



US Army Corps  
of Engineers  
Portland District

# PUBLIC NOTICE

## Application for Permit

**Issue Date:** February 16, 2016

**Expiration Date:** March 16, 2016

**US Army Corps of Engineers No:** NWP-1998-668/1

**Oregon Department of State Lands No:** N/A

### 30-Day Notice

Interested parties are hereby notified the U.S. Army Corps of Engineers, Portland District (Corps) has received an application for a Department of the Army permit for certain work in waters of the United States, as described below and shown on the attached plans. The Corps is soliciting comments on the proposed work.

**Applicant:** Mr. Len Fugate  
Attention: Len Fugate  
Fugate Farms LLC  
P.O. Box 426  
Bandon, Oregon 97411  
Email: [len.fugate@gmail.com](mailto:len.fugate@gmail.com)  
Telephone: (541) 808-1216

**Location:** The project site is located on agricultural property near 48504 Highway 101, Bandon, Coos County, Oregon. The site is located in Section 13 of Township 29 South, Range 15 West. Latitude and Longitude: 43.05722 North, -124.427570 West

**Waterway:** Unnamed tributary to Twomile Creek; palustrine and scrub-shrub wetlands abutting the unnamed tributary to Twomile Creek, and Twomile Creek, mile 1.6.

**Project Purpose:** The applicant's stated purpose is to develop a reservoir to provide a water source for agricultural operations.

**Project Description:** To retain 3,361 cubic yards (cy) of fill material in 0.31 acres of palustrine emergent wetlands and to discharge an additional 584 cy of material in 0.55 acre of wetlands to construct an earthen dam within an unnamed tributary to Twomile Creek, and abutting wetlands. The applicant has partially constructed approximately 230 linear feet of the estimated 270 foot long by 12 foot high earthen dam. The dam measures approximately 60 feet wide at its base and 20 feet wide at the crest and has been constructed with material sourced from an adjacent hillside. When complete, the project would permanently flood approximately 4.3 acres of the following types of aquatic resources: 1.02 acres of palustrine forested wetland, 2.53 acres of palustrine scrub-shrub wetland, 0.51 acres of palustrine unconsolidated bottom wetland, 0.24 acres of palustrine emergent wetland, and approximately 800 linear feet of the unnamed tributary to Twomile Creek. The depth of the reservoir would follow the contours of the existing topography and would possess the capacity to store approximately 48 acre feet of water annually. A manual conduit/gate assembly possessing a minimum diameter of eight inches would be installed on the dam to

provide an overflow relief mechanism to manage water within the reservoir. Releases from the reservoir would flow through onsite wetlands, into the unnamed tributary to Twomile Creek and into Twomile Creek. The applicant proposes to construct the dam during the summer season when the site is predominantly dry.

**Mitigation:** The applicant proposes to restore wetlands immediately south of the proposed reservoir and dam to compensate for permanent impacts to the unnamed tributary to Twomile Creek and abutting wetlands. A mitigation plan has not yet been developed by the applicant. The Corps will determine the type and amount of compensatory mitigation necessary to offset environmental losses from the proposed project.

**Drawings:** Seven (7) drawings are attached and labeled Corps No. NWP-1998-668/1. Copies of this public notice, which have been mailed or otherwise physically distributed, feature project drawings in black and white. The electronic version features those drawings in color, which we think more accurately illustrates the proposed project. To access the electronic version of this public notice, go to the Portland District website at <http://www.nwp.usace.army.mil/> and select Regulatory Branch Permit Information. At the Regulatory page select Regulatory Public Notices.

**Additional Information:** The partially completed reservoir was constructed without Department of Army (DA) authorization in 2011. If approved, the applicant anticipates completing construction during 2016.

**Authority:** The proposed project will be evaluated under the following:

Section 404, Clean Water Act (33 U.S.C. 1344), for discharge of dredged or fill material into waters of the United States.

**Clean Water Act Section 404(b)(1) Guidelines:** The described discharge will be evaluated for compliance with guidelines promulgated by the U.S. Environmental Protection Agency under authority of Section 404(b)(1) of the Clean Water Act. The 404(b)(1) Guidelines are the substantive criteria used in evaluating discharges of dredged or fill material into waters of the United States. The source of the fill material would be sourced from an adjacent hillside.

**Water Quality Certification:** Section 401 of the Clean Water Act (33 U.S.C. 1341) requires applicants to obtain a water quality certification for proposed discharges into waters of the United States. A permit for the described work will not be issued until certification has been issued or is waived from the certifying state. Attached is the state's notice for a water quality certification.

**Coastal Zone Management:** Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)), requires non-Federal applicants seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification which indicates the activity conforms with the State's Coastal Zone Management Program. The applicant believes the proposed project would comply with and be conducted in a manner consistent with the Oregon Ocean and Coastal Management Program. Attached is the state's notice for a consistency determination.

**Endangered Species:** Section 7 of the Endangered Species Act (ESA) (16 U.S.C 1536) requires federal agencies to consult with the National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service (USFWS) on all actions that may affect a species listed (or proposed for listing) under the ESA as threatened or endangered or that may adversely modify designated critical habitat. The Corps' preliminary review indicates that the described activity may affect an endangered or threatened species or designated critical habitat. The Corps will initiate consultation under Section 7 of the ESA. The Corps will complete the required consultation prior to finalizing a permit decision.

**Essential Fish Habitat:** Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) as amended (16 U.S.C 1855), requires Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The Corps' preliminary review indicates the described activity would adversely affect EFH at the project location or in the vicinity. The Corps will initiate consultation under Section 305(b)(2) of the MSA. The Corps will complete the required consultation prior to finalizing a permit decision.

**Historic Properties/Cultural Resources:** Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), requires Federal agencies to consult with the appropriate State and/or Tribal Historic Preservation Officer to take into account the effects of actions they undertake or permit on historic properties listed in or eligible for listing in the National Register of Historic Places. The Corps' preliminary review indicates the described activity is not located on property registered or eligible for registration in the latest published version of the National Register of Historic Places. The proposed work may affect other types of cultural resources.

This notice has been provided to the State Historic Preservation Office (SHPO), interested Native American Indian Tribes, and other interested parties. If you have information pertaining to cultural resources within the permit area, please provide this information to the Corps' project manager identified at the end of this notice to assist in a complete evaluation of potential effects.

**State and Local Authorizations:** The applicant has obtained approval from the Oregon Department of Water Resources and will be applying for the following additional governmental authorizations for the project: Oregon Department of Environmental Quality Individual Section 401 Water Quality Certification, Oregon Department of Land Conservation and Development Coastal Zone Management Act concurrence, and an Oregon Department of State Lands Removal/Fill permit. The applicant has completed a Floodplain Review Application with Coos County Planning Department.

**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 hearings shall state with particularity the reasons for holding a public hearing.

**Evaluation:** The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the described 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 described activity, must be balanced against its reasonably foreseeable detriments. All factors, which

may be relevant to the described activity will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people.

The Corps 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 the proposed project. Any comments received will be considered by the Corps 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.

**Submitting Comments:** Interested parties are invited to provide comments on the proposed project. Comments may be submitted by conventional mail or email. All comments received will be considered in determining whether authorizing the work would be contrary to the public interest.

Either conventional mail or e-mail comments must include the Corps reference number as shown on page 1 and include the commenter's name and address. In order to be accepted, e-mail comments must originate from the author's e-mail account and must include on the subject line of the e-mail message the Corps reference number. All comments received will become part of the administrative record and are subject to public release under the Freedom of Information Act including any personally identifiable information such as names, phone numbers, and addresses.

Additional information about the proposed project may be obtained from the Corps Project Manager listed below. All comments, whether by conventional mail or email, must be received no later than the expiration date of this public notice to ensure consideration. Comments should be submitted to the following mailing address or email address:

U.S. Army Corps of Engineers  
Anita Andazola  
North Bend Field Office  
2201 Broadway Suite C  
North Bend, Oregon 97459-2372  
Email: [anita.m.andazola@usace.army.mil](mailto:anita.m.andazola@usace.army.mil)  
Telephone: (541) 756-5316

**PUBLIC NOTICE**  
**Oregon Department of Environmental Quality (DEQ)**  
**Water Quality 401 Certification**

**Notice Issued:** February 16, 2016  
**Written Comments Due:** March 16, 2016

**Corps of Engineers No:** NWP-1998-668/1  
**Oregon Department of State Lands No:** N/A

**WHO IS THE APPLICANT:**

Mr. Len Fugate  
Fugate Farms, LLC  
P.O. Box 426  
Bandon, Oregon 97411

**LOCATION OF CERTIFICATION ACTIVITY:** See attached U.S. Army Corps of Engineers public notice.

**WHAT IS PROPOSED:** See attached U.S. Army Corps of Engineers public notice on the proposed project.

**NEED FOR CERTIFICATION:** Section 401 of the Federal Clean Water Act requires applicants for Federal permits or licenses to provide the Federal agency a water quality certification from the State of Oregon if the proposed activity may result in a discharge to waters of the state.

**DESCRIPTION OF DISCHARGES:** See attached U.S. Army Corps of Engineers public notice on the proposed project.

**WHERE TO FIND DOCUMENTS:** Documents and materials related to water quality issues as a result of the proposal are available for examination and copying at Oregon Department of Environmental Quality, 401 Water Quality Certification Coordinator, Northwest Region, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. Other project materials are available by contacting the Corps per the attached public notice.

Scheduling an appointment will ensure that water quality documents are readily accessible during your visit. To schedule an appointment please call DEQ Water Quality at Northwest Region at (503) 229-5263.

Any questions on the water quality certification process may be addressed to the 401 Program Coordinator at (503) 229-6030 or toll free within Oregon at (800) 452-4011. People with hearing impairments may call the Oregon Telecommunications Relay Service at 1-800-735-2900.

## **PUBLIC PARTICIPATION:**

**Public Hearing:** Oregon Administrative Rule (OAR) 340-48-0032 (2) states that “The Corps provides public notice of and opportunity to comment on the applications, including the application for certification, provided that the department (DEQ), in its discretion, may provide additional opportunity for public comment, including public hearing.”

### **Written comments:**

Written comments on project elements related to water quality must be received at the Oregon Department of Environmental Quality by 5 p.m. on the date specified in the upper right section on page one of this notice. Written comments may be emailed, mailed or faxed as described below:

Email - [401publiccomments@deq.state.or.us](mailto:401publiccomments@deq.state.or.us)

Mail - Oregon Department of Environmental Quality, Northwest Region  
700 NE Multnomah Street, Suite 600  
Portland, Oregon 97232  
Attn: 401 Water Quality Certification Coordinator

Fax - (503) 229-6957

**WHAT HAPPENS NEXT:** DEQ will review and consider all comments received during the public comment period. Following this review, certification of the proposal may be issued as proposed, issued with conditions, or denied. You will be notified of DEQ's final decision if you submit comments during the comment period. Otherwise, if you wish to receive notification, please call or write DEQ at the above address.

**ACCESSIBILITY INFORMATION:** This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Office of Communications and Outreach at (503) 229-5317 or toll free within Oregon at 1-800-452-4011 to request an alternate format. People with a hearing impairment can receive help by calling the Oregon Telecommunications Relay Service at 1-800-735-2900.

**PUBLIC NOTICE**  
**OREGON OCEAN AND COASTAL MANAGEMENT PROGRAM**  
**CONSISTENCY CERTIFICATION**

**Date:** February 16, 2016

**U.S. Army Corps of Engineers No:** Corps No. NWP-1998-668/1  
**Oregon Department of State Lands No:** N/A

**NOTIFICATION:**

For projects subject to coastal zone review, notice is hereby given that the project is being reviewed by the Department of Land Conservation and Development (DLCD) as provided in Section 307(c) of the Coastal Zone Management Act. The applicant believes that the activities described in the attached materials would comply with and be conducted in a manner consistent with the Oregon Ocean and Coastal Management Program. Project information can be made available for inspection at DLCD's Salem office.

DLCD is hereby soliciting public comments on the proposed project's consistency with the Oregon Coastal Management Program. Written comments may be submitted to DLCD, 635 Capital Street NE, Suite 150, Salem, Oregon 97301-2540. Comments may also be sent by fax to (503) 378-6033 or by email to [coast.permits@state.or.us](mailto:coast.permits@state.or.us). All comments must be received by DLCD on or before the comment deadline listed in the accompanying Corps of Engineers' Public Notice Application for Permit. For further information, you may call DLCD at (503) 373-0050.

**REVIEW CRITERIA:**

Comments should address consistency with the applicable ***enforceable policies*** of the Oregon Coastal Management Program. These enforceable policies are found in the following:

- Acknowledged Local Comprehensive Plans & Implementing Ordinances
- Statewide Planning Goals
- Applicable State Authorities incorporated into the Oregon Coastal Management Program (e.g. Removal-Fill Law, Water Quality Standards, Beach Bill, etc.) as applicable.

A list of specific enforceable policies can be found at the following link:

[http://www.oregon.gov/LCD/OCMP/Pages/OCMP\\_Enforceable-Policies.aspx](http://www.oregon.gov/LCD/OCMP/Pages/OCMP_Enforceable-Policies.aspx)

**INCONSISTENT?**

If you believe this project is inconsistent with the Oregon Coastal Management Program, your comments to DLCD should explain why you believe the project is inconsistent and should identify the Oregon Coastal Management Program element(s) in question. You should also describe how the project could be modified, if possible, to make it consistent with the Oregon Coastal Management Program.