



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102

PUBLIC NOTICE

PROJECT: Kerry Ranch - 2181 Francisco Avenue

PUBLIC NOTICE NUMBER: 2017-00591N

PUBLIC NOTICE DATE: May 16, 2019

COMMENTS DUE DATE: June 16, 2019

PERMIT MANAGER: Sarah Firestone

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1. **INTRODUCTION:** Kerry Ranch, LLC (POC: Mr. Dan Morgan, 925-899-1962), 150 Gate 5 Road, Suite 100, Sausalito, California, 94965, through its agent, Monk & Associates (POC: Ms. Hope Kingma, 925-947-4867), 1136 Saranap Ave., Suite Q, Walnut Creek, California, 94595, 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 residential subdivision, located in Santa Rosa, Sonoma 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: 2181 Francisco Avenue (APN 034-041-014, Lat. 38.473612°, Long. -122.761543°) and approximately 2,000 feet along the west side of Francisco Avenue between Delamere Avenue and San Miguel Avenue in the City of Santa Rosa, Sonoma County, California. The parcel is bounded on the south by San Miguel Road and on the east by Francisco Avenue. It is located in section 8, township 7N, and range 8W of the Sebastopol USGS 1:24K Quadrangle Map.

Project Site Description: The main project site is currently undeveloped pasture. It is relatively flat, with uplands occurring on slight hills and wetlands occurring in slight depressions. A preliminary jurisdictional determination in 2018 mapped three wetlands on the project site totaling 0.883 acre of potential wetland waters of the U.S. The main project site is bordered by a residential development to the west and roads on the east and south. There is an undeveloped parcel to the north, and aerial photos and USGS topographic maps suggest

that all the land to the north and west was originally part of a single wetland matrix that discharged into a blue-line stream northwest of the project area. The construction of the residential development to the west has partially impacted the hydrology of the wetlands on the proposed project site, though they are still connected to the wetland matrix via the undeveloped parcel to the north. The approximately 2,000 feet along the west side of Francisco Avenue that would also be impacted by the proposed project consist of paved road, storm drains, and a roadside ditch.

Project Description: As shown in the attached drawings, the applicant proposes to develop 30 single family homes and associated infrastructure such as roads, sidewalks, stormwater bio-swales, and utilities on a 4.15-acre parcel. The proposed development would include a new public street that would connect Orleans Street immediately west of the project site to Francisco Avenue immediately east of the project site. It would also include the widening of San Miguel Avenue and Francisco Avenue, the construction of a sidewalk along the section of San Miguel Avenue immediately to the south of the property and the construction of a pedestrian path and gutter along 2,000 feet of Francisco Avenue.

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 new residential housing in the City of Santa Rosa.

Project Impacts: The discharge of 1,425 cubic yards of permanent fill into 0.883 acre of wetland waters of the U.S.

Proposed Mitigation: The applicant proposes to compensate for the loss of 0.883 acre of wetland waters of the U.S. by purchasing 1.77 acres of wetland credits from the Alton North Mitigation Bank (a mitigation ratio of 2:1). The applicant proposes to minimize impacts to downstream waters of the U.S. by including low impact development concepts such as stormwater bio-swales and by developing a Storm Water Pollution Prevention Plan, which would include sediment control measures such as straw wattles and silt fencing.

Project Alternatives: The applicant has submitted an analysis of 5 on-site alternatives, including the proposed project, and 19 off-site alternatives. All on-site alternatives would result in at least some loss of waters of the U.S., as complete avoidance was deemed not feasible given the layout of the wetlands within the project site and the small size of the project site. 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, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403, 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 is not likely to affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by the San Francisco Bay Conservation and Development Commission.

Other Local Approvals: The applicant has obtained the following additional governmental authorizations for the project: none provided.

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. The project area occurs within the Santa Rosa Plain, and this parcel is designated as “may adversely affect listed plants and would likely adversely affect California tiger salamander.” Protocol-level surveys for the endangered Sonoma sunshine (*Blennosperma bakeri*), the endangered Sebastopol meadowfoam (*Limnanthes vinculans*), the endangered Burke’s goldfields (*Lasthenia burkei*), and the endangered California tiger salamander (*Ambystoma californiense*) failed to find any of these species on the project site; however, Sonoma sunshine and Burke’s goldfields were identified in the undeveloped area north of the project site in 2016, and the project site provides potential aestivation habitat for the California tiger salamander. The overall project would result in a loss of potential habitat for these four species, but is unlikely to result in direct mortality.

To address project related impacts to these species, USACE will initiate informal 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.

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 any required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project is not likely to 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 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 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 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 Sarah Firestone, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th 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>.