



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
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# PUBLIC NOTICE

PROJECT: Via Verdi Slope Stabilization Project

PUBLIC NOTICE NUMBER: 2010-00171S  
PUBLIC NOTICE DATE: December 14, 2018  
COMMENTS DUE DATE: January 13, 2018

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1. **INTRODUCTION:** The City of Richmond (POC: Mr. Yader Bermudez, (510) 774-6300, 450 Civic Center Plaza, Richmond, California 94804), through its agent, Johnson Marigot Consulting (POC: Mr. Cameron Johnson, (415) 602-2970, 88 North Hill Drive, Suite C, Brisbane, California 94005), 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 repair of an existing roadway located in the City of Richmond, 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 project area is located east of Interstate 80 and northeast of the intersection of Via Verdi and El Portal Drive, along Via Verdi and San Pablo Creek in the City of Richmond, Contra Costa County, California (Lat: 37.966553°, Long: -122.318838°). The project overlaps or is located adjacent to portions of the following APNs: 414-340-002-8, 414-340-001-0, 420-021-039-3, 420-021-040-1, and 420-021-041-9. The project area is illustrated in the attached maps (Figures 1 and 2).

**Project Site Description:** The project is sited within an urban area near the base of the Richmond Hills. Via Verdi is a residential street that serves as the only access to 85 single family homes and 100 apartment units in a residential area known as the Sobrante Glen neighborhood. Via Verdi is surrounded by moderately steep grassland hillsides upslope to the north and San Pablo Creek downslope to the south. The relatively flat

Via Verdi roadway fill embankment bisects the slope at approximately 33 to 40 feet above San Pablo Creek.

A landslide within the Via Verdi roadway fill embankment was observed in February 2017, impacting approximately 250 feet of the road. An emergency access road was constructed in grasslands to the north of Via Verdi to bypass the failed section of road, and soil from the emergency access road construction was stockpiled in grasslands to the west of Via Verdi. The project site encompasses the failed section of the Via Verdi roadway, the soil stockpile area to the west, the emergency access road to the north, and the section of San Pablo Creek to the south, an area of approximately 4.80 acres.

Three potentially jurisdictional waters of the U.S. were identified in the project area, including an open section of San Pablo Creek (0.11 acre), a culverted section of San Pablo Creek (0.02 acre), and an ephemeral drainage culvert (0.004 acre). San Pablo Creek is a perennial tributary to San Pablo Bay with a dense riparian corridor. San Pablo Creek is culverted under El Portal Drive and Via Verdi to the southwest of the project area. The ephemeral drainage culvert channels flows from the hillsides to the north into San Pablo Creek, passing under Via Verdi.

**Project Description:** As shown in the attached drawings (Figures 3 and 4), the applicant proposes to buttress the landslide by filling a portion of San Pablo Creek, which would be conveyed through a new 350-linear-foot concrete culvert. The new culvert would be connected to an existing culvert under El Portal Drive and Via Verde. Engineered fill would be placed around and over the culvert to buttress the landslide. Bioengineered slope protection and riprap with pole plantings would be placed at the headwall of the new culvert. A temporary

flow bypass system would be installed in San Pablo Creek during construction to dewater the work area. Following slope stabilization activities, Via Verdi would be reconstructed and utilities would be restored within the Via Verdi right of way. The emergency access road, soil stockpile area, and temporary utilities installed in 2017 would be removed, and these areas would be restored to pre-landslide conditions.

**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 repair and stabilize a roadway.

**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 repair and stabilize Via Verdi to provide safe vehicle access and to prevent the further collapse of the roadway.

**Project Impacts:** The proposed project would permanently impact approximately 0.08 acre (350 linear feet) of San Pablo Creek and temporarily affect approximately 0.004 acre of an ephemeral drainage culvert under Via Verdi. Approximately 10,000 cubic yards of material would be backfilled over the new culvert in San Pablo Creek. Additionally, a relatively small volume of fill material would be temporarily placed in San Pablo Creek to dewater the work area.

**Proposed Mitigation:** The applicant would avoid and minimize adverse effects to aquatic resources through implementation of standard best management practices relating to erosion control, invasive species control, pollution prevention and control, and the minimization of ground and vegetation disturbance. To compensate for the unavoidable loss of waters of the U.S., the applicant would conduct on-site restoration of the upstream bed and bank and off-site restoration of riparian areas.

**Project Alternatives:** The applicant analyzed the following eight alternatives: Alternative 1 – stabilize slope using a toe buttress with culvert (Proposed Alternative); Alternative 2 – abandon Via Verdi and construct a new access road (three route options); Alternative 3 – stabilize slope with a retaining wall; Alternative 4 and 5 – excavate slide mass and reconstruct slope (with or without geogrid

reinforcement); Alternative 6 – install a concrete bridge over the slide; Alternative 7 – realign Via Verdi to the north; Alternative 8 – stabilize slope with a drainage gallery. Of the eight alternatives, the Proposed Alternative has the second highest acreage of impacts to waters of the U.S.; two of the three new routes proposed in Alternative 2 would have greater impacts due to the need to construct a bridge over San Pablo Creek. USACE has not endorsed the submitted alternatives analysis at this time. USACE 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 thereof 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, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period.

**Other Local Approvals:** The applicant has applied for 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. § 1500-1508, and USACE regulations at 33 C.F.R. § 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 are present at the project location or in its vicinity and may be affected by project implementation: Alameda whipsnake (*Masticophis lateralis euryxanthus*) and California red-legged frog (*Rana draytonii*). To address project related impacts to these species, 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*, or 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.

**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 reviewed 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 may be present within a portion of the project area associated with Alternative 2. Further investigation would be required to understand the nature, condition, and extent of this cultural resource should Alternative 2 be selected. For the Proposed Alternative (Alternative 1), USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area and the project either has no potential to cause effects to historic properties or has no effect on historic properties. 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 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 in the project.

**8. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Naomi Schowalter, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4<sup>th</sup> Floor, Suite 0134, P.O. Box 36152, San Francisco, California 94102-3406; 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>.