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

US Army Corps of Engineers ®
San Francisco District

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Carmel Lagoon Interim Management Plan

Public Notice Correction

PUBLIC NOTICE NUMBER: 1996-190890S
PUBLIC NOTICE DATE: July 1, 2015
COMMENTS DUE DATE: August 1, 2015

PERMIT MANAGER: Lisa Mangione TELEPHONE: 415-503-6763 E-MAIL: Lisa.Mangione@usace.army.mil

1. **INTRODUCTION**: The Monterey County Resource Management Agency (MCRMA) (POC: Carl Holm, Acting Director, 831.755-5103), 168 West Alisal Street, 2nd Floor, Salinas, CA 93901, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to implement an interim plan for management of lagoon water levels to prepare for winter and spring flooding conditions in the Carmel River Lagoon in Monterey 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*.) and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq*.).

On March 18, 2015, the USACE published a public notice for the Carmel River Lagoon Interim Management Plan project, with comments due by April 18, 2015. The following text was erroneously omitted from the public notice during the review and finalization process: "The requested USACE permit authorization is intended to prepare for winter and spring flooding conditions from April 2015 to October 2016." The remainder of the original public notice text is accurate, and is included below for ease of reference.

2. **PROPOSED PROJECT**:

Project Site Location: Carmel Lagoon is located at the mouth of the Carmel River, at the south end of Carmelo Street and Scenic Drive within Carmel River Beach State Park, near the City of Carmel, Monterey County, California (36.53892°N, -121.92701°W) (Figure 1).

Project Site Description: The Carmel River drains approximately 246 square miles of the Santa Lucia and Sierra de Salinas Mountains into the Carmel Bay. Historically, the Carmel River meandered along the floor of the valley resulting in a dynamic riparian corridor that spanned much of the valley floor. Development of the valley has confined the river and isolated portions of the historic riparian corridor both physically and hydrologically. Golf courses, agricultural fields, and residential developments dominate the landscape, although some areas of natural vegetation still exist, particularly within the Carmel River riparian corridor and the Carmel Lagoon.

The Carmel Lagoon ecosystem has also been altered by development and hydrologic manipulation. Early in the 20th century, wetlands on the north side of the lagoon were partially filled, first for use as pasture, then for residential development. The floodplain south and east of the lagoon (the former Odello properties) was also leveed and graded for agricultural use, and the floodplain north and east of the lagoon was leveed for commercial and residential development. Other hydrologic alterations to the lagoon ecosystem include upstream development, and diversion of water from the Carmel River for municipal and agricultural use.

The Carmel Lagoon is a very productive estuary that serves as habitat for federally listed South-Central California Coast steelhead (*Oncorhynchus mykiss*), California red-legged frog (*Rana draytonii*), western

snowy plover (*Charadrius alexandrinus nivosus*), and Smith's blue butterfly (*Euphilotes enoptes smithi*).

Project Description: The proposed project, the Interim Sandbar Management Plan (Interim Plan) for flood management of the Carmel Lagoon is described in the "Memorandum of Understanding between County of Monterey, U.S. Army Corps of Engineers, and National Marine Fisheries Service, regarding Flood Prevention and Habitat Protection at the Carmel Lagoon" (2013 MOU), which was executed on September 6, 2013. The MCRMA is proposing to implement the interim plan while a long-term solution is developed, designed, funded, and constructed.

The Interim Plan includes the following general elements:

a) Sand Bags. As a first course of action before the rain season (October15 - April 15), and before mechanically managing the sandbar, the MCRMA would stockpile sand and place sand bags around homes along the north end of Carmel Lagoon (Camino Real, River Park Place, Monte Verde Street, 16th Avenue). This action is subject to receiving permission from property owners.

b) Public Outreach. The MCRMA would initiate public outreach to warn homeowners to take appropriate precautions to protect their property during the rainy season (October15 - April 15). Public outreach would include education on the potentially adverse effects of manual breaches completed by members of the community.

c) Sandbar Management. The MCRMA, after receiving appropriate approvals from permitting agencies, would manage the sandbar for flood protection (e.g., breaching). Any such work would be performed only when necessary - based on pre-determined river and/or tide conditions - to prevent flooding of homes and would be implemented in a manner that would minimize impacts to steelhead and their habitat.

d) Re-establishment/Summer Management. The MCRMA would assure any outlet channel work performed during the winter is closed off and the sandbar restored at the conclusion of the rain season, which is generally identified as April 15. The intent of the summer sandbar channel closure is to promote habitat for listed species throughout the summer months. When or if the level of water subsides in the Carmel Lagoon so the area around State Park's parking lot is dewatered, and there are adequate quantities of sand located on the beach, the MCRMA would harvest sand from the beach to restore beach access from Carmel River Beach State Park parking lot.

The Interim Plan is described in detail in the attached exhibit from the 2013 MOU, entitled "Exhibit A, Interim Plan and Criteria for Flood Control and Summer Management of the Carmel River Lagoon" (Attachment 1). The Interim Sandbar Management Plan activities are summarized below.

The MCRMA would breach the sandbar at the mouth of the Carmel River lagoon during immediate-need situations to alleviate flooding. Before breaching of the sandbar, the MCRMA shall implement all measures of flood protection (e.g., sand bags) to reduce the flood potential to the surrounding homes and infrastructure to the greatest extent feasible.

The decision to mobilize and conduct immediate-need sandbar management (i.e., mechanical breaching) would be based upon one or more of the following conditions:

a) Lagoon Water Elevation. Mobilization would occur when the lagoon water level reaches a surface elevation of 12.77 feet (NGVD88) as measured at the staff gauge located in the north arm of the lagoon. Actual channel excavation on the sandbar would begin when the lagoon water level reaches a surface elevation of 13.27 feet (NGVD88);

b) River Flows. When the rate of increase in water level in the lagoon, as estimated on the staff gauge, indicates less than six hours until the water level in the lagoon reaches a surface elevation of 12.77 feet (NGVD88), or when Carmel River flows reach or exceed approximately 200 cubic feet per second;

c) Ocean Influence (High Tides and/or Storm Surge). When monitoring indicates wave over-

topping would begin to rapidly increase the water level of the lagoon as well as increase the sandbar elevation.

A bulldozer or excavator would be used to dig a channel through the sandbar to the south, and would result in excavation and sidecasting of approximately 222 cubic yards of sand. The channel would be excavated to an approximate elevation of 10 feet (NVGD29) or 12.74 feet (NVGD88). Breaching of the plug would be completed by a crew using hand tools to avoid use of heavy equipment in water. The total area of site disturbance, from the staging area to the southern end of the channel, is approximately 2.02 acres or 88,000 square feet. The total length of the site disturbance area is approximately 1,500 linear feet or 0.29 miles.

Based on monitoring of conditions, the channel plug would be backfilled to ensure the lagoon water surface level does not drop below 8.77 feet (NVGD88). All work shall be completed in accordance with the following plans and drawings: "Site Plan – Sandbar Management 2014" (Figure 2) and "2014 Survey Elevations" in 2 sheets, and dated October 21, 2014 (Figures 3 and 4).

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 flood control.

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 provide for flood management of the Carmel Lagoon while the MCRMA develops the long-term flood management project, including preparing design plans and environmental documents, securing funding, and constructing the project.

Project Impacts: Project-related impacts in waters of the United States generally include mechanical breaching in the winter and spring, and backfilling the channel plug in the summer. Typically, a channel is cut from the west edge of the lagoon, in a south-westerly direction across the sandbar, approximately 600 feet in length, 5 feet in depth, with a 10-foot-wide bottom and a 2:1 slope. The excavated material is placed immediately adjacent to and west of the channel. The total area of the channel is typically approximately 18,000 square feet (0.41 acre). The total volume of excavated sand is typically approximately 222 cubic yards per event. For summer closure, the MCRMA would use the stockpiled sand to backfill and thereby close off the constructed outlet channel.

Proposed Mitigation:

Required impact minimization measures include:

Subsequent to any sandbar management action and after high inflows from the river have receded, the lagoon sandbar shall either be allowed to naturally close or remain with an open outlet channel flowing over the beach in a meandering channel that would be designed to mute tidal influence and rapid draining of the lagoon. When inflow exceeds initial opening outflows, the lagoon continues to rise long after the actual breaching. The lagoon shall be maintained at a minimum 8.77 foot (NVGD88) water surface elevation. If excessive scour is observed in the constructed outlet channel, the lagoon shall immediately be closed by the placement of sand that is free of contaminants.

MCRMA staff will monitor the river mouth and lagoon water levels both during and after the management action (i.e., breaching), and as often as necessary as conditions warrant. A qualified biological monitor (i.e., minimum of three years experience with anadromous salmonids) will be present during the initial breaching or closure of the channel. While an outlet channel remains open, the biologist shall monitor the channel twice daily (a.m. and p.m.) to document any fish entrainment, stranding, or other occurrences that pose a risk to steelhead. If stranded steelhead are observed, the MCRMA shall contact the National Marine Fisheries Service (NMFS) and California Department of Fish and Wildlife (CDFW) to coordinate any necessary fish rescues. Regular updates (bi-weekly) via email or phone call shall be provided to address any action that may be necessary if 'take' of steelhead occurs. A report produced by the biological monitor documenting construction activities and any observation of fish mortalities and/or harm or harassment will be submitted to the USACE and NMFS within two weeks post-construction. The report shall also outline all implemented measures of flood protection to protect surrounding homes and infrastructure, and estimated volume of sand moved.

Prior to work occurring during the nesting season of the snowy plover (e.g., summer closure), a qualified biological monitor will identify any areas that pose risk to the snowy plover. A report produced by the monitor documenting any observation of snowy plover will be submitted to the USACE and USFWS pre-construction. In the event that a snowy plover nest is found, the USFWS shall be contacted before work commences that may impact the species.

MCRMA staff requires approximately 24 to 48 hours, depending on weather conditions and the size of the sandbar, to mobilize and clear a channel through the sandbar with 1-2 bulldozers or excavator. Equipment shall be driven on the beach for sand management only. Loading and fueling shall take place on paved areas to ensure containment of hazardous materials.

MCRMA staff will usually work during daylight hours when large waves can be seen. In addition, work would occur outside of active rain storms to the greatest extent feasible while maintaining the primary goals of preventing flooding impacts and/or maintaining minimum water levels in the lagoon. Heavy equipment shall not be operated in open waters of the lagoon.

All impacts in waters of the United States would be temporary, minimal and localized. Consequently, compensatory mitigation is not required.

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. 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. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant is hereby advised to apply for a Consistency Determination from the California Coastal Commission to comply with this requirement.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, Central Coast District Office, 725 Front Street, Suite 300, Santa Cruz, California 95060-4508, by the close of the comment period.

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 CDFW.

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 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 reviewed the results of the applicant's California Natural Diversity Data Base search 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 and designated critical habitat are present at the project location or in its vicinity, and may be affected by project implementation:

- California red-legged frog (*Rana draytonii*) - threatened; project site is within designated critical habitat
- Western snowy plover (*Charadrius alexandrinus nivosus*) – threatened; project site is not within designated critical habitat;
- Smith's blue butterfly (*Euphilotes enoptes* smithi) – endangered; critical habitat not designated;
- South-Central California Coast steelhead (*Oncorhynchus mykiss*) – threatened; project site is within designated critical habitat;

To address project related impacts to these species and designated critical habitat, USACE will initiate informal consultation with USFWS for California red-legged frog and its critical habitat, western snowy plover and Smith's blue butterfly; and formal consultation with NMFS for steelhead and its critical habitat, 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, 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 present at the project location or in its vicinity, and that the critical elements of EFH may be adversely affected by project implementation.

To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(5(b)(2) of the Act, for potential adverse effects to Essential Fish Habitat (EFH) for various life stages of fish species managed with the Pacific Groundfish Fishery Management Plan, Coastal Pelagics Fishery Management Plan, and Pacific Coast Salmon Fishery Management Plan. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

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 will review the applicant's submittal that should include information regarding 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. 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 Lisa Mangione, 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.