



**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: Oak to Ninth Avenue Re-Development

PUBLIC NOTICE NUMBER: 297020S

PUBLIC NOTICE DATE: 09-05-2012

COMMENTS DUE DATE: 10-05-2012

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**1. INTRODUCTION:** Oakland Harbor Partners LLC (POC: Patrick Van Ness (510) 251-9272, 2201 Broadway, Suite 604, Oakland, CA 94612), through its agent, LSA Associates, Inc. (POC: Steve Granholm (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 re-develop an industrial and maritime area on the Oakland Estuary into a mixed-use neighborhood consisting of residential, commercial and open space. 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 project is located on an approximately 64.2 acre area bounded by Embarcadero Avenue on the north, 10<sup>th</sup> Avenue to the east, the Oakland Inner Harbor to the south and Fallon Street to west, in the City of Oakland, Alameda County, California (APNs 0000-0430-001-02 and portions of 0000-0430-001-04, 0000-0460-003, 0000-0460-004, 0000-0465-002 and 0000-0470-002). (Figures 1 & 2)

**Project Site Description:** Historically the site was used for industrial purposes and for cargo storage and distribution associated with the Port of Oakland. The site currently supports a mix of light industrial and commercial uses. The site contains four distinct areas. From west to east these areas are designated as Estuary Park (an existing park), Channel Park (an existing industrial area), South Park (a vacant lot) and Shoreline Park (composed of paved lots and warehouse, including the Ninth Avenue Terminal Building). (Figure 3)

**Project Description:** As shown in the attached drawings (Figure 4), the applicant proposes to re-develop the project area from an industrial and maritime area on the Oakland Estuary into a mixed-use neighborhood including residential, commercial and open space. The majority of existing commercial and industrial uses and structures on the project site will be removed or demolished to accommodate the proposed project. The proposed project will occupy 64.2 acres consisting of approximately 25 acres of mixed-use residential and commercial development, approximately 25 acres of new and improved park and open space areas and approximately 11 acres of new roads and infrastructure.

Proposed residential development includes the construction of 3,100 new residential units. Units will include a mix of flats, townhomes, and lofts ranging from studios to three bedroom units. The overall density of residential units will be approximately 125 dwelling units per net acres and nearly 50 dwelling units per gross acre.

Proposed commercial development includes the construction of approximately 200,000 square feet of ground floor commercial space. The spaces will support a variety of retail, restaurant, service and small office uses.

Proposed open space development includes a mix of active and passive parks, trails and open spaces. Approximately 20 acres of the proposed open space will include the construction of 20 acres of new and permanent public open space that will be designed as a series of interconnected parks. Uses of open green spaces will include passive recreation, trails, playgrounds, picnic areas and gardens.

The proposed project is anticipated to be constructed sequentially in four phases over a period of 13 years from

project implementation.

**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 construct residential housing, commercial facilities and open space areas.

**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 develop a mixed-used neighborhood consisting of approximately 3,100 residential units and approximately 200,000 square feet of commercial facilities in the West Oakland market area.

**Project Impacts:** Proposed project activities are regulated by and will take place within the jurisdiction of both Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

Activities regulated by and within the jurisdiction of the Section 404 Clean Water Act would include the placement of approximately 22,000 cubic yards of material within 2.47 acres of the San Francisco Bay and other jurisdictional waters within the project site. This impact area includes both 1.34 acres of permanent impacts and 1.13 acres of temporary impacts. These impacts are described by location in further detail in following paragraph.

The project proposes to place 650 cubic yards temporarily within 0.36 acres of jurisdictional waters in the Shoreline Park section as part of shoreline stabilization. Approximately 20,430 cubic yards of fill and 3,050 cubic yards of revetment are proposed to be discharged within 1.8 acres (1.32 acres permanently and 0.48 acres temporarily) of jurisdictional waters in the South Park section for the purpose of shoreline protection, boardwalk construction and construction of a sheet pile bulkhead. The project also proposes to place 1,400 cubic yards of fill and 20 cubic yards of revetment within 0.31 acres (.02 acres permanently and 0.29 temporarily) in the Channel Park section for the purpose of shore protection and tidal marsh creation. The project also proposes to place fill material within 0.017 acres of other

jurisdictional water within the inland portion of the project area.

Activities regulated by and within the jurisdiction of the Section 10 of the Rivers and Harbors Act includes the conducting of construction related work and placement of structures related to the proposed project. These activities are described by location in further detail in following paragraphs.

The project propose the removal of 3.08 acres of an existing wharf and 0.06 acres of wharf pilings in the Shoreline Park section as part of project demolition and retrofit and the subsequent placement of 650 cubic yards of shoreline revetment. Work in this area will also include the driving of fourteen sixty-inch diameter pilings to support Ninth Street Wharf. Proposed project work also includes the removal of 8,700 cubic yards of fill and 0.59 acres of existing docks and placement of 3,050 cubic yards of revetment and 20,430 cubic yards of fill as part of the construction of the boardwalk and bulkhead wall in the South Park section. Work in this area will also include the driving of eighty eight eighteen-inch diameter pilings for recreational boat anchorage. Proposed work in jurisdictional waters also includes the removal of 1,400 cubic yards of fill and placement of 1,400 cubic yards of fill and 20 cubic yards of revetment in the Channel Park section as part of shoreline construction.

Placement of structures being conducted within water subject to Section 10 of the Rivers and Harbors Act will include the placement of 650 cubic yards of revetment in the Shoreline Park section for shoreline protection, 3,500 cubic yards of revetment in the South Park section for shoreline protection and 70 cubic yards of revetment in the Channel Park section for shoreline protection. The project also proposes to place eighty eight eighteen-inch diameter pilings in the South Park section for recreational boat anchorage and fourteen sixty-inch diameter pilings in the Shoreline Park section to support the new Ninth Street Wharf.

**Proposed Mitigation:** To provide compensatory mitigation for impacts to jurisdictional waters of the United States the applicant has proposed to create areas of new tidal marsh, new shoreline, new open water as well as the removal of areas of shadow fill and floating fill. Approximately 0.64 acres of new tidal marsh is proposed to be created in the Channel Park area of the project. Approximately 0.21 acres of new shoreline is proposed to

be created in the form of a vegetated revetment in the Channel Park and South Park sections of the project area. Approximately 0.44 acres of open water is proposed to be created through the removal of solid fill and subsequent enlargement of Clinton Basin. Approximately 0.11 acres of open water is proposed to be created through the removal of solid fill in the South Park section of the project area. Removal of shadow and floating fill will be conducted in the Shoreline Park and South Park sections of the project area and will improve habitat enhancement for aquatic species.

### 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 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 has applied for a

Consistency Determination 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 ensure 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 Federally-listed species and designated critical habitat are present at the project location or in its vicinity, and may be affected by project implementation. To address project related impacts to these species and designated critical habitat, 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 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 at the project location or in its vicinity, 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 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 present in the permit area, and that such resources may be adversely affected by the project. 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 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.

**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 Kyle Dahl, San Francisco District, Regulatory Division, 1455 Market Street, 16<sup>th</sup> Floor, San Francisco, California 94103-1398; 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/>.