



**US Army Corps  
of Engineers**®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
450 Golden Gate Ave., 4<sup>th</sup> Floor  
San Francisco, CA 94102-3406

# PUBLIC NOTICE

PROJECT: Magee Preserve Residential Development

PUBLIC NOTICE NUMBER: 2011-00044S  
PUBLIC NOTICE DATE: September 26, 2019  
COMMENTS DUE DATE: October 26, 2019

PERMIT MANAGER: Naomi Schowalter

TELEPHONE: 415-503-6763

E-MAIL: naomi.a.schowalter@usace.army.mil

**1. INTRODUCTION:** Davidon Homes (POC: Mr. Steve Abbs, 925-945-8000, 1600 S. Main Street, Suite 150, Walnut Creek, California 94596), through its agent, Live Oak Associates, Inc. (POC: Ms. Davinna Ohlson, 408-224-8300, 6840 Via del Oro, Suite 220, San Jose, California 95119), 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 waters of the United States associated with the construction of a residential subdivision, located in the Town of Danville, 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 site is located south of the intersection of Diablo Road and Blackhawk Road, immediately east of McCauley Road, in the Town of Danville, Contra Costa County, California. The site encompasses APNs 202-050-071, 202-050-073, 202-050-078, 202-050-079, 202-050-080, 202-100-017, 202-100-019, 202-100-038, 202-100-040, and 215-040-002. The approximate center point of the project site is at latitude 37.82709°, longitude -121.95299°. The project area is illustrated in the attached map (Figure 1).

**Project Site Description:** The Magee Preserve Residential Development site consists of the 335-acre Magee East and the approximately 75-acre Magee West. Elevations range from 430 feet NGVD29 in the northwestern corner to 955 feet in the southern half of the site. Habitat types on the sites include riparian woodland/seasonal drainage, mixed oak woodland, valley oak savannah, non-native grassland, an impoundment, and developed/ruderal. The current land use is cattle grazing.

The USACE issued a preliminary jurisdictional determination for the Magee Preserve on August 12, 2019, determining that East Branch Green Valley Creek, an unnamed seasonal drainage in the southern half of the site, smaller ephemeral drainages, and a stock pond may be subject to USACE jurisdiction. A total of 2.14 acres of potential waters of the U.S. were documented, including 0.014 acre of in-stream wetlands and 13,604 linear feet of riverine features (Figure 2).

The Magee East site is bounded by East Branch Green Valley Creek and single-family residences to the north and by rangelands to the south, east, and west. Magee West is bounded by Diablo Road to the north, McCauley Road to the west, and rangelands to the south and east.

**Project Description:** As shown in the attached drawings (Figures 3 and 4), the applicant proposes to construct a 69-unit single-family residential subdivision on approximately 29 acres. The subdivision would be located on the flatter portions of the northern part of the site. Of the 69 lots, 66 would be clustered on approximately 26.1 acres of Magee East, and three lots would be clustered on approximately 2.9 acres of Magee West. An additional approximately 20 acres of grading would occur around the 29-acre residential development area. Construction would occur over a four year period.

The Magee East lots would be accessed via a new road off of Blackhawk Road in the panhandle east of Jillian Way; this access road would include a bridge over East Branch Green Valley Creek and would follow the general path of the existing ranch road. A recreational trail is proposed to begin at the Blackhawk Road entrance and generally parallel the proposed access road from this location to the point that the proposed emergency vehicle

access intersects Diablo Road. The three Magee West lots would be accessed via McCauley Road.

Three storm drain system outfalls on Magee East are proposed to drain stormwater into East Branch Green Valley Creek. These outfalls are part of a public dual storm drain system that collects and conveys storm water runoff from hillsides and open space areas to the creek and also collects and conveys stormwater runoff from impervious surfaces to onsite bioretention basins. A maximum of three geotechnical subdrain outfalls on Magee East would also convey water into the creek. Improvements to existing outfalls along East Branch Green Valley Creek are also proposed, including cattle gate replacement and clearing of sediment debris.

The remainder of the site, totaling 381.1 acres, would not be developed. These lands would be preserved as open space. Furthermore, a portion of the preserved open space would be protected in perpetuity with a conservation easement (Figure 3). A future public trail network is also being considered on lands to be preserved as open space on Magee East.

Permanent fill would be discharged into waters of the U.S. for a new creek crossing, construction of lots 36, 37, 57, and 58, and roads to access these lots. Within East Branch Green Valley Creek, an existing concrete wet crossing would be removed, rock grade control structures would be installed immediately upstream and downstream of the bridge crossing, and two storm drain outfalls would be constructed at the bridge crossing. An ephemeral drainage would be filled to accommodate lots 57 and 58 and a small length of Brumby Street. Another ephemeral drainage would be filled to accommodate lots 36 and 37 and the Red Tail Court cul-de-sac. Another ephemeral drainage would be filled to accommodate recontouring of a hillside for a detention basin.

**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 single-family residential development in the Town of Danville.

**Project Impacts:** The project would result in the permanent discharge of 1,640 cubic yards of dirt and 70 cubic yards of rock in 880 linear feet (0.11 acre) of non-wetland waters of the U.S.

**Proposed Mitigation:** The applicant believes they have avoided impacts to aquatic resources to the maximum extent practicable. To avoid and minimize impacts to aquatic resource, the applicant would implement standard erosion control measures and best management practices for construction near waterways, and all temporarily impacted areas would be restored to pre-project conditions following construction. To compensate for unavoidable impacts to waters of the U.S., the applicant has proposed on-site permittee-responsible mitigation. Approximately 3,150 linear feet of East Branch Green Valley Creek would be rehabilitated or enhanced, and wetland floodplain benches would be created. The mitigation area would be monitored for ten years or until performance criteria are met.

**Project Alternatives:** The applicant has submitted an alternatives analysis describing five alternatives to their preferred project: no impact, alternate clustered design, non-clustered design, alternate location, and no action. The alternate clustered alternative would have more lots and more infrastructure requirements for access, thus greatly increasing impacts. The non-clustered alternate would have widespread development throughout the site, requiring more access roads, grading, visual impacts, and more impacts to biological resources. An alternate location to accommodate the same amount of units is not available in the Town of Danville, and no site could also provide a comparable area of open space. The no impact alternative would avoid impacts to waters of the U.S. but would not be practicable. The no action alternative would not meet the basic project purpose.

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: California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*), and Alameda whipsnake (*Masticophis lateralis euryxanthus*). 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.

**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. USACE previously initiated consultation with the State Historic Preservation Officer for the proposed development of the Magee property, pursuant to Section 106 of the Act, and the SHPO did not object to a finding of no historic properties affected. 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 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 1111, San Francisco, California 94102-3404; 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>.