



US Army Corps  
of Engineers®  
San Francisco District

Regulatory Division, Eureka Field Office  
601 Startare Drive, Box 14  
Eureka, CA 95501

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

PROJECT: Lake Earl Breaching

PUBLIC NOTICE NUMBER: 2003-278500N

PUBLIC NOTICE DATE: November 13, 2015

COMMENTS DUE DATE: December 13, 2015

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1. **INTRODUCTION:** The County of Del Norte (COD) (POC: Ms. Heidi Kunstal 707-464-7254), Community Development Department, 981 H Street, Suite 110, Crescent City, California, 95531, and California Department of Fish and Wildlife (CDFW) (POC: Mr. Steve Burton 530-459-1129), 1724 Ball Mountain Road, Montague, California 96064 have applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a 10-year Department of the Army Permit to discharge fill material into jurisdictional waters of the United States associated with the breaching of Lake Earl and Lake Talawa lagoons by excavating a trench across the sandbar to the Pacific Ocean. The project is located at the sandpit separating Lake Earl and Lake Talawa from the Pacific Ocean about 5-miles north of Crescent City, Del Norte County. This 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 (33 U.S.C. Section 403).

## 2. PROPOSED PROJECT:

**Project Site Location:** The breach location is in Section 31, T17N-R1W, HBM, Crescent City Quad, as depicted on the attached map and plans in 3 sheets. Current conditions at the site consist of an unvegetated sandbar, approximately twelve to fifteen feet in height, separating the brackish lagoons (Lake Earl) from the surf-zone of the Pacific Ocean.

**Project Site Description:** The current conditions at the site consist of an unvegetated sandbar, approximately twelve to fifteen feet in height, separating the brackish lagoons (Lake Earl) from the surf- zone of the Pacific Ocean.

**Project Description:** The management of the Lake Earl Wildlife Area (LEWA) includes the periodic breaching of the lagoons during the winter months. Implementation of the Management Plan is designed to produce optimum conditions for a wide variety of native plant and animal species with special emphasis on wetland and water-associated wildlife, while minimizing or avoiding impacts to the surrounding environment. The LEWA naturally breaches at approximately 14 feet Mean Sea Level (MSL). When the water levels rise higher than eight feet MSL, neighboring ranchers begin to have their pastures inundated; when the water levels rise higher than 10 feet, the local roads and yards become inundated. The lagoon would be mechanically breached when the water surface reaches eight feet MSL in the period between September 1<sup>st</sup> and February 15<sup>th</sup> and when the water surface is above five feet MSL on February 15<sup>th</sup>. Under unusual circumstances, the surface elevation may reach 10 feet MSL before the breach is completed. For more information a copy of the LEWA Management Plan, Draft Environmental Impact Report and Final Environmental Impact Report may be obtained from Steve Burton of CDFW at the above address. The County and CDFW have requested a ten-year permit for breaching the lagoons as described. Best Management Practices (BMP's) and other minimization measures would be implemented to minimize project impacts to aquatic and sensitive resources.

**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 manage lagoon levels for flood control and ecological productivity.

**Overall Project Purpose:** The overall Project purpose requires that a reasonable range of alternatives to be analyzed. The overall project purpose is to manage winter lagoon levels between 8-10 feet MSL to maximize ecological productivity of the LEWA to the optimal extent possible while balancing the needs of all species with the needs of the public.

**Project Impacts:** Approximately 750 cubic yards of fill would be excavated and sidecast in jurisdictional waters permanently impacting about 0.10 acre of USACE regulated waters.

**Proposed Mitigation:** Compliance with the Lake Earl Management Plan, BMP's and other minimization measures would be implemented to minimize project impacts to aquatic and sensitive resources to minimize impacts. No compensatory mitigation is proposed.

**Project Alternatives:** Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). An evaluation has been made by this office under the guidelines and it was determined that the proposed project is water or wetland dependent.

The proposed alternative (breaching as proposed) and the no project alternative were considered. The no project alternative would represent a continuation of existing conditions without breaching. 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 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 Federal Applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Determination 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 Determination or has waived its right to do so. The project does occur in the coastal zone, and a *preliminary* review by USACE indicates the project may likely affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by the California Coastal Commission.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, North Coast District Office, 1385 Eighth Street, Suite 130, Arcata, California 95521, by the close of the comment period.

### 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. (Note: Project types potentially qualifying for a Categorical Exclusion are listed under Paragraph 6.a. of Appendix B to 33 C.F.R. Part 325. Projects requiring the preparation of the EIS must have the potential to "significantly" affect the quality of the human environment. "Significantly" as used in NEPA requires consideration of both "context" and "intensity." Refer to CEQ Regulations at 40 C.F.R. Section 1508.27 for additional information and definitions for these terms. If USACE intends to prepare an EIS or intends to adopt an EIS prepared by another Federal agency, this paragraph should be modified, accordingly.)

**Endangered Species Act (ESA):** Section 7(a)(2) of the ESA or 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 insure 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): Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. Endangered or threatened species and critical habitat currently identified as potentially impacted by the proposed project include coho salmon (*Onchorynchus kisutch*), Pacific Coast western snowy plover (*Charadrius alexandrinus nivosus*), tidewater goby (*Eucyclogobius newberrii*), bald eagle (*Haliaeetus leucocephalus*), California brown pelican (*Pelecanus occidentalis*). Coho presence has not been confirmed in LEWA since 1984, shortly after the CDFG coho stocking program was discontinued in 1980. If the Corps determines that a "no effect" determination is inappropriate for the coho salmon, the Corps would initiate consultation with NMFS. The Corps will initiate consultation with FWS on the above

listed threatened or endangered species, except coho salmon.

**Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA):** Section 305(b)(2) of the MSFCMA of 1996, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the National Marine Fisheries Service (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 (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, the Corps has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area and the biological assessment dated July 30, 2015, prepared by GHD. Based on this review, the Corps has made *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 the project. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. 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, the Corps has conducted a review of 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 including information assessed by Roscoe and Associates (2015), to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, the Corps 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 the Corps 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 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 practicable alternative to the project that would result in

less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. 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 of the project.

**8. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Carol Heidsiek, San Francisco District, Regulatory Division, Eureka Field Office, 601 Startare Drive, Box 14, Eureka, California 95501; 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>.