



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: Elworthy Ranch Residential Development

PUBLIC NOTICE NUMBER: 29825S
PUBLIC NOTICE DATE: 12-15-2011
COMMENTS DUE DATE: 1-15-2012

PERMIT MANAGER: Galacatos

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1. **INTRODUCTION:** KB Home, Inc. (POC: Ray Panek, 925-750-1700, 6700 Koll Center Parkway, Suite 200, Pleasanton, CA 94566), through its agent, Jeff Olberding Environmental (POC: Jeff Olberding, 925-866-2111, 3170 Crow Canyon Place, Suite 260, San Ramon, CA 94583), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to construct the Elworthy Ranch Residential Development in the Town of Danville, Contra Costa County, California. The project will result in the discharge of fill material into 0.045 acre of wetland and 0.069 acre (350 linear feet) within the two streams. 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 site is located west of San Ramon Valley Road between North Clear Creek Place and Century Oaks Way in the town of Danville, Contra Costa County, California (Figure 1). The project site is located on the U.S.G.S. 7.5 minute Las Trampas Ridge Quadrangle Map (Figure 2).

Project Site Description: The 458 acre project site has moderately steep, east facing slopes and ravines at the base of Las Trampas Ridge. The site is currently grazed grassland dominated by non-native species. The non-native species include wild oat (*Avena fatua*), riggut brome (*Bromus diandrus*), Italian ryegrass (*Lolium perenne*), black mustard (*Brassica nigra*), yellow star thistle (*Centaurea solstitialis*), Italian thistle (*Carduus pycnocephalus*), filaree (*Erodium spp.*) and bur clover (*Medicago polymorpha*). In addition, the state, special-

status plant, Congdon's tarplant (*Hemizonia parryi ssp. congdonii*) has been documented to occur on the project site during focused surveys in August and September 2001 and within the project footprint during a reconnaissance survey September 2010.

Several streams and two wetland features (0.29 acres) are jurisdictional waters of the U.S. (Figure 3). The streams have been impacted by grazing and are characterized by incised and eroded stream banks. However, the stream that occurs to the south of North Clear Creek Place still has riparian habitat vegetation that includes coast live oak, (*Quercus agrifolia*), California bay (*Umbellularia californica*), valley oak (*Quercus agrifolia*), and California buckeye (*Aesculus californica*). One wetland is situated on the hillside of the project site and the second wetland is located adjacent to San Ramon Valley Road. Both wetland features are dominated by non-native species including Italian ryegrass, Mediterranean barley (*Hordeum marinum*), rabbitsfoot grass (*Polypogon monspeliensis*), and curly dock (*Rumex crispus*).

Project Description: As shown in the attached drawings, (Figure 4) the applicant proposes to develop approximately 12 acres for the construction of 86 residential lots with their associated utilities and infrastructure. In addition, the project will include improvements to an existing access road to an East Bay Regional Park horse trail staging area and parking lot. This project has reduced in size from an initial proposal of 94 residential lots to 84 residential lots. The applicant is also proposing the following: placing 24 acres in a scenic easement in perpetuity as mitigation for the federally listed Alameda whipnake, preserving 232 acres as open space, and dedicating approximately 186 acres to East Bay

Regional Parks District.

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 housing within the town of Danville.

Project Impacts: The project will result in the discharge of fill material into 0.045 acre of wetland and 0.069 acre (350 linear feet) within the two streams. Impacts to the wetland feature 1 are associated to grading activities and impacts to wetland feature 2 are associated with headwall construction (Figure 5). Impacts to streams are associated with grading activities, erosion protection, culvert replacement, and headwall construction. (Figure 6).

Proposed Mitigation: The applicant is proposing to mitigate for these impacts by establishing 0.045 acres of on-site wetlands and enhancing 2,075 linear feet of existing, on-site stream area (Figures 7 through 13). The majority of the on-stream enhancement shall occur along one stream (Channel #1) and will include headcut and grade stabilization. Stream enhancement will also include the removal of debris and non-native vegetation, concentrated along Channel #1. Native tree, shrub, ground cover and grasses will be used for re-vegetation.

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 the following additional governmental authorizations for the project: a 401 Water Quality Certification issued by the San Francisco Bay, Regional Water Quality Control Board and 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. Based on this review, USACE has made a preliminary determination that the federally listed Alameda whipsnake (*Masticophis lateralis*) and its designated critical habitat are present at the project location, and may be affected by project implementation. Alameda whipsnake has been recorded within five miles of the project area and approximately six acres of the western portion of the project area occurs within Alameda whipsnake designated critical habitat. The project site does not contain suitable Alameda whipsnake breeding habitat in the form of annual grasslands with scattered shrub or tree cover. However, the project area is considered secondary habitat and Alameda whipsnakes have the potential to forage in the vicinity of the project area. The applicant is proposing to mitigate at a 3:1 ratio for impacts to Alameda whipsnake habitat by placing 24 acres in a scenic easement in perpetuity, preserving 232 acres as open space, and dedicating approximately 186 acres to East Bay Regional Parks District. The applicant is also proposing mitigation measures including a dry season construction window (April 15 to October 15), not starting construction within one half hour before sunrise and ceasing all grading activities one half hour before sunset, construction employee education for endangered species, on-site

biological monitor, and employing best management practices. The Corps initiated formal Section 7 consultation with the USFWS on August 11, 2011. Based on new information, the Corps will also initiate Section 7 consultation for potential impacts to federally listed California red-legged frog (*Rana draytonni*) that has been observed less than a mile to the south of the project site. 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 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 will request that the applicant 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 will make a *preliminary* determination on whether a 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, 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 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/>.