



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: Lands of Martin Development

PUBLIC NOTICE NUMBER: 2005-298510S
PUBLIC NOTICE DATE: December 14, 2016
COMMENTS DUE DATE: January 14, 2017

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1. **INTRODUCTION:** Jeff Martin (10756 Green Valley Road, Gilroy, CA 95020; 408-391-0013), through his agent, Live Oak Associates, Inc. (POC: Pamela Peterson; 6840 Via Del Oro, Suite 220, San Jose, CA 95119; 408-224-1411), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to realign and widen West Branch Llagas Creek in association with the construction of a residential subdivision in the community of San Martin, in unincorporated Santa Clara 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.*). The Corps previously received a nearly identical permit application package from Mr. Martin for which a Public Notice was posted on November 23, 2007; however, the application was subsequently withdrawn.

2. PROPOSED PROJECT:

Project Site Location: The project is located on a 95.31-acre parcel (APN 779-15-001) in San Martin, an unincorporated area in the southern part of Santa Clara County, on the west side of Monterey Highway between Highland Avenue and Fitzgerald Avenue (Figures 1 and 2, Site Location Maps). The site occurs in the Gilroy, CA, USGS 7.5-minute quadrangle, in the eastern half of Section 14 and the western half of Section 13, Township 3 South, Range 12 East. The approximate center point of the site is located at Latitude 37.063842° N, Longitude -121.602373° W.

Project Site Description: The property is located in a nearly flat rural area consisting of mixed agricultural and residential land uses. The project site has traditionally been used for agriculture and is bound by agricultural

fields to the north and west, Monterey Highway to the east, and a residential development and agricultural fields to the south. West Branch Llagas Creek currently enters and exits the site at right angles and bisects the western portion of the property, flowing in a southeasterly direction for approximately 2,237 linear feet. This reach of the creek is a modified earthen channel nearly devoid of riparian vegetation, covering approximately 0.27 acre. The lands on either side of the channel are regularly disked, and an olive orchard in the eastern third of the property would remain as such.

Project Description: As shown in the attached drawings (Figures 3 and 4), the applicant plans to realign and widen approximately 2,237 linear feet of West Branch Llagas Creek. The project proposes to fill this reach of the creek, restore it to its natural, historic alignment, and create associated riparian habitat. The creek would be realigned onsite, approximately 250 feet east of its current alignment and would be widened to a low-flow channel width of approximately 40 feet and a 100-year flood width of approximately 130 feet.

The proposed realignment of West Branch Llagas Creek would occur as part of the development of a 19-lot subdivision. Approximately half the site would be subdivided into 19 residential lots ranging from 1.8 to 4.3 acres in size. Infrastructure for the proposed subdivision would include the construction of a main access road from Monterey Highway, a new bridge over the realigned channel, and three cul-de-sac roads serving all nineteen lots. Filling the existing reach of West Branch Llagas Creek would allow for portions of seven of the lots and associated roads to be constructed in this area.

The remainder of the site, including the realigned channel and habitat restoration, would be dedicated as open space.

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 develop residential housing while restoring the functions and services of adjacent aquatic resources.

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 residential development in the San Martin Planning Area that meets the land use, flood control, habitat restoration, and aesthetic objectives set forth in the San Clara County General Plan.

Project Impacts: The project would result in the permanent discharge of approximately 800 cubic yards of fill into 2,237 linear feet (0.27 acres) of Corps jurisdictional waters. The source of the fill material would be the soil excavated for the proposed realignment.

Proposed Mitigation: To mitigate for the abandonment and filling of the current channelized alignment of the creek, the applicant is proposing to recreate and restore the portion of West Branch Llagas Creek crossing the site (Figures 5 and 6). The channel would be realigned approximately 250 feet east of its current location, approximating its historic alignment and creating a wider, more sinuous channel. A mitigation and monitoring plan has been developed to ensure an increase in the quantity and quality of the jurisdictional aquatic resource.

Project Alternatives: The applicant has analyzed five alternatives, including the Preferred Alternative, No Impact Alternative, Alternative Project Design Alternative, Alternative Location Alternative, and No Action Alternative. The Preferred Alternative consists of the project described above. The No Impact Alternative would include the residential development and open space project components on the subject property but no impacts to West Branch Llagas Creek. The Alternative Project Design Alternative would include the residential

development and open space project components on the subject property but a lesser impact to West Branch Llagas Creek. The Alternative Location Alternative would include the residential development and open space project components on another site in the San Martin Planning Area. The No Action Alternative would include not completing any project, leaving the subject property as it currently exists.

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 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, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401, 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. The project does not occur in the coastal zone.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project: 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 Federally-listed species and designated critical habitat are 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 USFWS and/or NMFS.

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 not present in the project area.

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 will conduct a review of the 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 will make a *preliminary* determination whether historic or archaeological resources are likely to be present in the permit area and whether the project may cause effects 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. 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 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 Naomi Schowalter, 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>.