



US Army Corps  
of Engineers®  
San Francisco District

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

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

PROJECT: Carmel Lagoon Management

PUBLIC NOTICE NUMBER: 1996-190890S  
PUBLIC NOTICE DATE: November 21, 2019  
COMMENTS DUE DATE: December 5, 2019

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1. **INTRODUCTION:** The Monterey County Resource Management Agency (MCRMA) (POC: Melanie Beretti, 831-755-5285), 1441 Schilling Place, South 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 (DA) Permit for ongoing lagoon management actions in preparation for winter and spring flooding conditions in the Carmel River Lagoon in Monterey County, California. This DA 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.*).

## 2. PROPOSED PROJECT:

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

**Project Site Description:** The Carmel River drains approximately 246 square miles of the Santa Lucia and Sierra de Salinas Mountains into Carmel Bay and the Pacific Ocean. 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 was also leveed and graded for agricultural use, and the floodplain north and east of the lagoon was leveed for commercial and residential development.

With large seasonal and annual variations in flow, the Carmel River typically becomes disconnected from the ocean during the summer/fall dry season, when ocean waves build a barrier beach (sandbar) across the mouth to form a closed lagoon. Low river inflow to the lagoon during this season balances with evaporation and seepage outflow through the barrier beach to maintain a relatively consistent water level during dry summer months. When river inflows increase during the wet season, rising water levels in the lagoon would eventually overtop and open the sandbar, but also result in flood risk to residential properties and other development which has encroached into the lagoon's floodplain. Artificial breaching has been conducted for many decades to control flooding and allow development within the floodplain, but has typically resulted in rapid draining of the lagoon and large cumulative impacts to steelhead and their critical habitat.

**Project Description:** In recent years MCRMA has worked to develop a long term lagoon management strategy which alleviates flood risk and also reduces impacts to steelhead, in accordance with the September 6, 2013 "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).

This strategy has three independent but complementary components to reduce the frequency and negative effects of artificial breaching: Interim Sandbar Management Plan (ISMP) to mimic natural sandbar overtopping and closure; Scenic Road Protection Structure (SRPS) to protect public infrastructure along the north end of the beach/sandbar when lagoon outflow is directed to the north; and Ecosystem Protective Barrier (EPB) to allow higher lagoon water levels while protecting residential properties along the north edge of the lagoon. MCRMA is currently considering multiple lagoon management alternatives, including variations of the three MOU components, as detailed in a December 2016 Draft Environmental Impact Report (DEIR) (<https://www.co.monterey.ca.us/home/showdocument?id=15459>). MCRMA has been implementing the ISMP on an interim basis since 2013, most recently under a short-term Individual Permit (IP) issued by USACE in 2017 and renewed for an additional year in 2018. Current SRPS design options being considered are the mid slope wall option and the full height wall option at the top of the slope, as described in the DEIR. Both options would reduce impacts to the beach and State Parks property compared to the original riprap design option, and would be entirely outside USACE jurisdiction. The EPB faces considerable technical, logistical, and political challenges and would likely not be constructed in the foreseeable future.

To allow for continued implementation of the ISMP, MCRMA has requested to modify the 2017-2018 IP to cover a longer time period (10 years) as well as additional sandbar management options that would be complementary with the SRPS. Because it appears likely that the EPB may be delayed for the foreseeable future, and the current SRPS design options are outside of USACE jurisdiction, the only component requiring USACE authorization at this time is the ISMP, which would continue to include the following:

- a) Sand Bags. As a first course of action before the wet season (October 15 - April 15), and before mechanically managing the sandbar, 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. MCRMA would initiate public outreach to warn homeowners to take appropriate precautions to protect their property during the wet

season. Public outreach would include education on the potentially adverse effects of unpermitted lagoon breaching completed by the public.

- c) Sandbar Management (figure 1). After receiving approvals from permitting agencies, MCRMA would manage the sandbar for flood protection. 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 (figure 2). If there is sufficient sand available on the beach/sandbar, MCRMA would ensure any outlet channel work performed during the winter is closed off and the sandbar restored at the conclusion of the wet season. Specific timing would be determined in coordination with regulatory agencies, but closure would occur once river inflow drops below 20 cfs, generally between April and July. The intent of the summer sandbar channel closure is to promote habitat for listed species throughout the summer months. As needed, MCRMA may also use available sand to restore beach access from the State Beach parking lot.

MCRMA would manage the sandbar at the mouth of the Carmel River lagoon during immediate-need situations to alleviate flooding. Sandbar management actions may include grading a pilot channel or notch, and would be tailored to mimic natural overtopping of the sandbar and facilitate slow, controlled lowering of lagoon water surface elevations, and reduce the risk of rapid lagoon draining. Before managing the sandbar, MCRMA would 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 would be based on the following:

- a) Lagoon Water Elevation. Mobilization would occur when the lagoon water level reaches a surface elevation of 12.77 feet (NAVD88) as measured at the staff gauge located in the north arm of the lagoon; or
- b) River Flows. When the rate of increase in water level in the lagoon, as estimated on the staff gauge, indicates less than twelve hours until the water level in the lagoon reaches a surface elevation of 12.77 feet

(NAVD88), or when Carmel River flows reach or exceed approximately 200 cfs; or

- 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.

Using the parking lot at the north end of the beach as a staging area, a bulldozer or excavator would be used to grade a pilot channel or notch through the sandbar, and would result in excavation and sidecasting of approximately 230 cubic yards of sand. The channel would be excavated to an approximate elevation of 10 feet (NGVD29) or 12.74 feet (NAVD88), leaving a sand plug. Final removal of the plug would be completed by a crew using hand tools to avoid use of heavy equipment in water. If appropriate based on conditions and agency coordination, the channel may be later backfilled with sand as needed to ensure the lagoon water level does not drop below 8.77 feet (NAVD88). The total area of site disturbance, from the staging area to the graded channel/notch, would be approximately 2.1 acres.

Outlet channel configuration would be determined in coordination with regulatory agencies, depending on conditions at the time, but would be configured as long as possible to slow and control the rate of lagoon outflow. In recent years a southward outlet channel along the base of the southern bluff has been effective in controlling the rate of lagoon outflow, and this alignment would likely continue to be utilized in the near future. Once the SRPS is constructed, and the northern bluff, Scenic Road, and the parking lot are sufficiently protected from potential scour, a northern outlet channel alignment would likely be utilized which would further reduce the risk of rapid lagoon outflow and associated impacts to steelhead and other species.

**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 continues to develop long-term lagoon management methods and infrastructure, to alleviate flood risk while also minimizing impacts to steelhead and other environmental resources.

**Project Impacts:** Project-related impacts in waters of the United States would generally include sand grading/excavation in the winter and spring, and backfilling the channel to close the lagoon by early summer. Typically, a channel would be cut from the west edge of the lagoon, in a south-westerly or northwesterly direction across the sandbar, approximately 300-600 feet in length and 5 feet in depth, with a 10-foot-wide bottom and 2:1 side slopes. The excavated sand would be placed above the High Tide Line (HTL) along the crest of the sandbar near the pilot channel so that it could be later used to backfill the channel as needed. The total excavation/grading area would be approximately 0.6 acre, but only a small portion of this would be within USACE jurisdiction below the HTL on the ocean side, or below the Ordinary High Water Mark (OHWM) on the lagoon side. For summer closure, MCRMA would use the stockpiled sand to backfill and close off the constructed outlet channel.

**Proposed Mitigation:** Subsequent to any sandbar management action and after high inflows from the river have receded, the lagoon would either be allowed to naturally close, or remain with an open outlet channel flowing over the beach in a meandering channel designed to mute tidal influence and prevent rapid draining of the lagoon. Depending on the location of the ISMP outlet channel, water year type, and observations of lagoon water level and river inflow, sand may be placed in the outlet channel to keep the lagoon water level at or above 8.77 feet (NAVD 88).

MCRMA would require 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 excavators. Equipment would be driven on the beach for sandbar management only. Loading and fueling would take place on paved areas to ensure containment of hazardous materials. Work would typically be completed 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 would not be operated in open

waters of the lagoon. All impacts in waters of the United States would be temporary, minimal and localized. Compensatory mitigation would therefore not be required.

**Project Alternatives:** A discussion of current sandbar management alternatives has been submitted to USACE, and additional lagoon management alternatives including the SRPS, EPB, and other infrastructure options have been further analyzed in the DEIR. USACE has previously determined that short term implementation of the current ISMP is the Least Environmentally Damaging Practicable Alternative (LEDPA), based on current conditions (i.e. without the SRPS or EPB). Construction of the SRPS would likely further reduce potential ISMP impacts in the long term by allowing a northern outlet channel alignment.

### 3. STATE AND LOCAL APPROVALS:

**Water Quality Certification:** State water quality certification or a waiver thereof is a prerequisite for the issuance of a DA 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 DA 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 has applied 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 a Lake and Streambed Alteration Agreement from the California Department of Fish and Wildlife.

### 4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

**National Environmental Policy Act (NEPA):** Upon review of the DA 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 DA 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 determined 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 is within designated critical habitat
- Western snowy plover (*Charadrius alexandrinus nivosus*) - threatened; project is not within designated critical habitat;
- South-Central California Coast steelhead (*Oncorhynchus mykiss*) - threatened; project is within designated critical habitat;

To address project related impacts to these species and designated critical habitat, USACE has completed formal consultation with USFWS, and has initiated formal consultation with NMFS, pursuant to Section 7(a) of the ESA. Any required consultation must be concluded prior to the issuance of a DA Permit for the project. USACE has also determined that the project would have no effect on the Smith's blue butterfly (*Euphilotes enoptes smithi*) and therefore this species was not included in the USFWS consultation.

**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), 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 determined that EFH is present at

the project location or in its vicinity, and may be adversely affected by the project. To address these potential impacts to EFH, USACE has initiated consultation with NMFS, pursuant to Section 305(5)(b)(2) of the MSFCMA. Any required consultation must be concluded prior to the issuance of a DA 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 DA Permit will be issued until the applicant obtains any required certification or permit. The project would be limited to areas landward of MHW and therefore does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely affect sanctuary resources since it is designed to mimic natural lagoon processes. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce, or their 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 ISMP 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 DA 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 DA 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 Greg Brown, San Francisco District, Regulatory Division, 450 Golden Gate Ave. 4<sup>th</sup> Floor, San Francisco, CA 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 DA 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>.