



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: Stewart Bar Gravel Extraction

PUBLIC NOTICE NUMBER: 2021-00056

PUBLIC NOTICE DATE: September 13, 2022

COMMENTS DUE DATE: October 12, 2022

PERMIT MANAGER: Ms. L. Kasey Sirkin

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1. **INTRODUCTION:** Wylatti Resource Management (POC: Mel Goodwin 707-983-8135), P.O. Box 575, Covelo, California 95490, 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 jurisdiction waters of the United States associated with gravel extraction from the Middle Fork Eel River near the city of Dos Rios, 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 along the Middle Fork Eel River at 51111 Covelo Road, Dos Rios, California (APN 035-030-17, -49, &-65), Section 5, Township 21 North, and Range 13 West. The coordinates of the approximate center of the project area are 39.705° North and -123.328° West (figure 1).

Project Site Description: The project area is on the Middle Fork Eel River. This area is characterized by low to mid gradient meander bends and the formation of point bars that tend to accumulate large quantities of sand and gravel. These exposed bars are generally devoid of woody vegetation but are likely to be seasonally colonized by various herbaceous species.

Project Description: The applicant proposes to extract up to 20,000 cubic yards of aggregate from the project site. The actual volume removed, and the specific area of extraction varies from year to year but may not exceed the maximum limits stated above. The gravel extraction is typically performed using a skim type method using a variety of heavy equipment including dozers, excavators, front end loaders, scrapers, and dump trucks to remove the

aggregate material from gravel bars and transport the material to offsite stockpile areas. The material may be stockpiled at an adjacent upland area along Highway 162. A temporary culverted stream crossing may be installed to provide access to the extraction area. After the applicant has removed the aggregate to the approved extraction design lines and grades, the site will be re-graded as necessary to leave no depressions or berms that may potentially trap fish or cause impacts to surrounding habitats. When the final surfaces of the site are graded for seasonal reclamation, the temporary crossing will be removed. The aggregate extraction activities shall be confined to the period of July 15 to October 15.

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 gravel extraction.

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 gravel for commercial use.

Project Impacts: Up to 20,000 cubic yards of gravel would be extracted or redistributed within the 3.4 acre area of the stream bed over the 10 year authorization period. Some of the gravel may be removed and stockpiled outside the stream channel. Additionally, some woody debris and vegetation may be moved from locations within the extraction area.

Proposed Mitigation: Regulated discharge of fill material would be limited to redistributing native streambed substrate in order to reduce flooding, increase surface hydrologic connectivity, and improve fish passage. Therefore, no compensatory mitigation would be required.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver 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, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403, 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 would not likely 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,

North Coast District Office, 710 E Street, Suite 200, Eureka, California 95501, by the close of the comment period.

Other Local Approvals: The applicant will be applying for the following additional governmental authorizations for the project:

- California Department of Fish and Wildlife, Streambed Alteration Agreement R1
- Mendocino County Use Permit
- Mendocino County Air Quality Management District Permit to Operate

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. 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 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.

- Northern California (NC) steelhead (*Oncorhynchus mykiss*)
Threatened (January 5, 2006; 71 FR 834)
Critical habitat (September 5, 2005; 70 FR 52488)
- Southern Oregon/Northern California Coasts (SONCC) coho salmon (*O. kisutch*)
Threatened (June 28, 2005; 76 FR 50477)
Critical habitat (May 5, 1999; 64 FR 24049)
- California Coastal (CC) Chinook salmon (*O. tshawytscha*)
Threatened (June 28, 2005; 70 FR 37160)
Critical habitat (September 5, 2005; 70 FR 52488)

The project reach of the Middle Fork Eel River contains Federally-listed threatened Coho salmon (*Oncorhynchus kisutch*), threatened Chinook salmon (*Oncorhynchus tshawytscha*), and threatened steelhead (*Oncorhynchus mykiss*). Critical habitat has been also designated for all three species to include all estuarine and river reaches accessible to salmonids below longstanding, naturally impassable barriers. Designated critical habitat consists of the water, streambed, and the adjacent riparian zone. The overall project could potentially induce changes in channel morphology. To address project related impacts to these species and designated critical habitat, USACE will initiate informal 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*, and 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 area is within the area managed under the Pacific Coast Salmon FMP. The extraction of gravel may cause adverse effects to substrate present within the project area. 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 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 Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely 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 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 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 practicable alternative to the project that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

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 of the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Ms. L. Kasey Sirkin, San Francisco District, Regulatory Division, 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>.