



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

SAN FRANCISCO DISTRICT

Regulatory Division  
450 Golden Gate Ave., 4<sup>th</sup> Flr, Ste 0134  
P.O. Box 36152  
San Francisco, CA 94102-3406

# PUBLIC NOTICE

PROJECT: Newell Creek Dam Inlet-Outlet Replacement Project

PUBLIC NOTICE NUMBER: 2010-00087S

PUBLIC NOTICE DATE: March 20, 2019

COMMENTS DUE DATE: April 19, 2019

PERMIT MANAGER: Danielle Mullen

TELEPHONE: 415-503-6783

E-MAIL: danielle.m.mullen@usace.army.mil

1. **INTRODUCTION:** The City of Santa Cruz Water Department (POC: Sarah Easley Perez, 831-420-5327), 212 Locust Street, Suite C, Santa Cruz, California, 95060 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 replacement of the inlet and outlet of the Newell Creek Dam, located in the City of Ben Lomond, in Santa Cruz County, California. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*)

2. **PROPOSED PROJECT:**

**Project Site Location:** The project is located at the Newell Creek Dam (NCD), which impounds Loch Lomond Reservoir (Reservoir), at 10244 Newell Creek Road, in the City of Ben Lomond, in Santa Cruz County, California, (37.101808, -122.072977). See attached location map.

**Project Site Description:** NCD impounds the Reservoir, which is fed by Newell Creek from the north. Newell Creek continues south from the dam where it eventually joins the San Lorenzo River and flows into the Pacific Ocean. Areas surrounding the dam and Reservoir are predominantly open space, forest lands with scattered residences. The Project area is primarily surrounded by lands owned by the City on the same 520-acre property on which the Project area is located. A private residence owned by the City on an approximately 20-acre site is located at the southern end of the Project. Approximately six privately-owned parcels abut the NCD property. The project area contains 0.07 acre of wetlands, including seasonal wetlands and seeps, and 20.87 acres (2,402 linear

feet) of non-wetland waters, including the Reservoir, ephemeral, intermittent and perennial drainages.

**Project Description:** As shown in the attached drawings, the applicant proposes to replace the existing inlet/outlet structures in new locations at the Reservoir and conduct other associated improvements. The Project is comprised of the following primary components: Three new inlets located within the Reservoir that function to control and convey flows in and out of the Reservoir; an outlet structure with valves and controls at the toe of the dam to convey flows in and out of the inlet/outlet works, the structure would provide for energy dissipation for water releases to the Newell Creek Pipeline (NCP) or beneficial releases; a new dam seepage collection and monitoring system; a 14-foot maximum diameter tunnel containing 48-inch and 10-inch inlet/outlet pipelines through the right (west) abutment and under the dam; replacement of an approximate 2,000 linear-foot segment of the NCP between the existing outlet structure and the first isolation valve; a new control house on the dam crest to house controls for the inlets; improvements along the dam's access roads to improve access for construction, including a new culvert crossing at the spillway plunge pool; and decommissioning the existing inlet/outlet works once the replacement inlet/outlet system is operational.

**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 water supply.

**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 protect the City's ability to deliver drinking water and to allow the City to meet California Department of Water Resources Division of Safety of Dams (DSOD) requirements for Reservoir draw-down in an emergency.

**Project Impacts:** The Project would result in the following unavoidable impacts to waters of the U.S.: the installation and construction of the inlet structure would result in 0.02 acre of fill within the Reservoir; the disposal of associated dredged material from inlet construction would result in 1.3 acres of fill within the Reservoir; the creation of a construction platform at the tunnel portal would result in 0.02 acre of fill within a perennial drainage, 0.04 acre of fill in wetland seep, 0.01 acre within the spillway plunge pool, and 0.01 acre within an ephemeral drainage; the spillway plunge pool crossing and NCP replacement would result in 0.03 acre of permanent fill and 0.05 acre of temporary fill within the spillway plunge pool, 0.02 acre of permanent fill within a wetland seep, 0.01 acre of permanent fill and 0.01 acre of temporary fill within a seasonal wetland, and 0.05 acre of permanent fill and 0.04 acre of temporary fill within Newell Creek; and the temporary barge launch/pier would result in 0.02 acre of temporary fill within the Reservoir.

**Proposed Mitigation:** The project would implement erosion control measures and construction related BMPs; water quality protection measures; and avoidance of in-channel work to the maximum extent possible in order to avoid and minimize project impacts. A compensatory mitigation plan is being prepared in accordance with the Corps' mitigation regulations (33 C.F.R. Part 332) to compensate for unavoidable impacts to waters of the U.S. resulting from the construction platform, the spillway plunge pool crossing, and the NCP replacement. The project components within the Reservoir, while considered permanent impacts, do not result in a loss of waters of the U. S. and do not adversely impact any aquatic resource functions or services and therefore do not require compensatory mitigation. The proposed compensatory mitigation plan will identify mitigation projects located within the same watershed (San Lorenzo River watershed) and will provide in-kind mitigation for the impacted aquatic resources. A conceptual mitigation memorandum has been developed and includes on-site mitigation work including riparian vegetation restoration, wetland creation and enhancement, and instream habitat enhancement in Newell Creek.

**Project Alternatives:** 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, 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. 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 California Coastal Commission.

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 Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife for the project:

#### 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

and designated critical habitat are present at the project location or in its vicinity and may be affected by project implementation. The project reach of Newell Creek may be utilized by Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) during high flow events, and has been designated critical habitat for CCC steelhead and Central California Coast Coho salmon (*Oncorhynchus kisutch*). Potential effects could occur to salmonids during construction activities through temporary increased turbidity and sedimentation and fish may need to be relocated during dewatering. To address project related impacts to these species and designated critical habitat, USACE will initiate formal consultation with NMFS, 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 present at the project location or in its vicinity and that the critical elements of EFH may be adversely affected by project implementation. The project reach of Newell Creek is within the *Pacific Coast Salmon FMP*, which could be temporarily adversely affected through increased turbidity and sedimentation during construction. To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act. 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 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 may be present in the permit area and that such resources may be affected by the project. Resources may include structures associated with the dam. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. 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 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 in the project.

8. **SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Danielle Mullen, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4<sup>th</sup> Floor, Suite 0134, P.O. Box 36152, San Francisco, California 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 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>.