



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: Southwest Estates

PUBLIC NOTICE NUMBER: 1999-245550N

PUBLIC NOTICE DATE: July 27, 2015

COMMENTS DUE DATE: August 27, 2015

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1. **INTRODUCTION:** Mr. Jay Ryder of Ryder Homes of California, Inc. (POC: Laurence P. Stromberg, Ph.D., Wetlands Consultant, 415-721-0700), 1425 Treat Blvd., Suite B, Walnut Creek, CA 94597, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge 2,625 cubic yards of fill material into 2.71 acres of jurisdictional waters of the United States associated with the construction of a residential subdivision, located in Santa Rosa, Sonoma County, California. 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.*). This proposed project was previously put to public notice on April 5, 2002, but the permit was subsequently denied without prejudice.

## 2. PROPOSED PROJECT:

**Project Site Location:** The project site is located at 533 Bellevue Avenue, Santa Rosa, Sonoma County, California (36.396°N and 122.750°W, APN 134-042-025). It is situated within the Santa Rosa USGS Quadrangle Map on the north side of Bellevue Avenue between Dutton Meadow Drive and Stony Point Road and is bounded on the west by Burgess Drive and Elsie Allen High School. The land abutting to the north was recently developed as Bellevue Ranch. The land to both the east and the south is rural residential, and development is currently planned for the eastern parcels.

**Project Site Description:** The site of the proposed project is located on the Santa Rosa Plain, in southwest Santa Rosa, Sonoma County, California (Figure 1). The topography is relatively flat, with only two to three feet of relief between the northern and southern boundaries. There are some mounds, which have been enhanced by

scraping and piling of dirt to create better conditions for horse pasturing, and level features that are transitional to swales and basins. Mounds range 1-1.5 feet in height. In the past, the property appears to have been subjected solely to ordinary rural residential use, including horse, cattle, and sheep grazing. A small house and associated outbuildings remain on the site.

Most of the northern two-thirds of the property appears to retain the natural microtopography, the soils remain physically intact, and the limited physical disturbance suggests that this part of the property was probably never used for intensive agriculture. Predominant soil types include Wright loams and Clear Lake clays, the latter of which is a hydric soil strongly associated with seasonal wetlands and vernal pools.

The site supports a mosaic of non-native annual grassland and seasonal wetland habitat. Upland habitat is dominated by the grasses *Avena fatua*, *Bromus diandrus*, and *Bromus hordaceus*. The undisturbed mound-and-depression topography features connected seasonal wetlands and vernal pools with the dominant plant species *Pleuropogon californicus*, *Festuca perennis*, and *Juncus phaeocephalus*.

**Project Description:** As shown in the attached drawings, the applicant proposes to develop Southwest Estates, a single-family residential subdivision of 48 homes on 8.95 acres, comprising roughly the northernmost two-thirds of one parcel (APN 134-042-25). The residences will be between 4,500 to 7,600 square feet and each contains three or four bedrooms. An additional 4.08 acres within the same parcel's southern end will be considered for future multi-family residential development.

A network of four new roads will extend from Common Way, to be constructed from the eastern boundary. Burgess Drive will be widened between a bridge over Colgan Creek and the project site's northwestern corner. A storm drain and a sanitary sewer in a pair of parallel off-site easements of 55 feet wide will also be installed along Common Way. These components will increase the total project footprint to 10.68 acres.

**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 residential 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 develop affordable residential housing in a small-lot subdivision to meet the projected housing needs according to the policies and requirements of the City of Santa Rosa's General Plan and the Southwest Area Plan, as well as to achieve 10 percent profit on total sales revenues.

**Project Impacts:** The project would involve a fill discharge of 2.71 acres. Of this total, 2.15 acres are seasonal wetland habitat on-site and within the strip which Burgess Drive will be widened between the project site and the bridge over Colgan Creek to the south. Another 0.56 acre of off-site seasonal wetland will be filled to construct a segment of Common Way and install a sanitary sewer and storm drain in a 55-foot-wide easement.

**Proposed Mitigation:** Mitigation for the loss of wetland habitat is proposed at the ratios established in the Biological Opinion issued by the U. S. Fish and Wildlife Service on March 16, 2006, in response to a request for consultation initiated while the earlier permit application was still under consideration. Mitigation combines preservation at a ratio of 1:1 with restoration and/or construction at a ratio of 1:1 or 1.5:1, the latter if the mitigation wetlands have not been observed over at least one winter to show adequate hydrologic function.

The applicant has proposed entering into a purchase agreement to buy 2.71 mitigation credits for wetland

impacts at a 1:1 ratio. The total being proposed includes: 1.60 credits from the Laguna Wetland Mitigation Bank, 0.55 credits also from the Laguna Wetland Mitigation Bank, 0.17 credits from the Yuba Drive Mitigation Preserve, 0.30 credits from Hale Bank, and 0.09 credits from Hazel Mitigation Bank. This proposed mitigation plan is currently under review at the Corps to ensure that it will adequately compensate for the loss of wetlands and aquatic features.

### 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, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403, by the close of the comment period.

**Coastal Zone Management:** 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 California Coastal Commission.

Coastal zone management issues should be directed to the District Supervisor, California Coastal Commission, North Central Coast District Office, 45 Fremont Street, Suite 2000, San Francisco, California 94105-4508.

### 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 the following federally-listed species and designated critical habitat are present at the project location or in its vicinity, and may be affected by project implementation.

The entire project area and its associated off-site construction, a total of 10.68 acres, are suitable habitat for the federally-listed California tiger salamander (*Ambystoma californiense*). This amphibian species is

dependent upon a network of seasonal wetlands for such life functions as breeding, migration, foraging, and aestivation. The site is located within the boundaries of the Santa Rosa Plain Conservation Strategy for the species.

Approximately 2.15 acres of seasonal wetland on the site and another 0.56 acre of off-site seasonal wetland being proposed for impacts comprise suitable habitat for three federally-listed plant species: Sonoma sunshine (*Blemnosperma bakeri*), Sebastopol meadowfoam (*Limnanthes vinculans*), and Burke's goldfields (*Lasthenia burkei*). Although the area is currently unoccupied by these species according to protocol-level surveys, the seed bank for these species may be present and would be destroyed by the action. Furthermore, loss of habitat limits future potential for plant distribution in this area.

California freshwater shrimp (*Syncaris pacifica*) may occur on the Santa Rosa Plain in sandy and gravelly reaches of streams, typically inhabiting pools found below undercut banks and exposed tree roots. No creek habitat occurs on the project site and, therefore, no suitable habitat is present for this species.

To address project related impacts to these species and designated critical habitat, USACE will contact the USFWS for a concurrence that the proposed project as revised satisfies the requirements of the Biological Opinion that the USFWS issued on March 16, 2006 to cover 11 individual projects on 77.19 acres in southwest Santa Rosa, 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 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 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.

According to the California Historical Resources Information System, the proposed project area may potentially contain unrecorded archaeological sites. 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. However, the applicant has submitted an analysis of project alternatives that 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 Daniel Breen, 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 *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.