



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: Palos Colorados Residential Development

PUBLIC NOTICE NUMBER: 1996 - 22057S

PUBLIC NOTICE DATE: 06-6-2011

COMMENTS DUE DATE: 07-1-2011

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1. INTRODUCTION: Richfield Investment Corporation (POC: Ricardo Sabella, 713-975-6288), 10001 Westheimer Road, Suite 2888, Houston Texas, 77042, through its agent, LSA Associates (POC: George Molnar, 510-236-6810), 157 Park Place, Point Richmond, CA 94801), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to construct the Palos Colorados Residential Development. The proposed project would construct 123 single-family homes and associated infrastructure on an approximately 495 acre project site located in the Town of Moraga, Contra Costa County, California. The San Francisco District issued a public notice for this project on March 31, 2003. At that time, the proposed project included an 18-hole public golf course with associated clubhouse and practice facilities. The applicant has since revised the proposed project, eliminating the golf course and its associated facilities. Project impacts have been reduced from 1.06 acres to 0.67 acres of seasonal wetland fill and from 7,740 linear feet to 155 linear feet of stream fill. 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 proposed project is located in the town of Moraga in Contra Costa County, California, on undeveloped land situated east of Moraga Road, west of St. Mary's Road and south of Sky-Hy Road in Moraga (Figures 1, 2 and 3). The Project Site is bordered by residential development to the north, northwest and east. The city limits of the City of Lafayette form the eastern and northern boundaries of the site. The project site is comprised of eight parcels (APNs:

256-370-003, -004, -005, -006, -007, and -008; 237-080-014, and 256-040-023) located at 37.08733°N and 122.119722°W in Sections 5 and 6, Township 1S, Range 2W of the Las Trampas Ridge United States Geological Surveys (USGS) 7.5-minute quadrangle.

Project Site Description: The project site is situated within northwest-trending ridges with many streams, gullies, and swales. The central and largest portion of the project site drains into Coyote Gulch, a tributary of Las Trampas Creek and the northeastern corner drains into Old Jonas Creek, a tributary to Lafayette Creek. This area of the project site is within the Suisun Bay watershed. The smaller, eastern portion of the project site is within the San Francisco Bay watershed with the streams in the northwestern corner flowing into Laguna Creek, a tributary of Moraga Creek.

The Project Site also contains approximately 5.1 acres of jurisdictional seasonal wetlands, primarily associated with seeps and shallow swale drainages, and three jurisdictional stock ponds (Ponds 1, 2 and 3) encompassing approximately 2.7 acres (Figure 3). The applicant has constructed two additional ponds encompassing approximately 0.13 acres as pre-impact mitigation for the proposed project's potential impacts to the federally listed California red-legged frog (*Rana aurora draytoni*).

The project is currently grazed, pasture dominated by non-native grasses including wild oat (*Avena fatua*), foxtail brome (*Bromus madritensis*), riggut brome (*Bromus diandrus*), hare barley (*Hordeum murinum*), annual bluegrass (*Poa annua*), Italian ryegrass (*Lolium perenne*), and soft chess (*Bromus hordeaceus*).

Project Description: As shown in the attached

drawings, the applicant proposes to construct 123 residential lots and associated infrastructure on approximately 66 acres in the northern and western portions of the site (Figure 4). Residential lots would average 21,138 square feet in area. A total of 102.1 acres would be graded area and 66.9 acres permanently developed. The applicant is also proposing to preserve 358 acres as open space under a conservation easement.

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 mid-sized residential community composed of estate-sized market rate lots to serve the Western Contra Costa/Northern Alameda County market area.

Project Impacts: The proposed project would result in the permanent filling of 0.67 acres of jurisdictional wetlands and 155 linear feet stream (Figure 4). Temporary filling of 0.35 acres of jurisdictional waters would occur as a result of the construction of wetland mitigation features within on-site and off-site mitigation areas, and for the construction of the Laguna Creek detention basin. Following completion of the mitigation features and the detention pond, wetland and other aquatic habitat will be restored and expanded in each location where the temporary filling occurs.

Proposed Mitigation: Impacts to seasonal wetlands and streams will be mitigated onsite (Figure 5). The applicant is proposing to mitigate for impacts to seasonal wetlands by creating 0.61 acre of seasonal wetlands in 11 locations. The applicant is proposing to plant 2.8 acres of new oak and riparian woodland along onsite stream courses to mitigate for impacts to 155 linear feet of stream.

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 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. 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. 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.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project: Lake and Streambed Alteration Agreement and endangered/Threatened Species Take Authorization (Consistency Determination) to be issued by the California Department of Fish and Game and grading and building permits from the Town of Moraga. The proposed project has a certified Environmental

Impact Report and Vested Tentative Map and Hillside Development Approval from the Town of Moraga.)

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 federally-listed threatened California red-legged frog (*Rana aurora draytoni*) and Alameda whipsnake (*Masticophis lateralis euryxanthus*) are present at the project location or in its vicinity, and

may be affected by project implementation. USACE initiated consultation with the USFWS, pursuant to Section 7(a) of the Act on September 13, 2007 indicating that the proposed project is likely to affect California red-legged frog, and that the project may affect, but is not likely to adversely affect Alameda whipsnake. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. The applicant is proposing both onsite and offsite mitigation for the potential impacts to the federally-listed species (Figures 6, 7 and 8). The offsite mitigation site is at located Christie Road near Hercules, Contra Costa County, CA. Mitigation for potential impacts to California red-legged frog includes pond enhancement and construction. Additionally, upstream enhancement work entailing cattle exclusion, bio-stabilization and riparian plantings would be conducted to protect the new ponds from future erosion and sedimentation problems. The off-site mitigation property will be protected by a conservation easement.

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 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 reviewed the search conducted by the applicant's agent 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. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. 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 submitted an analysis of project alternatives which is being reviewed by USACE.

6. PUBLIC INTEREST EVALUATION: 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 Katerina Galacatos, 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/>.