



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

PUBLIC NOTICE

PROJECT: Faria Preserve Development Project

PUBLIC NOTICE NUMBER: 2005-296780S

PUBLIC NOTICE DATE: March 27, 2015

COMMENTS DUE DATE: April 26, 2015

PERMIT MANAGER: Holly Costa

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1. **INTRODUCTION:** Faria LT Ventures, LLC, 5000 Executive Parkway, Suite 530, San Ramon, California (Contact: Pat Toohey (925) 355-1305), through its agent, Olberding Environmental, Inc., 3170 Crow Canyon Place Suite 260, San Ramon, California (Contact: Jeff Olberding: (408) 472-4343) has 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 141-acre residential subdivision, located on a 456-acre undeveloped parcel in the City of San Ramon, Contra Costa 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.*).

2. PROPOSED PROJECT:

Project Site Location: The property, located west of Highway 680 in the City of San Ramon, Contra Costa County, encompasses approximately 456 acres northeast of the intersection of Bollinger Canyon Road and Deerwood Road (Figure 1: Regional Map, The Faria Preserve). The project site extends from the terminus of Purdue Road to Bollinger Canyon Road and is north of Deerwood Road and existing residential development (Figure 2: Vicinity Map, Faria Preserve, Figure 3: USGS Quad Map Overlay). The Property is comprised of the following eight Assessor's Parcels: 208-240-005, 007,008,009,039,048, 208-250-011 and 208-260-046.

Project Site Description: Elevations of the project site range from 930 feet at the northern portion of the development parcel to 520 feet at the inlet location of an existing underground culvert near the terminus of Purdue Road. The topography consists of moderately steep,

southeast-facing slopes and ravines at the base of Las Trampas Ridge. Habitats on the site are characteristic of the East Bay foothills, consisting of large expanses of non-native annual grassland habitat and dense stands of oak and bay woodland in the ravines. Within the project site, several smaller tributaries flow across the slopes connecting to two main drainage channels. The on-site drainages have a moderately steep gradient and support primarily oak and bay woodland with scattered occurrences of willow thickets. The property has been used historically for livestock grazing. Surrounding land uses include commercial and industrial development to the east, residential development to the south and open space to the north and west.

Project Description: As shown in the attached drawings, the applicant proposes to construct a 141-acre residential development and associated infrastructure (Figure 4: Aerial Map, The Faria Preserve). Specifically, the project would include: construction of 740 residential units; construction of a 1.5-acre house of worship site, a 2.6-acre educational facility site, a 12.9-acre community park, and a 0.7-acre rose garden; construction of a public street (Faria Preserve Parkway) connected to Bollinger Canyon Road on the west and Purdue Road on the east and construction of roads within the Project footprint; installation of utilities and other infrastructure; construction of landscaping, storm drains, and water quality ponds to provide water quality treatment and mitigate the Project's impact on hydrograph modification; and construction of public trails in dedicated open space areas (Figure 5: Conceptual Site Plan). Work would also include the construction of a trailhead staging area along Bollinger Canyon Road and improvement of an existing access road to access two East Bay Municipal Utility District (EBMUD) water tanks positioned on the hill above the west side of the Project.

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 development.

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 applicant's state overall project purpose is to construct a medium scale (700-1000 residential units) mixed residential development to accommodate the increasing housing demand within the City limits of San Ramon that assists in meeting the needs of the City's General Plan and is capable of being constructed pursuant to the Zoning Ordinance.

Project Impacts: Project implementation would require placement of permanent fill in 1.11 acres of the 3.29 acres of on-site seasonal wetlands. Work would require placement of approximately 16,620 cubic yards of fill consisting primarily of redistributed (graded) earth and rock riprap into jurisdictional wetlands/waters (Figure 6: Delineation Map, Figure 7: Jurisdictional Impact Map, and Figure 8: Development Impact Map). Portions of four ephemeral drainage channels would be impacted resulting in the permanent fill of 0.12 acres (2,306 linear feet) of Waters of the U.S. Approximately 1,380 linear feet of the middle drainage channel and an estimated 120 linear feet of the eastern drainage channel would be placed in underground culverts.

| Water Bodies Impacted | | |
|------------------------------|----------------------------------|---------------------------------|
| Wetland/Waters (Type) | Existing | Proposed Fill |
| Seasonal Wetland | 3.29 acres | 1.11 acres |
| Ephemeral Drainage Channel | 3.71 acres 19,097 linear feet | 0.12 acres 2,306 linear feet |
| Total | 7.0 acres 19,097 linear feet | 1.23 acres 2,306 linear feet |

Proposed impacts and mitigation related to wetlands and other waters are summarized in the attached "Table 5. Summary of Wetland/Waters and Riparian Impacts and Mitigation".

Proposed Mitigation: To compensate for unavoidable impacts to waters of the U.S. a combination of mitigation has been proposed including work onsite (Figure 9: Mitigation Plan), offsite (Figure 10: Offsite Channel Enhancement Mitigation Location), and species-specific mitigation. Work onsite would include creation (2.22 acres of seasonal wetland and 2,717 linear feet of channel), enhancement, and preservation (2.18 acres of seasonal wetland and 12,155 linear feet of channel). Proposed mitigation for jurisdictional impacts includes: setting aside the remainder of the Faria Property as an open space preserve subject to conservation easement; establishment of a riparian and wildlife corridor along the central drainage channel, also protected by a conservation easement; preservation of wetlands and ephemeral/intermittent streambed; creation of wetland habitat along the riparian and wildlife corridor; establishment of riparian habitat along off-site creek channels in the City of San Ramon; restoration of buried creek channel segments in San Ramon; and preservation of two large off-site properties and their aquatic features.

Project Alternatives: An alternatives analysis in compliance with the U.S. Environmental Protection Agency's ("EPA") Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material under 40 CFR Part 230 "Guidelines" was submitted in 2012. The USACE, Regional Water Quality Control Board, and California Department of Fish and Wildlife (CDFW) had several concerns that resulted in the applicant revising the site plan in 2013, reducing project related impacts to jurisdictional wetlands/waters. An additional supplemental analysis was recently submitted. The analysis considered three off-site developments within the City of San Ramon, and four on-site alternatives. Alternatives included:

- "Entire Property Development Plan 2000";
- "Double Loaded Creek Corridor Plan 2006";
- "Single-Loaded Creek Corridor Plan 2009"; and
- "Eastern Creek Avoidance Plan 2010".

Recently additional on-site alternatives were evaluated including:

- Maximum Avoidance Plan 2013
- Avoidance Plan 2006 (Balanced Cut/Fill Alternative) and
- Maximum Avoidance Plan 2014 (Land Bridge).

The Corps has not endorsed the submitted alternatives analysis at this time. The Corps will prepare its own 404(b)(1) alternatives analysis 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 submitted an application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the project. No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed, if the RWQCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period.

Coastal Zone Management: Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification that indicates the activity conforms with the State's coastal zone management program. Generally, no federal license or permit will be granted until the appropriate State agency has issued a Consistency Certification or has waived its right to do so. 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.

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 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:

- Alameda whipsnake (*Masticophis lateralis*)
Threatened, 62 Fed. Reg. 64,306 (December 5, 1997)
Critical Habitat, 71 Fed. Reg. 58175 (October 2, 2006)

- California red-legged frog (*Rana draytonii*)
Threatened, 61 Fed. Reg. 25,813 (May 23, 1996)
Critical Habitat, 73 Fed. Reg. 53,492 (Apr. 13, 2006)

To compensate for impacts to 201 acres of potential Alameda whipsnake (AWS) and California red-legged frog (CRLF) habitat the Applicant is proposing to permanently preserve and manage 255 acres of onsite open space and 301 acres of open space at two offsite properties (Roberts Ranch and Ambrose Mitigation Property, Figure 11: Offsite Species Mitigation Location Map). All three species mitigation areas contain USFWS designated critical habitat for the AWS, contain potential breeding habitat for CRLF and will expand protected open space associated with the Las Trampas Regional Wilderness area and East Bay Municipal Utility District protected watershed property (Figure 12: Alameda Whipsnake Critical Habitat Map Ambrose and Roberts Ranch Mitigation Properties and Figure 13: USGS Quadrangle Map Ambrose and Roberts Ranch Mitigation Properties).

To address project related impacts to these species and designated critical habitat, USACE initiated formal consultation with USFWS, pursuant to Section 7(a) of the Act. Consultation for the project concluded on December 19, 2014 with issuance of a Biological Opinion (BO) which includes incidental take statements for AWS and CRLF. The BO enumerates appropriate species mitigation, includes conservation measures designed to minimize impacts to these species, and also outlines appropriate avoidance and minimization measures for protection of special status species.

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 not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. 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 the State Historic

Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. 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 been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

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 Holly Costa, 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>.