



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: Northeast Fairfield Specific Plan Area - Canon Station

PUBLIC NOTICE NUMBER: 2010-00057S
PUBLIC NOTICE DATE: November 6, 2015
COMMENTS DUE DATE: December 7, 2015

PERMIT MANAGER: Mr. Jim Mazza

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1. **INTRODUCTION:** The City of Fairfield (POC: Kevin Berryhill (707) 428-7448), Public Works Department, 1000 Webster St., Fairfield, California 94533-4883, and Canon Station LLC (POC: Dan Aguilar (510) 451-4400), One Kaiser Plaza, Suite 1450, Oakland, California 94612, through their agent, Area West Environmental, Inc. (POC: Michelle Tovar, (916) 987-3362), 6248 Main Avenue, Suite C, Orangevale, California 95662, have applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill material into jurisdictional waters of the United States associated with the construction of a large-scale, master-planned community located in the City of Fairfield, south of the City of Vacaville in Solano County. 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 proposed project is located on the western side of the California Central Valley, just east of the base of the Cement Hills and west of the Jepson Prairie in Solano County, south of the City of Vacaville, north of the Travis Air Force Base, and between Peabody Road on the west and North Gate Road on the east (Figure 1). This location corresponds with Sections 2, 3, 10, 11, 14, and 15, Township 5 North, Range 1 West on the Elmira, California U.S. Geological Survey 7.5-minute topographic quadrangle maps (Figure 2). A list of APNs within the project boundary is available upon request.

Project Site Description: The project site is located within northwest-trending hills at the eastern edge of California's Coastal Range. The topography is mostly flat, with gently rolling ridges from north to south on the eastern

side of the Noonan Ranch parcels and smaller ridges running from east to west along the North Kelley parcel. Elevations range from 60 feet in the flats to 180 feet above mean sea level at the top of the highest ridgeline. The project site consists mainly of grassland historically used for cattle ranching and hay production, of which large portions are still used for grazing. There are no occupied residences or structures in the project area. All of the project area has been subjected to some level of disturbance and much of the area has been cultivated for agricultural purposes. The once native grassland and vernal pool endemic plant communities have largely been converted to communities dominated by non-native annual grasses. Surface topography has also been altered sufficiently to result in hydrological changes, such as a shortened hydro-period and even complete elimination of vernal pool basins through grading. The majority of the project site is drained by Union Creek, both by its natural channel and by a constructed bypass channel, while smaller portions of the site are located within three other watersheds. Potential waters of the United States identified within the project site include: Union Creek and tributary stream segments with wetland characteristics; additional stream segments and culverts defined as Other Waters; and numerous seasonal wetlands. The total potential jurisdictional wetlands and other waters of the United States identified within the project study area is approximately 106.53-acres.

Project Description: As shown in the attached drawings, the applicants are proposing a transit-oriented, mixed-use development with a range of residential, commercial, and park uses in the City of Fairfield, Solano County, California. The development would be situated on approximately 520-acres in northeastern Fairfield adjacent to the Capitol Corridor, a commuter rail line between Sacramento and the Bay Area and within 0.6 mile of the proposed Fairfield-Vacaville Train Station. The proposed

project would consist of 2,300 dwelling units within varying residential land use densities, 9.3 acres of commercial development, and approximately 100.5 acres of park and open space. The proposed project also includes roadway improvements, pedestrian improvements, community facilities, detention basins, facilities for water supply, wastewater treatment and storm water drainage. The type of fill material to be discharged into jurisdictional wetlands and waters would be mostly comprised of soil, dirt, silt, sand and mud, with an estimated amount of 16,400 cubic yards. Permanent direct impacts to wetlands and other waters of the U.S. associated with the project are anticipated to total approximately 10.15 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 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 a master-planned community that includes mixed use, regional transit-oriented residential development consistent with other regional initiatives and policies established to guide and support new development.

Project Impacts: Approximately 16,400 cubic yards of fill material will be placed within 10.15 acres of wetlands and other waters of U.S. and result in permanent impacts. Temporary impacts associated with the proposed project are expected to total approximately 0.36 acres. An additional 21.0 acres of direct temporary impacts of wetlands and other waters of the U.S. are anticipated to occur as a result of wetland rehabilitation construction in mitigation areas.

Proposed Mitigation: In addition to the impact avoidance reflected in the project's Section 404(b)(1) Alternatives Analysis, the project will include a range of best management practices and measures that will avoid and minimize impacts to wetlands and special-status species habitat during and after construction. Measures include: designated areas for vehicle and equipment fueling and maintenance; sanitization of vehicles, personal gear,

work crew equipment and other construction equipment before being used in natural areas; preparation and implementation of a storm water pollution prevention plan (SWPPP); working training by an approved biologist; and installation of exclusion fencing. Compensatory mitigation for the project is proposed within four on-site mitigation areas and will consist of three types of wetland mitigation: (1) re-establishment, (2) rehabilitation, (3) enhancement on-site, and (4) enhancement off-site using mitigation bank credit purchase. A total of 18.53-acres of seasonal wetlands are proposed for on-site re-establishment. A total of 21.00-acres of wetlands are proposed for on-site rehabilitation. A total of 39.59-acres of wetlands are proposed for on-site enhancement, with an additional 0.20-acre of enhancement specifically for California tiger salamander (CTS) breeding habitat of small vernal pools. The final compensatory mitigation component will be the purchase of 13.19-acres of CTS breeding habitat mitigation credits from one or more USFWS/CDFW-approved conservation banks that include the project site within their service areas. Additionally, existing upland habitat is proposed for preservation and/or enhancement in each of the on-site mitigation areas.

Project Alternatives: The applicants have submitted an alternative analysis, looking at the feasibility of off-site and on-site alternatives. The applicants have determined that there are no off-site alternatives that are practicable. The applicants developed four on-site alternatives for the residential component of the proposed project and four on-site alternatives for the roadway component. The residential alternatives included: (1) providing a project layout as envisioned under the approved *Fairfield Train Station Specific Plan*; (2) providing a project layout that would fill approximately 43 percent less wetlands than the Specific Plan alternative; (3) providing a project layout that would fill approximately 83 percent less wetlands than the Specific Plan alternative; and (4) providing a project layout that would avoid all wetland filling. The roadway alternatives included: (1) New Canon and New McCrory Road in the approximate locations envisioned under the approved *Fairfield Train Station Specific Plan*; (2) full wetland avoidance alignment of roadways; (3) partial wetland avoidance (16 percent less wetlands filled than the Specific Plan Alignment); and (4) upgrading existing roadways. The Corps has not endorsed the submitted alternatives analysis at this time. The Corps will conduct an independent review of the project alternatives prior to reaching a final permit decision.

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 San Francisco Bay 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. 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.

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.

Other Local Approvals: The applicants have obtained or have applied for the following additional governmental authorizations for the project: Zoning Ordinance Amendment, General Plan Amendment, EIR Certification and CEQA findings from City of Fairfield; A Water Quality Certification to be issued by the San Francisco Bay RWQCB; A Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife.

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 3 Federally-listed species and 3 designated critical habitats are likely to occur within the project location or in its vicinity, and may be affected by project implementation. The species include Federally-listed threatened vernal pool fairy shrimp (VPFS) (*Branchinecta lynchi*), threatened California tiger salamander (CTS) (*Ambystoma californiense*), and endangered Contra Costa goldfields (*Lasthenia conjugens*). The three critical habitats have also been designated within the project area and include VPFS, vernal pool tadpole shrimp, and Contra Costa goldfields. Vernal pools within the action area provide habitat for VPFS and it is anticipated that there will be direct permanent effects to this species through the proposed development of approximately 10.06-acres of vernal pools and swales. The project area overlaps with 10.28-acres of designated critical habitat for VPFS and Mitigation Areas 2 and 3 overlap with 174.83 acres of critical habitat for VPFS. Within this overlap, the proposed impacts will directly affect 8.48-acres of grassland and 0.08-acre of seasonal wetland habitat that exhibit the primary constituent elements of this critical habitat. The project area provides potential upland dispersal habitat for CTS. A total of approximately 501-acres of direct impacts and 201-acres of indirect impacts to potential CTS upland habitat and 4.03-acres of direct impacts and 1.30-acres of indirect impacts to potential CTS breeding habitat are anticipated to occur with the proposed development. There will be no direct or indirect effects to occupied habitat for Contra Costa goldfields. The project area overlaps with 10.28-acres of designated critical habitat for Contra Costa goldfields and Mitigation Areas 2 and 3 overlap with 174.83 acres of critical habitat for Contra Costa goldfields. Within this overlap, the proposed impacts will directly affect 8.48-acres of grassland and 0.08-acre of seasonal wetland habitat that exhibit the primary constituent elements of this critical habitat for Contra Costa goldfields. The project area overlaps with 10.28-acres of designated critical habitat for vernal pool tadpole shrimp and Mitigation Areas 2 and 3 overlap with 174.83 acres of critical habitat for vernal pool tadpole shrimp. Within this overlap, the proposed impacts will directly affect 8.48-acres of grassland and 0.08-acre of seasonal wetland habitat that exhibit the primary constituent elements of this critical habitat for vernal pool tadpole shrimp. To address project related impacts to these species and designated critical habitats, USACE will initiate formal consultation with USFWS, 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 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 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. These resources include a bedrock mortar site and the historic Vacaville Junction site. The applicant proposes protection of these sites by establishing “Environmentally Sensitive Areas” to be avoided on the project plan sheets, with fencing erected to avoid impacts. The applicant also proposed archaeological monitoring during construction. 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. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

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 Mr. Jim Mazza, San Francisco District, Regulatory Division, 1455 Market Street, 16th 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>.