



US Army Corps
of Engineers®

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

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

Project: Metcalf Road Residential Development

NUMBER: 26418S DATE: 29 January 2003 RESPONSE REQUIRED BY: 1 March 2003
PROJECT MANAGER: Phelicia M. Gomes PHONE: (415) 977-8452 E-MAIL: pgomes@spd.usace.army.mil

1. INTRODUCTION: The Braddock and Logan Group (Mr. Jim Sullivan 4155 Blackhawk Plaza Circle, Suite 201 Danville, CA 94526, 925-736-4000) has applied for a Department of the Army permit authorizing the discharge of fill into 1.22 acres of jurisdictional wetlands to construct a residential development north of Metcalf Road, between Highway 101 to the west and the abandoned Coyote Canal Extension to the east, in the City of San Jose, Santa Clara County, California (Figure 1). This application is being processed pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. PROJECT PURPOSE: The basic project purpose is housing. The overall project purpose is to provide an economically viable housing development serving the Coyote Valley Area of San Jose.

3. PROJECT DESCRIPTION: The applicant has proposed to construct a residential development on a maximum of 54.4 acres (total graded area) of their entire 261-acre parcel located to the west of the Coyote Canal Extension (Figure 2). A minimum of 206.6 acres east of the canal would remain as open space and would be placed in a conservation easement in perpetuity. Construction would include 213 detached single-family homes on lots that are typically 4,000 sq. ft. The project would also include landscaping, road infrastructure and associated utilities. The main roadway for the project would require the extension of Basking Ridge Avenue from the north to its terminus within the project boundary approximately 3,000 feet north of Metcalf Road. The entrance from Basking Ridge Avenue to the project site at this northern location would provide the main ingress and egress for residents.

In order to provide emergency vehicle access (EVA) south of the terminus of Basking Ridge Avenue, an existing ranch road will be gated east of the southern lots to provide an EVA route on this side of the project.

In light of water quality considerations, a detention basin would be constructed near the northwestern corner of the property and a bioswale would run along Basking Ridge Avenue to treat road runoff. Both of these facilities have been designed to meet Regional Water Quality Control Board water quality standards and would be approved by them as part of their permitting process.

A flood control basin would be constructed just below the canal above the farthest southern lots to detain runoff from the open space area during large storm events (but less than 10 year storms). The basin would have a mechanized gate to slowly release the stormwater.

The roughly rectangular, 261-acre parcel contains one steep canyon, ranging in elevation from 260 feet to 585 feet, and an associated creek along the northern edges of the property, generally flowing east to west. A steep ridge that runs from the northwest to the southeast dominates the site. It rises from the western edge of the property almost to the eastern edge, where the land dips into the drainage mentioned above. The western slope of the ridge has several short drainages, which are seasonally intermittent, draining to the southwest, and ultimately under Highway 101 into Coyote Creek. Two drainages on the southern portion of the ridge flow from north to south. The site has been and is currently used for livestock grazing. Several

horse corrals, hay bins, and associated outbuildings are present in the western portion of the property.

On-site vegetation is primarily dominated by non-native annual grasslands, with scattered oaks present in the northeastern corner. Central Coast riparian scrub and freshwater marsh are also present in scattered locations along the unnamed creek near the northern end of the project area. Seasonal areas of freshwater seep are also present in several drainage swales, and a small area of poorly developed sage scrub is present on a steep, south-facing slope in the southern portion of the site (Figure 3).

Wildlife species known or presumed to be present on-site include those commonly associated with non-native annual grassland, freshwater marsh and seasonal wetlands. The site was also examined for federally protected species. Based on the results of surveys conducted by Sycamore Associates, the site supports breeding and aestivation habitat for California Tiger Salamander (CTS) (state candidate species) and breeding and dispersal habitat for California red-legged frog (CRF) (federally listed as threatened). Additionally, during a site visit conducted on April 9, 2002 with representatives from USFWS and RWQCB, two adult bay checkerspot butterflies (BCB) (federally listed as threatened) and a healthy population of the butterfly's host plant plantain (*Plantago erecta*) were detected on site well above the canal, on the eastward side of the ridge top. This portion of the parcel above the canal is adjacent to other open space areas and has been proposed for preservation; therefore, the area would continue to provide habitat for BCB, a habitat corridor for other species and connectivity to other wildlife habitat in perpetuity under a conservation easement.

The habitat value of the project site below the canal is limited due to the proximity of Highway 101 and adjacent developments. Despite this, the site provides several seasonal ponds, a riparian drainage, and upland habitat that can be used by sensitive species. Pond A, even though breached and currently dry, and Pond D likely provided suitable breeding habitat for CRF and possibly CTS. The riparian corridor may be utilized by many types of wildlife including CRF, CTS, burrowing owl, western pond turtle, many species of birds and raptors, and other more common wildlife.

The proposed project was designed in conjunction with local municipal specifications. It adheres to the City of San Jose's General Plan by providing a residential development within the Urban Growth Boundary and outside the Greenline. The proposed project is constrained by the City of San Jose zoning that does not allow construction to occur above the abandoned Coyote Canal Extension or above the 30 percent slope line. These two limits are generally the same within the project area. These constraints are being adhered to except for a few areas where the project proponent has asked the City of San Jose to allow grading above the 30 percent slope line. No construction is proposed for the area above the canal. Additionally the developed portion of the project lies within the Designated Urban Limit Line and outside the established Greenline to the northeast. The site is adjacent to the existing Basking Ridge Development, the southeastern-most development along Highway 101 within San Jose City Limits. When Basking Ridge was being developed, the City of San Jose sized the sewer and utility services to provide for development of the proposed site. The services are not sized to handle any potential development beyond the Metcalf Road site.

4. CORPS OF ENGINEER'S JURISDICTION:

The Corps exerts Section 404 jurisdiction over a total of 5.73 acres of fresh-water seasonal wetlands and 0.03 acre of un-vegetated waters of the U.S. within the project area.

5. WETLAND IMPACTS: Of the total 5.73 acres of wetlands, the proposed project would fill 1.22 acres (Figure 3). The wetlands to be filled are in the area adjacent to Highway 101 and therefore are thought to have lower functions and values than those wetlands to be preserved and/or enhanced.

While the project has been designed to almost entirely avoid the drainage at the northeastern end of the site, the applicant has proposed to place an arch culvert in a wetland at the drainage's western end to provide a crossing for Basking Ridge Avenue. The freshwater marsh located directly beneath the Basking Ridge subdivision's clean water basin, may be hydrologically related to that basin. The associated impact on this feature is 0.10 acre. This roadway would serve as the frontage

road for the project along the western property boundary.

Also impacted are 1.12 acres of seasonal wetlands due to construction of housing-related roads and building pads. This includes the filling of Pond B and C, both of which are thought to have low habitat value. Pond B generally dries out very quickly and is an unlikely breeding pond for CTS CRF. Pond C is covered with a dense stand of *Arundo donax*, a highly invasive species that out-competes most native plant species.

6. PROPOSED MITIGATION:

Avoidance: The proposed project avoids 0.03 acre of unvegetated waters of the U.S. and approximately 4.53 acres of jurisdictional wetlands, most of which lie within the 206-acre area open space area that would be protected in perpetuity under a conservation easement. This open space area includes the entire riparian corridor of the northern drainage where the applicant has proposed enhancements as part of their mitigation plan. The project also avoids wetlands associated with Pond D, which has known CRF habitat and sitings. Housing pads and roads have been placed a minimum of 100 feet away from this sensitive resource.

Minimization: To further minimize future impacts in the open space area, a grazing plan has been proposed to encourage the continued growth of sensitive serpentine soil plant species, including plantago a BCB host plant. In addition to restricting grazing, potential BCB breeding areas on-site would be seeded with the native grassland seed mix supplemented with seeds of primary and secondary larval host plants and nectar plants for the BCB.

The applicant acknowledges that the proximity of the development to sensitive resources in the open space area increases the possibility for human disturbance. To minimize potential for these types of impacts, an educational brochure would be created for the Metcalf Road Project covering important topics for future homeowners. The brochure would discuss information for homeowners on the following topics:

- The conservation easement and the purpose it serves;
- Special-status species and other wildlife;

- Mitigation measures implemented for the project;
- Water quality issues;
- Air quality issues;
- Open Space Adaptive Management; and
- Community contribution to preserving the open space and water quality.

The brochure would include a regional map and photos or illustrations. It would be created prior to completion of the mitigation project and submitted to the agencies for their approval. The approved brochure would then be distributed to the future homeowners by the project proponent's sales staff as part of the Code Covenants and Restrictions disclosure package that all purchasers would be required to read and sign.

Additionally, fencing and other appropriate barriers would be constructed between the developed area and the preserved area to prevent people and pets from disturbing the enclosed habitats.

Mitigation: As compensation for unavoidable impacts to 1.22 acres of jurisdictional wetlands, the developer has proposed to create five wetland areas totaling 1.91 acres (approximately 1.5 to 1 mitigation ratio) within the planned conservation easement. Most would be located in or near the channel of the northern tributary. These areas were found to be the most hydrologically conducive for wetland creation. Created wetland areas would provide approximately 0.12 acre of perennial freshwater marsh and 1.79 acres of seasonal wetland.

Proposed Created Wetland #1 – This created wetland would be located at the confluence between the northern drainage (on-site) and the unnamed offsite drainage to the north. The site would be fed by groundwater and is intended to provide seasonal wetland habitat. The total wetland area is planned to be 2,632 square feet (0.06 acre).

Proposed Created Wetland #2 – This pond would be created using a dam within the northern tributary stream course. The dam would likely be an earthen berm with anticipated permanent impacts of 550 sq. ft. The pond would be a maximum height of 4 ft. and would be dependent on water supply from both the stream and groundwater seepage. The pond

would potentially provide breeding habitat for California red-legged frog not currently present in this area. The total created wetland area would be 5,217 square feet (0.12 acre).

Proposed Created Wetland # 3 – This mitigation area is designed to be a seasonal wetland with periodic ponding. The area would be dependant on groundwater and would be excavated to a level that allows wetland plantings to reach the groundwater table. This seasonal wetland would be approximately 24,816 square feet (0.57 acre).

Proposed Created Wetland # 4 – Wetland #4 has been designed as a seasonal wetland that would be fed by intermittent stream surface flow. To allow for seasonal flooding, the elevation of this site would be lowered to match the elevation of the broad localized channel of the northern drainage. Additional measures could be required to enhance the supply of subsurface water. This wetland area would be approximately 29,425 square feet (0.68 acre).

Proposed Created Wetland # 5 – This created seasonal pond would re-establish Pond A downstream of its former location, thereby removing it from the PG&E easement where it is currently routinely impacted by maintenance crews. Pond A had confirmed sightings of CRF and likely provided breeding habitat prior to its being breached. The decision to relocate Pond A was made to avoid any potential future breaches of its dam. An earthen berm would likely be created to allow ponding at the new location. Permanent impacts associated with the dam would be approximately 630 sq. ft. The inundation of this area would be dependent on the seasonal flows of the northern tributary. Total created wetland area would be approximately 20,942 square feet (0.48 acre).

All created wetlands are intended to replace impacted jurisdictional wetlands while providing breeding, refugia and aquatic habitat for CRF and CTS. The created wetlands have been designed based upon extensive historic wetland analysis and evaluation of current hydrologic data to minimize their potential for failure due to inadequate water. The created wetlands would be part of a five-year monitoring plan. The monitoring would be required to ensure wetlands are functioning as designed and

would include remedial measures in the event the created wetlands are not functioning as designed.

As additional mitigation, the applicant has proposed two smaller projects that would enhance habitat within the parcel. First, the applicant has proposed to install a culvert under busy, 30-foot wide Metcalf Road, thereby connecting the project to Metcalf Creek on County lands to the south. This would provide CRF safe passage between the two sites, as they are known to inhabit both locations. Second, the applicant has proposed to remove a failed culvert on the northern drainage just upstream of the confluence. This material would be removed concurrent with the grading of the proposed wetland mitigation areas.

7. STATE APPROVALS: State water quality Section 401 certification 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 the Clean Water Act (33 U.S.C. Section 1431). The applicant has provided a valid request for water quality certification by the Regional Water Quality Control Board (RWQCB). No permit will be issued until the applicant obtains the required certifications. A Section 401 certification can be presumed if the RWQCB fails or refuses to act on a valid request for certification within 60 days after receipt, unless the District Engineer determines a longer period is a reasonable time for 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.

8. COMPLIANCE WITH VARIOUS FEDERAL LAWS

National Environmental Policy Act of 1969 (NEPA): At the conclusion of the public comment period, the Corps will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190), the Council on Environmental Quality's Regulations at 40 CFR 1500-1508, and Corps 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 the jurisdiction of the Corps and other non-regulated activities the Corps 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.

Endangered Species Act of 1973 (ESA): The Metcalf Road project site was investigated for federally endangered species. Specifically, California red-legged frog (*Rana aurora draytonii*) and Bay checkerspot butterfly (*Euphydryas editha bayensis*) were identified on-site as was a small area of serpentine soil.

Bay checkerspot butterflies are known to occur on site and were spotted by biologists during recent site visits. A few small patches of potential breeding ground exist on the site. Some serpentine influence is evident in the soils on the site in the extreme southeastern portion of the property. A healthy population of plantain was found on the site in April 2002, however owl's clover is not abundant on the site.

California red-legged frogs (*Rana aurora draytonii*) are also known to occur on site. Suitable dispersal, core breeding and upland aestivation habitats are present. The California red-legged frog has been documented moving through drainages and grasslands to and from the site and surrounding undeveloped lands. They can and will move between the widely distributed wetlands and ponds on the site.

All consultations required under Section 7 of the Endangered Species Act are currently being pursued by the Corps. Comments about endangered species should be sent to Ms. Valary Bloom, US Fish and Wildlife Service, 2800 Cottage Way, W-2605, Sacramento, California, 95825.

National Historic Preservation Act of 1966 (NHPA): A Corps of Engineers' 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, the Corps of Engineers will coordinate with the State Historic Preservation Officer to take into account any project effects on such properties.

9. EVALUATION OF ALTERNATIVES: The applicant will be required to evaluate alternatives to this project. Evaluation of the proposed project's impacts includes application of 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)). Several alternatives that meet the overall project purpose will be selected for evaluation. Evaluations of alternative that do not impact special aquatic sites (i.e. wetlands) will be required, as an evaluation pursuant to the Section 404(b)(1) guidelines indicates that the proposed project is not a water dependent activity.

10. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which 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 if so, 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 and their cumulative impacts must be considered, relevant to the proposal. These 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; consideration of property ownership and, in general, the needs and welfare of the people.

11. CONSIDERATION OF COMMENTS: The Corps of Engineers 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 impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or 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.

12. SUBMITTING COMMENTS: Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name, the number and the date of this Notice, and should be forwarded so as to reach this office within the comment period specified on page one of this Notice. Comments should be sent to: Regulatory Branch, Attention: Phelicia Gomes. It is the Corps policy to forward any such comments, which include objections, to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Notice that a public hearing be held to consider this application. Requests for public hearings shall state with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant, whose address is indicated on the first page of this notice, or by contacting Phelicia Gomes of our office at telephone (415) 977 - 8452. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.