



PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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EMERGENCY PERMIT ISSUED Malibu Lagoon Temporary Berm

Public Notice/Application No.: SPL-2013-00780-BLR

Project: Malibu Lagoon - Surfrider Beach Temporary Berm

Comment Period: November 3 through November 18, 2014

Project Manager: Bonnie Rogers; 213-452-3372; Bonnie.L.Rogers@usace.army.mil

Applicant

John Kelly
LA County Beaches and Harbor
13837 Fiji Way
Marina del Rey, California 90292

Contact

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13837 Fiji Way
Marina del Rey, California 90292

Location

Malibu Beach within the city of Malibu, Los Angeles County, CA (at: 34.033809, -118.679702).

Activity

On November 15, 2013, Los Angeles County constructed a temporary berm (200 x 36 x 5 ft) on Surfrider Beach to direct water flow from Malibu Lagoon away from the historic property, the Adamson House (see attached drawings) under an emergency Standard Individual Permit (SIP) issued by the Corps on November 20, 2013. As required by the permit, in March, 2014, the berm was dismantled. For more information see page 3 of this notice.

Interested parties are hereby notified that an application was received for a Department of the Army emergency permit for the activity described herein and shown on the attached drawing(s). A permit was issued with special conditions on November 14, 2013. We invite you to review today's public notice and provide views on the completed emergency project. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that support the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered. Comments can be mailed to:

LOS ANGELES DISTRICT CORPS OF ENGINEERS
ATTN: Regulatory, Bonnie Rogers
915 Wilshire Blvd. Ste 930
LOS ANGELES, CALIFORNIA 90017

Alternatively, comments can be sent electronically to: Bonnie.L.Rogers@usace.army.mil

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are

also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made that an environmental impact statement is not required for the proposed work.

Water Quality- The applicant submitted an application to obtain a water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Under the Corps emergency permit notification process, the LA-RWQC was given approximately 36 hours by email and phone to respond or the 401 certification would be waived. No response was received; therefore, the certification was waived.

Coastal Zone Management- The applicant certified the proposed activity complied with and was conducted in a manner consistent with the approved State Coastal Zone Management Program. For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that prior to issuing the Corps authorization for the project, the applicant must obtain concurrence from the California Coastal Commission that the project is consistent with the State's Coastal Zone Management Plan. On October 24, 2013 the California Coastal Commission issued an Emergency Permit (G-4-13-0223) to the Los Angeles County Department of Beaches and Harbor to construct one temporary sand berm.

Essential Fish Habitat- Preliminary determinations indicated the proposed activity may adversely affect essential Fish Habitat but impacts would be minimal. Pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Los Angeles District hereby requests initiation of EFH consultation for the proposed project. This notice initiates after-the-fact EFH consultation requirements of the Act (via 50 CFR 600.920(a)(1)). In order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), pursuant to 50 CFR 600.920(e)(3), I am providing, enclosing, or otherwise identifying the following information:

1. Description of the proposed action: see project description on page 4 of this public notice.
2. On site inspection information: see baseline information on page 4 of this public notice.
3. Analysis of the potential adverse effects on EFH: The construction of the berm on dry sandy beach intermittently flooded by ocean water and/or Malibu Lagoon water is EFH habitat. However, the project did not result in adverse impacts to EFH. No eelgrass is present, the constructed berm was temporary and removed March 2014. Furthermore, the berm which was constructed under an Emergency Standard Individual Permit (SIP), did not result in work within flowing water (Malibu Lagoon) where NOAA-managed species, including steelhead and tidewater goby, have potential to occur.
4. Proposed minimization, conservation, or mitigation measures: The sand berm was constructed to occupy the smallest area possible while still protecting the Adamson House and therefore avoided impacts to EFH to the maximum extent. In addition, the berm was constructed as a temporary structure to avoid any potential long-term impacts to EFH and thus also resulted in a minimal and temporary impact.

5. Conclusions regarding effects of the proposed project on EFH: Based on the project description and completed construction of the temporary sand berm, the proposed project resulted in disturbance of approximately 7,200 square feet of substrate within waters of the United States; however, impacts were minimal and temporary. Furthermore, the affected substrate consisted of sand frequently raked and manipulated, and did not contain hard rock substrate or flowing water at the time of construction or deconstruction.

Therefore, it is my initial determination the proposed activity may adversely affect but did not have a substantial adverse impact on EFH or federally managed fisheries in California waters. My final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NOAA Fisheries. If I do not receive written comments (regular mail or e-mail) within the 30-day notification period, I will assume concurrence by NOAA Fisheries that no mitigation measures are necessary.

Cultural Resources- The latest version of the National Register of Historic Places (NRHP) was consulted and the project area contains a historic property listed on the NRHP, the Adamson House, originally listed in 1977. During agency coordination prior to issuance of the emergency Standard Individual Permit, the Corps made a determination of No Effect to historic properties. The Corps consulted with the State Historic Preservation Officer (SHPO), and received a response on November 07, 2013 agreeing there would be No Effect to the Adamson House historic property. This review constitutes the extent of cultural resources investigations by the District Engineer and the DE is otherwise unaware of additional resources.

Endangered Species- Preliminary determinations indicate the proposed activity may have affected federally-listed endangered or threatened species, but not their critical habitat. Therefore, post-construction formal consultation under Section 7 of the Endangered Species Act may be required. Species include threatened western snowy plover (*Charadrius nivosus ssp. nivosus*), endangered tidewater goby (*Eucyclogobius newberryi*), and endangered California least tern (*Sterna antillarum browni*). On November 07, 2013 the Corps sent an agency notification to USFWS regarding potential impacts to ESA and received a response on November 08, 2013. The response included recommended special conditions for potential impacts to threatened western snowy plover at Malibu and Zuma Beach, which were then incorporated into the Corps emergency SIP. No recommendations were provided for California least tern or tidewater goby because the project work area was limited to a specific area and resulted in no effect to these species. Finally, a Biological Monitor was present during the construction and deconstruction of the sand berm and no impacts to Federally listed endangered or threatened species were observed.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material in to a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). The basic project purpose for the proposed project is to protect property, the historic Adamson House. The project is water dependent.

Overall Project Purpose- The overall project purpose serves as the basis for the Corps' 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, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to protect the National Historic Adamson House property.

Additional Project Information

Baseline information- The Santa Monica Bay watershed feeds directly to the ocean and includes high quality perennial and intermittent waters of the United States. The project area is directly adjacent to the newly restored Malibu Lagoon, which provides a suite of local and fishery nursery functions to the area. The Corps has not issued any permits in the past for construction of temporary sand berms in this area. Natural resources of concern include wetlands, estuaries, coastal beach habitat, Federally listed bird species, including nesting birds, and fish species and their critical habitat. As a beach, the area is open to the public and receives a high degree of foot and dog traffic.

Project description-

Sand was excavated from the windswept portion of Zuma Beach / Point Dume using mechanized equipment, loaded into dump trucks, and transported to the Malibu Beach (Surfrider Beach) discharge site. The material was discharged onto Malibu Beach (Surfrider Beach) to construct a temporary sand berm approximately 200 x 36 x 5 feet onto, resulting in approximately 0.16-acre impacts to non-wetland waters of the United States.

Proposed Mitigation- The proposed mitigation may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence (avoidance/minimization/compensation), as applied to the proposed project is summarized below:

Avoidance: The proposed activity avoided direct contact with Malibu Lagoon, which was occupied with pooled water, and was constructed on dry beach.

Minimization: The berm size was limited to the expected minimum area necessary based on previous breaching patterns of the lagoon.

Compensation: No compensatory mitigation has been proposed because impacts were minimal and temporary. The berm was removed in March 2014, and the site was restored to the previous condition.

Special Conditions Included in emergency SIP

The following list is comprised of Permit Special Conditions that were required in the Emergency Standard Individual Permit (SIP):

1. The sand berm shall be removed no later than May 31, 2014 and the remaining sand, if any, redistributed to the surrounding beach. The permittee shall ensure all sites within waters of the U.S. subject to authorized, temporary impacts are restored to pre-project alignments, elevation contours, and conditions to the maximum extent practicable to ensure expeditious resumption

of aquatic resource functions. No later than 45 calendar days following completion of authorized work in waters of the U.S., the permittee shall submit a memorandum documenting compliance with this special condition.

2. You shall provide a written report to this office (within 45 days of completing the project) after completion of all work conducted under this permit. **THIS REPORT IS MANDATORY.**

At a minimum the Report shall include the following:

- A) The name, address, and telephone number of the applicant and the applicant's agent (if appropriate)
- B) Full description of the activity including:
 - i) description of the emergency and the potential for loss of life or property
 - ii) purpose of the activity
 - iii) final goal of the entire activity
 - iv) location (e.g., latitude/longitude or UTM coordinates; section/township/range on appropriate USGS topographic map; Thomas Guide map, or other source to accurately portray project location)
 - v) size and description of project area (include maps or drawings showing the areal and lineal extent of the project, and pre- and post-construction photographs)
 - vi) quantities of materials used
- C) Information on receiving waterbody impacted including:
 - i) name of waterbody
 - ii) type of receiving waterbody (e.g., river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, wetland type, etc.)
 - iii) temporary/permanent adverse impact(s) in acres/cubic yards/linear feet
 - iv) compensatory mitigation in acres/cubic yards/linear feet
 - v) other mitigation steps (to avoid, minimize, compensate)
- D) information on federally listed or proposed endangered species or designated or proposed critical habitat (notification must be provided to FWS and NMFS as appropriate) including:
 - i) temporary/permanent adverse impacts
 - ii) compensatory mitigation
 - iii) other mitigation steps (to avoid, minimize, compensate)

3. Any work authorized by this permit must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction does not result in significantly increased impacts to aquatic resources and logistical concerns indicate such reconstruction is as expedient considering the condition of the project site and is limited to in-kind replacement or refurbishment.

4. Endangered Species Act: This Corps permit does not authorize you to take any threatened or endangered species, in particular the threatened western snowy plover (*Charadrius nivosus ssp. nivosus*), the endangered tidewater goby (*Eucyclogobius newberryi*), the endangered California least tern (*Sterna antillarum browni*), nor the endangered southern California coast steelhead (*Oncorhynchus mykiss*) or adversely modify their designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). Pursuant to the FWS recommendations provided, including the required avoidance and minimization measures, the Corps Regulatory Division has determined, and the FWS has concurred, your activity is likely

to adversely affect tidewater gobies and its designated critical habitat, and western snowy plover and its designated critical habitat, but that section 7 consultation will be addressed after the emergency has been eliminated. Your authorization under this Corps permit is conditional upon your compliance with all of the required avoidance and minimization measures, which are incorporated by reference in this permit. Failure to comply with the required avoidance and minimization measures would constitute non-compliance with your Corps permit. The FWS and NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

5. Prior to initiation of site work, the applicant will perform an informal pre-construction meeting with maintenance and management personnel to inform them about potential presence of western snowy plovers, including their protected status, proximity to the project site, avoidance/minimization measures to be implemented during the particular project, and the implications of violating the Endangered Species Act and Corps permit conditions.

6. The number of access routes, size of staging areas, and the total area of the activity will be limited to the minimum necessary to achieve the project goal. Environmentally sensitive areas will be established to confine access routes and construction areas to the minimum necessary to complete construction; this goal includes locating access routes and construction areas outside of wetland and beach areas to the maximum extent practicable. Construction and staging areas will be demarcated with flagging so that workers will not impact areas larger than those necessary to accomplish the work.

7. A qualified biological monitor shall remain onsite at Malibu Beach and also Zuma Beach / Point Dume, and monitor for western snowy plovers within the work areas, during all project activities, especially during equipment mobilization between different work and staging areas.

8. If wintering western snowy plover are detected within the work area at either Zuma Beach / Point Dume or Malibu Beach (Surfrider Beach), no project activities may disturb western snowy plovers and work shall not commence until the plovers leave the work area on their own.

9. The applicant will provide a written summary of work performed (including biological survey and monitoring results), best management practices implemented (i.e., use of biological monitor, exclusion nets and numbers of organisms relocated, flagging of project areas, erosion and sedimentation controls) and supporting photographs of each stage. Furthermore, the documentation describing listed species surveys will include the name of biologist(s), location and description of area surveyed, time and date of survey, all survey methods used, a list and tally of all sensitive animal species observed during the survey, and a description of the instructions/recommendations given to the applicant during the project.

10. The applicant will avoid coastal strand and wrack (kelp and other washed up organisms) cast upon the beach to the maximum extent possible. If wrack cannot be avoided, the qualified biologist will collect and store it until the emergency project has been completed. Once the project has been completed the qualified biologist will replace the wrack on the beach.

11. Vehicles, including heavy equipment at both beaches, used for the project will operate below a maximum of 5 miles per hour speed limit, and if western snowy plovers are encountered, the driver/operator will back up 50 feet and alter their route to avoid flushing or disturbing plovers.

12. During and after berm construction or tear down activities, heavy vehicle equipment will not contact, disturb or significantly impact lagoon, ocean water, intertidal habitat, or fish and wildlife seaward of the Higher High Water (HHW).

13. The Permittee shall ensure no debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the United States. Upon completion of the project authorized herein, any and all excess material or debris shall be completely removed from the work area and disposed of in an appropriate upland site.

For additional information please call Bonnie Rogers of my staff at 213-452-3372 or via e-mail at Bonnie.L.Rogers@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

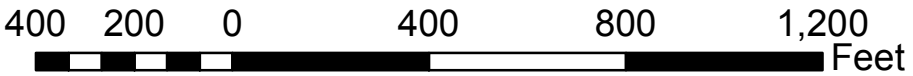
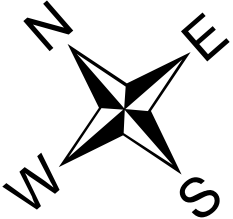
- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

U.S. ARMY CORPS OF ENGINEERS – LOS ANGELES DISTRICT
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Zuma/Point Dume Sand Collection Areas



Proposed Sand Collection Area (approx. 500 cubic yards)

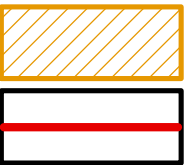


Malibu Lagoon (Surfrider) Beach Sand Berm Location Map



Photo: Winter 2011

Legend



Proposed Stabilizer/Sand Berm Area

Los Angeles County Property Line

Map: September 2013, LACO Dept. of Beaches and Harbors, Planning Division

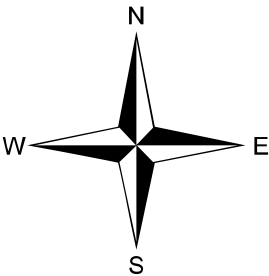


Photo: 2013 (Google Maps)



Malibu Lagoon - Proposed Berm Location



Existing Conditions as of May 11, 2011