley Road at the main entrance to the project; improvement of West Fire Road; replacement of the fire access road to the east side of Grady Creek (East Fire Road); realignment of the Upper Fire Road around the Main Building; nine bridges; and other related improvements such as water tanks. Riparian restoration and enhancement of Miller Creek,

Grady Creek, Landmark Creek and other tributaries located on the property. Restoration and enhancement plans include improving the habitat functions and values of the Stream Conservation Area (SCA) as well as the creek channels. The project incorporates Low Impact Development (LID) practices to manage stormwater through a natural system that is coordinated with SCA restoration and enhancement. The remaining parcel area of 187 acres around the 52-acre development area would be preserved in its natural state as private open space.

The proposed Main Building would have three stories over underground parking, the proposed footprint is 123,145 square feet with a total area of construction of 269,701 square feet. The proposed Gate House would be 900 square feet and 25 feet high. Grading would involve approximately 237,355 cubic yards of cut and 239,059 cubic yards of fill. The 239,059 cubic yards of fill includes 67,660 cubic yards that would be used as material for stream restoration activities. Shrinkage of 0-5% of the volume of cut material due to the compaction of excavated soils used as fill may be experienced. The fill in the east fill area would be reduced, as needed, to balance the site. Most of the excavation would occur during the construction of the Main Building, Service Road, and Upper Fire Road.

An approximately 1,200 linear foot section of Lucas Valley Road would be realigned to eliminate two sharp curves and improve sight distances near the main entrance to the project. A Main Entry Road would be constructed from Lucas Valley Road, over Miller Creek to the Gate House and then to the Main Building. Just past the Gate House, a new section of the West Fire Road would be constructed to connect to the existing alignment of the fire road. Four existing unimproved crossings of Miller Creek and its tributaries would be replaced by bridges. The East Fire Road would be constructed to provide access to the property on the east side of Grady Creek. The Upper Fire Road would be realigned around the west side of the Main Building and then connect to the existing alignment above the Main Building.

Construction of the proposed main building, realignment of Lucas Valley Road, construction of access roads and bridges, will impact approximately 1,202 linear feet (0.09 acre) of other waters of the U.S.

The riparian restoration and enhancement of Miller Creek, Grady Creek, Landmark Creek and other onsite tributaries would place 4,730 cubic yards of soil fill from building construction, native creek bed material and boulders, over 2.0 acres below ordinary high water of

other waters of the U.S. The purpose of the compacted fill material is to raise the stream channel bottom elevation in selected reaches of the main creeks and their tributaries. Raising the channel bed would allow for the re-activation of abandoned floodplain terraces to provide flow and sediment attenuation, and would serve to ‘plug’ the existing drain of the alluvial aquifer. In-stream structures consisting of boulder step pools and weirs, and large woody debris structures (LWD), which improve habitat complexity and provide refugia for fish, are proposed to be created using boulders and trees removed during building construction.

**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 twofold, (1) commercial development, and (2) creek restoration and enhancement.

**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 (1) is to construct a commercial facility composed of a Main Building and associated infrastructure. The project need is to create additional custom-designed facilities for specialized digital film production.

The overall project purpose (2) is to restore and enhance Miller Creek, Grady Creek, Landmark Creek, and their tributaries located in the Project Area with the goal of reestablishing a natural creek channel morphology, fish passage, and enhancing the functions and values of the creeks and associated riparian areas. The project need is site-specific water dependent action to repair decades of erosion and damage to the headwaters of Miller Creek and to reconnect fish passage to upper Miller Creek and associated tributaries.

**Project Impacts:** A total of 2.0 acres of waters of the U.S. below the ordinary high water mark would be filled with 4,730 cubic yards of soil fill, boulders, native creek bed material for riparian restoration and enhancement. Stream restoration within Miller Creek will extend from a point approximately 950 linear feet downstream of the Grady Ranch Bridge to a point approximately 200 feet upstream of the western fire road crossing of Miller Creek. Restoration activities within these areas would generally include laying back creek banks and repairing deeply

incised creek reaches in order to raise the water table within Miller Creek, beneficially modifying flow durations, velocities, and bed and bank stability. Native riparian vegetation would be planted throughout the restoration areas to further enhance functions and values. Three small in-stream wetlands totaling 0.04 acre will be filled by stream restoration activities.

Construction of the proposed project, including construction of the Main Building, realignment of Lucas Valley Road and construction of access roads and bridges, will impact approximately 1,202 linear feet (0.09 acre) of other waters of the U.S.

Project impacts include re-routing of a small, intermittent drainage, a 573-foot portion of this stream would be filled, and flow would be diverted into a newly-constructed bio-engineered stream channel that will travel around the west edge of the proposed Main Building. 153 linear feet of a small intermittent drainage channel will be filled by construction activities. Project impacts also include re-routing of 464 linear feet a tributary of Miller Creek to allow for realignment of Lucas Valley Road near the main entrance. The bio-engineered stream channel would be planted with native riparian vegetation. Proposed project construction would fill approximately 16 linear feet (<0.01 acre) of an ephemeral tributary to Landmark Creek.

Total fill to intermittent creeks is 1,270 linear feet. The bioengineered channel realignments would establish (create) 1,230 linear feet of intermittent creek.

**Proposed Mitigation:** Miller Creek, Grady Creek, Landmark Creek, Loma Alta Creek and several smaller tributaries within the Project Area are deeply incised and show signs of heavy erosion along their banks. Streams affected by scouring and slumping provide poor habitat for aquatic and riparian vegetation and associated wildlife species such as salmonids and other fish species. The restoration (enhancement) of these riparian areas is self-mitigating and completion of the project will result in increased aquatic habitat function and in no net loss of aquatic habitat.

The bioengineered channel realignments would establish (create) 1,230 linear feet of intermittent creek to mitigate for the loss of 1,270 linear feet of intermittent creek filled for construction of the Main Building and realignment of Lucas Valley Road.

**Project Alternatives:** For both the commercial development and the riparian restoration a No Action Alternative was analyzed. Under the no federal action

alternative the project purpose and need for increased specialized production space was not fulfilled because there are no proposed building sites in this project area that are large enough for the proposed building that do not require fill in waters of the U.S. The no federal action alternative for the riparian restoration would preclude any work in the creek channels and therefore allows increased degradation of jurisdictional waters and restriction of steelhead habitat through a fish passage barrier on Miller Creek.

The On-Site Alternative for commercial development is an alternative building location located north of Miller Creek just west of the current Grady Bridge and in front of a hill. The Main Building would be reconfigured but have the same size footprint as the preferred alternative, and it would still be three stories above underground parking. The location of the building, however, would be shifted southwest. This location is on a steep hill which would result in significantly more cut and off-haul than the preferred alternative, and would require the complete filling of one unnamed drainage (a permanent impact of approximately 400 linear feet), and the realignment of approximately 178 linear feet of another unnamed drainage. Additional environmental effects of this alternative would include 0.9 acre of impacts to native grassland and 192 trees removed.

The Lay Back Banks Alternative for creek restoration would create a stable channel and floodplain area at the existing channel grade. This would be accomplished by laying back the banks of the incised channel and removing some of the adjacent terrace material to widen the inset channel and provide adequate floodplain area for flow and sediment attenuation. Boulder weirs would still be incorporated to provide channel stability and grade control, and to improve steelhead passage, although to a lesser extent than in the preferred alternative. Large logs and/or rootwads would also be placed within the restored channel corridor to improve habitat complexity and provide refugia for fish. This alternative would include a full reconfiguration of the channel, including significant (locally massive) disturbance of the stream bed, banks, and adjacent terrace. It represents a wider channel-corridor disturbance than the applicant's preferred alternative, affecting far more mature, bank-stabilizing trees.

The Selected Bank Stabilization Alternative for creek restoration would do spot protection of lower banks with rock and willows to prevent undercutting and collapse and would use in-stream large woody debris to divert flow away from banks. This alternative would require less fill

in the stream bed but would not stabilize upper banks and terraces.

### 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.

**Other Local Approvals:** The applicant has applied for the following additional governmental authorizations for the project: CA Department of Fish and Game Streambed Alteration Agreement, Marin County CEQA, Marin County Local Permit.

### 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. Based on this review, USACE has made a preliminary determination that the following Federally-listed species are present at the project location or in its vicinity, and may be affected by project implementation. The proposed project area of Miller Creek and Grady Creek contains Federally-listed threatened Steelhead-Central California Coast (*Oncorhynchus mykiss*). The Central California Coast ESU includes all naturally spawned populations of steelhead (and their progeny) in California streams from the Russian River in southern Mendocino County to Aptos Creek in Santa Cruz County, and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), excluding the Sacramento-San Joaquin River Basin. The overall project is projected to improve steelhead habitat and spawning areas by removing fish passage barriers and creating bio-engineered riffle areas (shallow areas with gravel or cobble substrate) for spawning and deeper pools with sufficient riparian cover for rearing. To address project related impacts to this species, USACE will initiate informal consultation with NOAA 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.

The USACE has made a preliminary determination

that California red-legged frogs (*Rana draytonii*) may be present at the project location or in its vicinity, and may be affected by project implementation. The California red-legged frog (CRLF) is distributed through central California and uses ponds or pools for breeding during the wet season and ponds, riparian areas, or other aquatic habitats during the rest of the year. To address project related impacts to this species USACE will initiate informal consultation with USFWS 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.

**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 latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant, 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 commercial facility for digital technology-based film production portion of 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, which is being reviewed by USACE.

The restoration and enhancement of Miller Creek, Grady Creek, Landmark Creek, and their tributaries located in the Project Area with the goal of reestablishing a natural creek channel morphology, fish passage, and enhancing the functions and values of the creeks and associated riparian areas 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 that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. The applicant has submitted an analysis of project alternatives, which is being reviewed by USACE.

**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.

<http://www.spn.usace.army.mil/regulatory/>.

**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 Sahrye Cohen, 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: