



US Army Corps
of Engineers

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

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RESPONSE REQUIRED BY: 19 April 2002

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

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1. **INTRODUCTION:** Bohan & Canelis Austin Creek Ready Mix (BCACRM), 600 Austin Creek Road, Cazadero, California 95421, has applied to the U.S. Army Corps of Engineers (USACE) for a five-year Department of the Army Permit to continue the annual removal of up to 50,000 cubic yards (cys) of sand and gravel from the lower reach of Austin Creek, approximately five miles south of the Town of Cazadero, in Sonoma County, California. This individual permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. **PROJECT DESCRIPTION:** As shown in the attached drawings, BCACRM proposes to remove sand and gravel from areas of bars that are exposed during summer low-flow conditions. The excavation area begins 1,000 feet upstream from the confluence of Austin Creek with the Russian River and extends 3,500 feet upstream from that point, encompassing approximately ten acres of creekbed below the plane of ordinary high water (APNs 97-030-29, 97-080-03, -06, -07, 97-230-36, 97-090-44).

Sand and gravel excavation would be accomplished by skimming only the surface layer of aggregate material that has accumulated on the exposed areas of each bar since the previous excavation episode. The depth of excavation would typically range from ½ to 4 feet, depending on the net accumulation of aggregate material on each bar. A dozer would scrape and push the sand and gravel into temporary stockpiles that, in turn, would be placed by a front-end loader into a dump truck for transport to the nearby processing plant, located on the east side of Austin Creek Road. The dump truck would use existing haul roads over the outer bank of Austin Creek to avoid further bank disturbance and loss of riparian vegetation. The low-flow channel would be crossed at two locations to gain access to several of the exposed bars. At these locations, a temporary flatcar bridge (30 feet long by 12 feet wide) would be lowered by two front-end loaders onto abutments constructed on both sides of the low-flow channel. Each abutment would be comprised of approximately ten cys of sand and gravel skimmed from the adjacent bar.

All excavation work would be performed in accordance with the provisions of the approved Reclamation Plan, requirements

of the California Department of Fish and Game that are stipulated in the 1603 Streambed Alteration Agreement, and the applicable provisions of the Aggregate Resources Management Plan and Surface Mining and Reclamation Ordinance for Sonoma County.

In general, these requirements are as follows, subject to further revisions: (a) All work occurring below the plane of ordinary high water is limited to the low-flow period of May 15 to November 1 of each year. (b) No excavation or skimming occurs below the two percent (2 feet vertical to 100 feet horizontal) transverse grade line measured from the edge of the low-flow channel to the outer bank. If no flowing water is present, the two percent transverse grade is measured from the point on the bar that is one foot above the thalweg elevation of the low-flow channel. (c) An undisturbed buffer is maintained along the perimeter of each bar and the flowing water that is a minimum of three feet in width. (d) Riparian vegetation growing along the perimeter or as dense stands in each bar and on the outer bank is not removed or otherwise disturbed. (e) Upon the completion of work, the disturbed areas of each bar are graded to remove any pits and depressions that could otherwise entrap fish, and all compacted areas are ripped to a depth of 18 to 24 inches. (f) Temporary crossing structures are set a minimum of four feet above the water surface, and are not installed prior to June 1 and are removed by November 1 of each year. Except for the installation of the crossing structures, no equipment shall operate in the flowing water. (g) Except for temporary stockpiling of sand and gravel for loading purposes and separating oversized aggregate materials, all processing operations occur landward and above ordinary high water and outside the limits of adjacent riparian vegetation. (h) Pre-excavation cross-section surveys of the project area are provided to the reviewing agencies by February 1 of the following year.

3. **PURPOSE AND NEED:** BCACRM indicates the purpose and need for the project are to continue the seasonal removal of sand and gravel to provide a local source of aggregate materials for construction uses, landscaping, and erosion-control in western Sonoma County. From a State and County perspective, BCARM maintains vested rights to continue aggregate excavation operations that were legally in effect prior to 1976; these operations began in 1950 and have been authorized by the USACE since 1986. Over the last five years, approximately

179,460 cys of aggregate material has been removed from the bars, or an average of 35,890 cys per year.

4. **SITE DESCRIPTION:** The lower reach of Austin Creek is characterized by a series of low-gradient meander bends and the formation of point bars that tend to accumulate large quantities of sand and gravel originating from early logging and mining operations in the upper watershed. Median daily flows range from 200 feet per second in February to 0.6 cubic feet per second in September; in the lower reach of Austin Creek, summer flows essentially become subterranean in nature, resulting in a narrow and shallow low-flow channel or a series of isolated pools. Vegetation on the banks is comprised of mature redwoods, Douglas firs, bays, alders, box elders, willows, and black berry vines that tend to form a continuous riparian canopy. The exposed bars are generally devoid of woody vegetation but are likely to be seasonally colonized by various herbaceous species, including white sweet clover, cocklebur, Jerusalem oak, birds-foot lotus, and Indian tobacco.

5. **STATE APPROVALS:** State water quality certification or 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 (33 U.S.C. 1341). BCACRM is hereby notified that, unless the USACE is provided a valid request for water quality certification by the Regional Water Quality Control Board (RWQCB) within 30 days of the date of this Public Notice, the District Engineer may consider the permit application to be withdrawn. No Department of the Army Permit will be issued until BCACRM obtains the required certification or waiver. A waiver will be explicit, or it may be presumed if the RWQCB fails or refuses to act on a valid request for certification within 60 days after 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, Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403, by the close of the comment period.

For prior aggregate excavation episodes, the RWQCB adopted Waste Discharge Requirements Order No. 83-138 that may remain valid until there is a change in the operation, a change in ownership, or a change in the regulatory process.

The project is not subject to the jurisdictional purview of the San Francisco Bay Conservation and Development Commission or the California Coastal Commission.

6. **COMPLIANCE WITH VARIOUS FEDERAL LAWS:**

National Environmental Policy Act of 1969 (NEPA): At the

conclusion of the public comment period, the USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190), the Council on Environmental Quality's Regulations at 40 CFR 1500-1508, and USACE Regulations at 33 CFR 230 and 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of the USACE and other non-regulated activities the 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.

Endangered Species Act of 1973 (ESA): Naturally spawned populations of coho salmon (*Oncorhynchus kisutch*), steelhead (*Oncorhynchus mykiss*), and chinook salmon (*Oncorhynchus tshawytscha*) inhabiting the California Coast Province, including the Russian River Basin, have been federally-listed as threatened under the Endangered Species Act. Critical habitat has been also designated for these 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 adjacent riparian zone. The headwaters and upper tributaries to Austin Creek presently or historically have provided spawning and rearing habitat for coho salmon and steelhead. The lower reach of Austin Creek, including the excavation area, is presumed to principally serve as a migratory corridor for adult and juvenile salmonids. Adult coho salmon generally enter the Russian River Basin and migrate upstream to spawn from late October to mid-February and die within two weeks after spawning. Yearling juvenile coho salmon tend to migrate downstream to the ocean from March to mid-June. Steelhead are capable of repeat spawning episodes. Adult steelhead enter the Russian River Basin from late fall through April and begin spawning in December. Juvenile steelhead will remain in fresh water from one to three years and tend to migrate downstream to the ocean during the spring and early summer months. Chinook salmon are presumed to not inhabit the Austin Creek watershed area.

To address project-related impacts to salmonid fish species and their designated critical habitat, the USACE will initiate formal consultation with the National Marine Fisheries Service, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The consultation process must be concluded prior the issuance of any Department of the Army Permit for the project.

The headwaters and upper tributaries to Austin Creek presently provide suitable habitat for the endangered California freshwater shrimp (*Syncaris pacifica*). The preferred habitat is low-gradient, perennial streams with diverse, undercut banks

with exposed roots and overhanging woody debris and vegetation. The lower reach of Austin Creek, including the excavation area, is presumed to not provide suitable habitat for freshwater shrimp due to the intermittent nature of the summer flow regime. No other federally-listed threatened or endangered species are known to occur within the project area or in the project vicinity.

Magnuson-Stevens Fishery Conservation and Management Act of 1996 (MSFCMA): The Russian River Basin occurs within essential fish habitat for the Pacific Salmon Fishery that includes both coho and chinook salmon. Essential fish habitat for these species corresponds to their designated critical habitat. The aforementioned Section 7 consultation process will also address project-related impacts to essential fish habitat.

National Historic Preservation Act of 1966 (NHPA): Based on a review of survey data on file with various City, State, and Federal agencies, no historic or archaeological resources are known to occur on-site or in the project vicinity. Since the exposed bars are comprised of sediments recently deposited by high water-flow events, aggregate excavation work would not likely encounter intact archaeological resources. If unrecorded historic or archaeological resources were discovered during excavation work, such operations would be suspended until the USACE concluded Section 106 consultation with the State Historic Preservation Officer to take into account any project-related impacts to these resources.

7. COMPLIANCE WITH THE 404(b)(1) GUIDELINES: Projects resulting in dredged or fill material discharges 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 to extract gravel for commercial use. This conclusion raises the (rebuttable) presumption of the availability of a practicable alternative to the project-related discharges into waters of the United States that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. BCACRM has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

8. 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.

9. CONSIDERATION OF COMMENTS: The USACE 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 project. All comments received by the 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 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.

10. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to the San Francisco District, Regulatory Branch, North Section, citing the applicant's name and Public Notice Number in the letter. Comments may include a request for a public hearing on the project prior to a determination on the permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All comments will be forwarded to BCACRM for resolution or rebuttal. Additional information may be obtained from the BCACRM or by contacting Mr. Peter Straub of the Regulatory Branch at telephone 415-977-8443.