



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: Gravel Extraction Activities at Van Duzen River Ranch, Hydesville, California

PUBLIC NOTICE NUMBER: SPN-2007-00633

PUBLIC NOTICE DATE: June 14, 2022

COMMENTS DUE DATE: July 13, 2022

PERMIT MANAGER: L. Kasey Sirkin

TELEPHONE: 707-443-0855

E-MAIL: l.k.sirkin@usace.army.mil

1. **INTRODUCTION:** Mercer Fraser (POC: Mr. Mark Benzinger, 707-599-6371), 5383 Kneeland Road, Kneeland, CA 95549, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to extract gravel for commercial purposes from the Noble and Patton gravel bars. 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 site is located in Humboldt County, in the Hydesville area, southeast of River Bar Road, approximately two miles southeast from the intersection of State Highway 36 with River Bar Road on the property known as 1919 River Bar Road and the property known to be in Sections 20, 27-30, 32-33, Township 02 north, Range 01 east. See enclosure 1.

Project Site Description: The proposed action involves removal of river run aggregate materials from within the active channel of the Van Duzen River, Humboldt County California. The locations are characterized by sparse quantities of riparian vegetation, consisting of willows, alders, cottonwoods, and other water tolerant plant species. The gravel bars are dynamic and change locations within the active channel frequently. No development exists on any of the locations where materials would be removed and all the sites have experienced some level of resource extraction for at least the past 10 years.

Project Description: The applicant proposes to perform annual gravel extraction activities, including constructing temporary stream crossings, and stockpiling on two Van Duzen River gravel bars at the above

mentioned location. The harvesting of aggregate materials on the Van Duzen River involves the extraction of up to 100,000 cubic yards of flood-washed alluvial materials with heavy equipment (belly-scrappers, front-end loaders, excavators, bulldozers, haul trucks) from designated locations along the Van Duzen River. All extraction and reclamation activities are restricted to a season between June 1 and October 15 of each year, although work extensions may be granted by the Corps on a case-by-case basis until November 1.

When potential extraction methods and locations are identified for a given year's operational bars, a set of proposed plans along with the pre-extraction monitoring data shall be submitted to the County of Humboldt Extraction Review Team (CHERT, described below), Corps, NMFS, and CDFW (the interagency review team). CHERT is a team of riverine scientists appointed by the County of Humboldt Planning Department to provide recommendations to the proposed extraction plan in order to limit the amount of adverse effects from the extraction. As part of the review process, the individual operators and the interested agencies would conduct a field review of each operational bar. During the interagency review, variations to the proposal are discussed, and improved, if possible.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is to extract gravel.

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 extract river run gravel for commercial sale.

Project Impacts: The proposed extraction activities include the temporary placement of fill, for bridge abutments and bar access, within the active channel of the Van Duzen River. There would be no loss of waters or wetlands associated with proposed extraction activities.

Proposed Mitigation: All of the proposed extraction activities include avoidance and minimization measures including, but not limited to, the following: avoidance of riparian vegetation; work season limitations; post extraction grading to pre-project conditions; adherence to all CHERT recommendations; pre-extraction wildlife surveys; pre and post extraction surveys and monitoring; and annual review and approval of all extraction plans.

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 the established Reasonable Period Of Time established by the Corps.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403, by the close of the comment period.

Coastal Zone Management: 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.

Other Local Approvals: The applicant has obtained the following additional governmental authorizations for the project: a Lake and Streambed Alteration Agreement from the California Department of Fish and Wildlife, and a mining permit from the County of Humboldt.

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 or 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to 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 proposed project may have an adverse effect on federally listed threatened coho and Chinook salmon, as well as steelhead and their designated critical habitats. The Corps anticipates that the proposed project may result in direct (lethal) impacts to juvenile steelhead that may attempt to burrow into the gravels during seasonal bridge construction. The project area after the proposed activities may contribute fine sediments as a sediment plume during the first rains in the fall and more fine sediments, which may fill the interstitial spaces in the gravel and pools. The sediment plumes, filled interstitial spaces, and fining of pool sediments constitute indirect impacts to designated critical habitats. The sediment plume may also affect salmonid behavior.

To address project related impacts to these species 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 National Marine Fisheries Service (NMFS) on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management 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 may have an adverse effect on Pacific Coast Salmon FMP through direct and indirect impacts to instream habitat, hydrology, and river morphology. 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 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 been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

6. PUBLIC INTEREST EVALUATION: The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general

environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

7. CONSIDERATION OF COMMENTS: USACE is soliciting comments from the public; Federal, State, and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments by email (see above), or hard copy to L. Kasey Sirkin, San Francisco District, Regulatory Division, Eureka Field Office, 601 Startare Drive, Box 14, Eureka, California 95501; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent or by contacting the Regulatory Permit Manager by telephone or e-mail (cited in the public notice letterhead). An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.