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SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

Project: Weber Light Manufacturing Project, Hayward

NUMBER: 24967S DATE: 8 August 2003 RESPONSE REQUIRED BY: 8 September 2003
PROJECT MANAGER: Phelicia M. Gomes PHONE: (415) 977-8452 EMAIL: pgomes@spd.usace.army.mil

1. INTRODUCTION: John E. Weber, 303 Derby Avenue, Oakland, CA 94601, through his agent The Huffman-Broadway Group, Inc. (Terry Huffman; 415-925-2000), has applied to the Corps of Engineers (USACE) for a Department of the Army Permit to discharge fill material into jurisdictional wetland areas for the construction of the Weber Light Manufacturing Development Project, in the City of Hayward, Alameda County, California (Figure 1). This individual permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. PROJECT PURPOSE AND NEED: The basic purpose of the proposed project is construction of light manufacturing facilities. The overall project purpose is the construction of light manufacturing facilities and associated infrastructure within the Specific Plan Area of Hayward, California.

The applicant states that the proposed project is needed as part of the South of Route 92 Specific Plan that designates the area for several uses including business park, single family residential, parks, and commercial-retail land uses. Figure 2 shows the Specific Plan Area. The light manufacturing uses on the proposed project site are an integral part of the planned mixed use development area. The proposed project will help meet the City of Hayward's demand for light manufacturing facilities, help attract employment opportunities for existing residents, and help to create a stronger tax base for the City of Hayward. The balance of land uses described and the location of land uses within the Specific Plan Area are the result of extensive study by the City of Hayward, which resulted in a General Plan amendment and zoning changes by the City of

Hayward to accommodate the land uses as proposed in the Specific Plan within their specified locations.

3. PARCEL HISTORY AND USACE JURISDICTION: The project site and most of the areas to the south and west of the site were historically part of the salt marshes, tidal sloughs and mudflats that bordered San Francisco Bay. Much of this tidal marshland area was diked off from the Bay in the mid-1800s and converted to cattle pasture. Between 1880 and 1980, duck clubs created ponds and allowed them to seasonally flood to attract waterfowl. Onsite management for waterfowl ceased in the 1980s, although enclosing levees still exist on the project site. After that, most of the site was and still is utilized for agricultural lands.

The Huffman-Broadway Group, Inc. conducted an investigation of the geographic extent of possible wetland areas or other types of waters of the United States subject to USACE regulation under the Clean Water Act that could be located within the Weber project site. Wetlands meeting the Corps 87 manual wetland definition included 43.13 acres of non-tidal saturated palustrine emergent wetlands. Further investigation determined that the non-tidal drainage ditches dug on dry land were exempt from Corps jurisdiction. Subsequent to the verification of the wetland delineation, a correction in the property boundaries resulted in a modification in the wetland acreage actually falling within the property boundary. After re-drawing the property boundaries, 42.46 acres of the non-tidal saturated palustrine emergent wetlands were deemed present on site (Figure 3).

4. PROJECT DESCRIPTION: As shown in the attached drawings, the applicant is proposing to construct a light manufacturing project and associated infrastructure on approximately 34.5 acres of 84.7 acres of property. The project area is located in the City of Hayward, south of State Route 92 and southwest of Industrial Boulevard (Figure 1). The project area is comprised of two major parcels; a 2.76 acre parcel which lies between Baumberg Road to the north and Old Arden Road to the south (labeled B1 in Figure 3); and an 81.43 acre parcel which is bounded on the east and southeast by the Oliver properties, on the south and west by the Wildlife Conservation Board's Baumberg Tract and on the north by Old Arden Road and a small residential and industrial area off Baumberg Road (labeled A in Figure 3). In addition, there are two small parcels which abut the 81.43 acre parcel. These small parcels total 0.50 acre (labeled B2 and B3 in Figure 3). There are no wetlands on the "B" parcels. The entire project area is west of the Southern Pacific/Union Pacific railroad tracks. The 81.43-acre main parcel is a combination of four smaller parcels that were once duck hunting ponds and are now cultivated for hay and barley crops. Several drainage ditches and drain pipes were also constructed to carry stormwater off the property during on-going farming operations in order to remove excess water from upland croplands.

The 81.43 acre parcel (Weber parcel) is one of the properties included in the City of Hayward's South of Route 92 Specific Plan Area (Figure 2). The Specific Plan Area is approximately 335 acres and is owned by four separate landowners. Light manufacturing land uses are proposed to be located on approximately (including infrastructure) 31.19 acres on the main Weber project site and an additional 3.26 acres on "B" parcels. Lot sizes are planned to range from 1.6 acres to approximately 4.2 acres.

Access to the project site will be provided south from Baumberg Avenue to Old Arden Road. The main street within the light manufacturing area will extend south from Old Arden Road curving around towards the tip of Baumberg Avenue. At

that point it will become a cul-de-sac with an emergency vehicle access route that extends up to Baumberg Avenue. All of the industrial uses will take access from this single collector.

The development standards set forth in the Specific Plan Development Guidelines will control storage, parking, truck loading and light manufacturing industrial activities and site utilization. The construction activities would require the discharge of approximately 24,340 cubic yards (cys) of fill material into 5.03 acres of non-tidal saturated palustrine emergent wetlands to establish final grade elevations (Figure 4).

5. PROPOSED MITIGATION:

Avoidance: The proposed project will avoid 38.43 acres of jurisdictional wetlands found on site.

Minimization: In addition, a 50-foot buffer will be maintained between development areas and existing or proposed wetlands on the property to minimize impacts to wetland habitats.

Mitigation: The applicant has proposed compensatory in-kind, on-site mitigation at a ratio of 1.6:1 to compensate for 5.03 acre of wetland losses attributed to project construction. This will be accomplished through the creation of 2.0 acres of seasonally flooded palustrine emergent wetlands in the southern portion of the site and the restoration of 6.16 acres of diked farmed wetlands through the removal of farming activities. The location of the mitigation areas are shown in Figure 5.

The applicant has proposed that establishment of wetland vegetation on the enhanced and created wetland areas would occur by seed dispersal and colonization from the adjacent wetland areas; however, planting or seeding would take place if wetland plant colonization were deemed to be unsuccessful after three growing seasons. Annual maintenance and monitoring of the enhanced and created wetlands would be performed for a minimum five-year period or until specific

performance criteria were attained. These on-site wetland areas would be protected in perpetuity via deed restrictions to be recorded with the County of Alameda.

The applicant's mitigation proposal is subject to Corps review and approval and is therefore not final. The complete and final mitigation plan will be made available for review at our office.

6. ALTERNATIVES ANALYSIS: The applicant has submitted an analysis of alternatives for the project to facilitate a compliance determination of the guidelines. A range of off-site alternatives were considered, as well as alternatives which would meet the purpose of the project with no or minimal effects of the jurisdictional waters of the United States. Projects involving fill discharged into waters of the U.S. 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 that there is a practicable alternative to the project that would have less adverse effect to the aquatic ecosystem.

7. STATE APPROVALS: State water quality certification is a prerequisite for the issuance of a USACE permit to conduct any activity that may result in a fill or pollutant discharge into waters of the U.S., pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). The applicant requested a State water quality certification in December of 2002. No USACE permit will be granted until the applicant obtains the required certification. A certification may be presumed if the State fails or refuses to act on a valid request for certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is reasonable for the State 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.

The project is not subject to the jurisdictional purview of the San Francisco Bay Conservation and Development Commission (SFBCDC) or the California Coastal Commission (CCC).

8. COMPLIANCE WITH FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of NEPA (Public Law 91-190), the Council on Environmental Quality's Regulations at 40 CFR 1500-1508, and USACE's Regulations at 33 CFR 230 and 325. The final NEPA analysis will normally address the direct, indirect and cumulative impacts that result from regulated activities within USACE's jurisdiction and other non-regulated activities deemed to be sufficiently 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.

Potentially mitigable but significant impacts include the loss of seasonal wetlands on-site and various aquatic functions typically associated with wetland ecosystems, including ground water recharge and discharge, floodwater storage and desynchronization, sediment and toxicant retention, nutrient retention and transformation, and habitat for wildlife.

Endangered Species Act of 1973 (ESA): The California Natural Diversity Data Base (CNDDB) was reviewed for records of occurrences of special status animals, plants, and natural communities that have been reported in the project vicinity. The special status animal species listed as occurring in the 7.5 minute USGS quadrangle in which the project is located that are

federally listed as threatened or endangered include the California clapper rail (*Rallus longirostris obsoletus*), nesting western snowy plover (*Charadrius alexandrinus nivosus*), nesting California least tern (*Sterna antillarum browni*), and the salt marsh harvest mouse (*Reithrodontomys raviventris*). The federally listed special status plant species listed by the CNDDDB as occurring in the 7.5 minute USGS quadrangle in which the project is located is the Contra Costa goldfields (*Lasthenia conjugens*) a federally listed species.

Wildlife

In the vicinity of the project site, clapper rails have been observed in the outboard tidal marsh between the San Mateo Bridge toll plaza, and the marsh south of the mouth of the Alameda Flood Control Channel Area (San Francisco Bird Observatory 1985, as cited in EIP Associates, 1997). The project site does not exhibit suitable habitat for the California clapper rail since the salt marsh vegetation is not sufficiently developed to provide habitat for the California clapper rail (EIP Associates, 1997).

As part of the environmental assessment for the Programmatic Environmental Impact Report for the South of Route 92 General Plan Amendment and Specific Plan on the Oliver Estate/Weber properties (EIP Associates, October 1997) surveys were conducted on the project site for snowy plovers and any potential nesting habitats on the project site. No western snowy plover were observed, and no suitable habitat was found.

As reported in the Programmatic Environmental Impact Report, California least terns have regularly used areas adjacent to the project site for foraging and resting during the post breeding period when most adults and fledglings disperse from the main Bay Area breeding colonies. Ponds west of the project site provide shallow water conditions preferred during this period. As reported in the EIR, California least terns are unlikely to utilize the project site because fish upon which they feed do not occur in ponds on the site.

The salt marsh harvest mouse (SMHM), a federally and state listed endangered species, requires pickleweed as its primary habitat, with higher areas for escape from flooding. Monk & Associates reported in 1999 that a search of CDFG's CNDDDB for records of the SMHM within five miles of the project site indicated that the SMHM has been trapped within Area W (see Figure 6). Two SMHM were trapped in 1985 during the course of a 200-trap night study. This record states that the habitat the SMHM was trapped in was marginal and adjacent to ditches and sloughs. Since Area W has been plowed and/or farmed for many years, Monk & Associates, who have assessed the project site for SMHM habitat suitability (see below), feel it is likely that the record reflects a trapping location on the periphery of the farmed field instead of in the center of the farmed field where CNDDDB has recorded the occurrence. The southern periphery of the existing farm field does exhibit habitat that would be suitable for use by SMHM (Zone B, see below).

In 1985 the SMHM was also trapped approximately 0.35 mile south of the project site on the Wildlife Conservation Board (WCB) property. According to the CNDDDB record, the site where the trapping occurred consists of a flat field divided by a low berm and drainage canal running north to south through the center. Vegetation is moderate to very dense *Salicornia*; the area has no tidal action. Monk & Associates have determined from this description that trapping location is probably immediately west of the pickleweed-lined ditch that traverses north to south through the WCB property. The WCB ditch connects to a ditch on the south border of Area W.

A survey of the project site was conducted in March 1999 in order to determine the current potential for the on-site habitat to support the SMHM. In summary, the SMHM habitat suitability assessments indicated that Area H, and Zone B within Area W (see Figure 6) potentially provide suitable SMHM and salt marsh wandering shrew habitat. Zone D, which consists of a narrow ditch

which forms the western border of Area LM, is not considered by Monk & Associates to be utilized by the SMHM since there is a sparsely vegetated levee between Zone D and an offsite abandoned Cargill salt pond which could be potential SMHM habitat. SMHM would need to traverse this sparsely vegetated levee to get to Zone D.

Plants

The Contra Costa goldfields, a federally listed plant species, is found in vernal pools in open, grassy areas up to 700 feet. Suitable habitat is not present on site for this species.

After a determination of effect is made, all required ESA consultations would be pursued in accordance with Section 7 of the Endangered Species Act.

Magnuson-Stevens Fishery Conservation and Management Act of 1996 (MSFCMA): The project site does not occur within designated essential fish habitat for the Pacific Salmon Fishery, since there are no constituent habitat elements necessary for spawning and rearing on the project site.

National Historic Preservation Act of 1966 (NHPA): USACE's archaeologist will be requested to conduct a cultural resources assessment of the permit area, involving a review of published and unpublished data on file with city, state, and federal agencies. If, based on assessment results, a field investigation of the permit area is warranted, and cultural properties listed or eligible for listing on the National Register of Historic Places are identified during the inspection, USACE will coordinate with the State Historic Preservation Officer to take into account any project effects on such properties.

Holman & Associates conducted a field inspection of the site. Visual inspection was conducted in the northern portions of the property where the baylands/uplands interface historically occurred, and in the low levees themselves that were evidently built up from the soils of the pond enclosures themselves. The ground surface was

inspected for typical indicators of aboriginal use and/or occupation typical to the area and darker than surrounding soils containing visible amounts of shellfish remains and indications of fire, concentrations of bone and stone, and artifacts of these materials. In Area H, the vegetation cover, the presence of water and the presence of the deposition of silts and decomposing vegetation made it virtually impossible to conduct a visual inspection of the ground surface except along a small strip of land paralleling the railroad tracks.

No indicators of aboriginal presence were noted inside the project site borders. It is evident that the conversion of the historic salt marsh environment into duck hunting ponds effectively removed several feet of the surface soils, leaving them deposited on the low levees. The pond bottoms reveal a layer of fine silts and clays, the result of the removal of the surface soils and vegetation. Along the northern border of the property, the soils are slightly more developed, but also appear to have been regularly soaked, containing little to no naturally occurring rock.

In summary, the archaeological field inspections indicated that there is no evidence of archaeological material, either historic or prehistoric, inside the project area. It is Holman & Associates' opinion that future development of the parcel will have no effect on cultural resources, and no further recommendations are made regarding the location and/or evaluation of cultural materials.

Standard construction-related measures to preserve such resources would be employed if buried artifacts or other archaeological resources were exposed during excavation and grading operations. If unrecorded historic or archaeological resources were discovered during construction, such operations would be suspended until the USACE concluded Section 106 consultation with the State Historic Preservation Officer to take into account any construction-related impacts to these resources.

9. PUBLIC INTEREST EVALUATION: The decision

whether to issue a permit will be based on an evaluation of the probable effects, including cumulative effects, of the proposed activity and its intended use on the public interest. Evaluation of the probable effects that the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision will reflect the national concern for both protection and utilization of important resources. All factors that may be relevant to the proposal must be considered including the cumulative effects thereof. Those factors 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.

10. CONSIDERATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the effects of this proposed activity. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess effects on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. To make this decision, comments are used to assess effect on endangered species, historic properties, water quality, and the other environmental factors that are addressed in a final Environmental Assessment and/or an Environmental Impact Statement

pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

11. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to the San Francisco District, Regulatory Branch, South Section, citing the applicant's name and Public Notice number in the letter. Comments may include a request for a public hearing on the project prior to a determination on the application; such requests shall state, with particularity, the reasons for holding a public hearing. All comments will be forwarded to the applicant for resolution or rebuttal. Details on any changes of a minor nature that are made in the final permit action will be provided on request. Other information may be obtained from the applicant or by contacting Phelicia Gomes of our office at 415-977-8452 or by email at pgomes@spd.usace.army.mil