



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

PUBLIC NOTICE

PROJECT: Torian Site Residential Development

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COMMENTS DUE DATE: 12-18-2011

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1. **INTRODUCTION:** Integral Communities (POC: Glenn Brown, 925-984-7137, 190 North Wiget Lane, Suite 101, Walnut Creek, CA 94598), through its agent Zentner and Zentner (POC: John Zentner, 510-622-8110, 95 Linden Street, Suite 6, Oakland, CA 94607), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill material into jurisdictional waters of the United States associated with the construction of a residential subdivision on the Torian Property, located in the city of Newark, Alameda 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.*), and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The 42-acre Torian Property is comprised of two parcels (APN's 92-115-8 and 92-115-10) in the commercial/industrial area of western Newark (figures 1 and 2). It is bordered by Willow Street on the east, gravel roads on the west (Hickory Street) and south, and industrial properties owned by Ashland Chemical Inc. and SHH LLC on the north.

Project Site Description: The Torian site is a rectangular property situated among salt ponds, business parks, and other commercial/ industrial sites along the historic bay margins near the head of Plummer Creek slough. The property is a flat, partially developed but abandoned industrial parcel formerly occupied by a brick manufacturer. The north half of the property contains concrete foundations, paved areas, and other remnant infrastructure from the former brick factory. The south half is relatively undisturbed, primarily non-native annual

grassland, and contains the historic channel of Plummer Creek which is still visible as a swale parallel to the southern boundary. The Plummer Creek drainage was diverted into flood control channels in the mid 1900's. The main channel (F-1) runs near the southern property boundary, and a smaller tributary channel (F-6) runs between the south end of Willow Street and the eastern property boundary. Both channels are tidally influenced adjacent to the project site. The property contains 7.92 acres of wetlands clustered in three areas (figure 3): along the remnant Plummer Creek swale across the southern part of the property; within abandoned quarry pits adjacent to the eastern boundary, and in the low-lying northwestern quadrant of the property between Hickory Street and the former brick factory. The F-6 channel contains an additional 0.2 acre of brackish wetland.

Project Description: As shown in figure 4, the applicant proposes to develop the entire property with approximately 631 units, including 120 two story townhouses and 270 garden style apartments clustered in the northern part of the site, and 241 detached homes in the southern half of the site. The project also includes a central park area of about 2.1 acres, and paseos or "pass-throughs" and pocket parks totaling about 1.7 acres throughout the development for pedestrian movement among the homes. Finally, the project will include a bayside trail along the southern border of the property that takes up about 0.6 acres. This bayside trail will eventually connect to the planned Bay Trail project. Infrastructure to be provided by the project includes the following:

- Willow Street widening and re-construction.
- Hickory Street construction.
- Extension of Central Avenue
- EBDA sewer main replacement.
- Typical on-site streets, sanitary sewer, storm drain and water facility construction.

The stormwater treatment and runoff program includes numerous bioretention areas to treat stormwater. These are scattered throughout the densely developed site but will provide for landscape treatment of at least 50% of the developed site. Treated runoff will be released to the Alameda County Flood Control F-6 ditch, which runs along the eastern property boundary. Two outfalls will be constructed into this ditch (figure 5), which will also be crossed by the planned extension of Central Avenue into the development (figure 6).

To remediate soil quality issues resulting from past industrial activities and other factors, site preparation will require excavation of the surface soils at two locations (figure 7). These two locations include the eastern and southern wetland clusters and account for about 1.3 acres of the on-site wetlands.

Finally, due to soil stability issues, the entire site will require excavation, deep dynamic compaction (DDC) and the subsequent installation of a wicking system.

Construction phasing would be contingent upon marketing requirements but would generally include site preparation as one, continuous phase, presently scheduled for spring 2012 followed by construction and sale of units in the fall.

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 construct housing.

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 construct a mixed-density residential housing development to serve the city of Newark and Western Alameda County market area.

Project Impacts: Mass grading of the project site in preparation for construction would result in permanently filling all 7.92 acres of wetlands on the property. The two stormwater outfall structures in the F-6 channel would result in approximately 0.02 acre of additional wetland fill. The Central Avenue extension would cross the tidal portion of the F-6 channel with a clear-span bridge which would not result in fill impacts.

Proposed Mitigation: The applicant states that avoidance and minimization of impacts to the wetlands onsite is not practicable due to the need for soil remediation and deep dynamic compaction prior to development. The presence of contaminated soil requires that portions of the project site soils must be excavated and either treated or disposed of at an appropriate, off-site location. As shown in figure 7 and described above, two of the three wetland clusters on-site would be so treated. The third cluster, on the western side of the site, even if preserved, would be significantly affected by the excavation and wicking required to provide geotechnical stability, which would essentially drain the wetland. The applicant proposes compensatory mitigation for unavoidable impacts to 7.94 acres of wetlands through the purchase of eight acre-credits from the Preserve at Redwood Shores Mitigation Bank, located in Redwood City, San Mateo County (figure 1).

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 (33 U.S.C. § 1341 *et seq.*). The applicant has 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, by the close of the comment period.

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. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant is hereby advised to apply for a Consistency Certification from the San Francisco Bay Conservation and Development Commission to comply with this requirement.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111, by the close of the comment period.

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 may be present in the vicinity of the project, and may be affected by project implementation: salt marsh harvest mouse (*Reithrodontomys raviventris*), western snow plover (*Charadrius alexandrinus nivosus*), and California clapper rail (*Rallus longirostris obsoletus*). To address project related impacts to these 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.

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 present in the vicinity of the project, and that the critical elements of EFH may be adversely affected by project implementation. To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(5)(b)(2) 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 MPRSA 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. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

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 Greg Brown, San Francisco District, Regulatory Division, 1455 Market Street, 16th 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/>.