



US ARMY CORPS
of Engineers

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

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

NUMBER: 27840-1N DATE: June 4, 2004
RESPONSE REQUIRED BY: July 4, 2004

PERMIT MANAGER: David Ammerman PHONE: 707-443-0855

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1. INTRODUCTION: The Hoopa Valley Tribe (HVT), Roads Department, P.O. Box 789, Hoopa, California 95546, (Contact: Mr. Travis Schneider, Pacific Affiliates, Inc., at: 707-445-3001), has applied for modification of U.S. Army, Corps of Engineers (Corps) Permit No. 27840N, issued October 15, 2003, for the discharge of fill in waters of the United States in connection with in stream gravel mining on the Trinity River. The original permit covered gravel operations on the Campbell Bar, Tish-Tang #8 Bar at River Mile 15, the Cal-Pac Bar, Security West Bar, and the Security East Bar. All of the above gravel bars including the proposed addition of the Tish Tang Bar at River Mile 17 are within the Hoopa Valley Indian Reservation, in Humboldt County, California. This modification requests the addition of the Tish Tang Bar (located at River Mile 17 near Tish Tang Campground) to the current gravel extraction permit (See Sheet 1 of 2 for location). This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

2. PROPOSED PROJECT:

Project Site: The additional Tish Tang Bar is located at River Mile 17 on the left bank of the Trinity River. Access to this bar

would be through roads on Tish Tang Campground located east of Highway 96, at the confluence of Tish Tang a Tang Creek and the Trinity River. Current conditions at the site consist of an unvegetated gravel bar on the left bank, which is expected to replenish annually during periods of high flow. Above the gravel bar and above Ordinary High Water on the left bank is a developed campground maintained by HVT. Tish Tang Bar access comes from the campground access roadway off Highway 96. The Tish Tang Campground access is a paved, two-lane roadway that leads directly to the gravel bar. Gravel hauling trucks would not enter or travel through the campground.

Project Description: As shown in the attached drawings (See Sheet 2 of 2), the applicant plans to extract gravel by bar skimming on the downstream two-thirds of the gravel bar unless it can be demonstrated that extraction can be conducted within upstream bar areas that would prove beneficial to the preservation of riffle structure or bar/bank stability. The gravel would be skimmed from the surface of the bar with a bulldozer, or front-end loader, and pushed into piles within the excavation area. When sufficient material is accumulated, the stockpiled gravel would be loaded directly

into dump trucks and taken either to construction locations or to the Cal-Pac gravel processing site located north of the project area within the Hoopa Valley Indian Reservation. Toward the end of the excavation season, material would be carried from the gravel bars to approved stockpile sites off of the Tish Tang Bar (probably at the Cal Pac gravel processing site). Skimming operations would be conducted within approved extraction areas, blending final surfaces to surrounding natural features. The extraction area limits would be marked with flagging and/or staked so that the operators can clearly see the extraction limits and maintain grade control throughout the extraction activity. No trenches or pits would be excavated at Tish Tang Bar. Gravel would be carried from the project site by ten-wheelers (10-12 cubic yard capacity) and by "belly-dump" type trucks (15-20 cubic yard capacity). Truck traffic would be about equally divided between the two types. The gravel haul route from Tish Tang Bar would be via the Tish Tang Campground access road to Highway 96 and from there north to the Cal-Pac aggregate processing plant.

All construction activities would be conducted during weekday working hours, 8 A.M. to 5 P.M. Construction areas would be fenced with temporary construction safety fencing during gravel extraction. Beach access during extraction would be provided to the upper 1/3 of the bar during extraction hours. The extraction site would be regraded daily to smooth all extraction edges and blend existing grades with cut grades. All on-bar construction activities would be scheduled with the Hoopa Valley Tribe Administration and Planning

Departments before extraction commences (*Hoopa Valley Tribe Trinity River Aggregate Extraction Scope of Work, Tish Tang Bar*, submitted with Pacific Affiliates letter of April 5, 2004).

The HVT requested that the Corps permit authorize extraction on the Tish Tang Bar and the five other gravel bars (when winter gravel recruitment and replenishment allow) on a seasonal, annual basis for five years (2004 to 2008). It is not expected that all of the gravel bars would be extracted at the same time each season. The bars extracted would alternate depending on gravel availability and bar conditions.

Purpose and Need: The basic purpose of this project is to extract aggregate and gravel for commercial sale (both non-tribal and tribal customers). Some of the other gravel bars, including Campbell Bar, Security East and West Bars, Cal-Pac Bar, would also be extracted if gravel recruitment over the winter period allows for adequate extraction volumes. However, during the 2003-2004 winter period, some of these bars were not expected to provide sufficient gravel to meet tribal needs nor supply commercial market demands. Therefore, the Tish Tang Bar near the campground was proposed to meet the gravel volume shortfall. The overall purpose of this project is to provide an additional source of aggregate and gravel for multiple uses by the Hoopa Valley Tribe, including sale to non-tribal entities. The gravel and aggregate would be used for building construction, road maintenance of construction, and other infrastructure.

Impact: The project will result in the

discharge of fill into waters of the United States (the Trinity River) through the bar skimming operations, post-extraction grading of the site for fishery protection and enhancement, and the temporary stockpiling of gravel on the river bar. The estimated volume of material to be extracted from the Tish Tang Bar has not yet been determined as of this writing. The HVT, through its consultant Pacific Affiliates, will be conducting cross section surveys on the Tish Tang Bar when river flows permit. When the proposed volumes have been calculated, they will be submitted to the Corps prior to the start of the extraction season. The extraction area would be approximately 1,750 lineal feet long by approximately 50-100 feet wide and cover about 2 to 2.5 acres of Corps jurisdictional waters and the gravel bar.

Mitigation: The applicant has proposed the following measures to minimize or mitigate for the in stream mining impacts: End of season grades would slope outboard toward the river and downstream, complimentary to the low-flow channel gradient. These measures would prevent ponding of water and potential entrapment of fish during river flow fluctuations within the extraction area. All extraction would maintain a 1-foot minimum vertical offset from the current water's edge and/or a 6-foot minimum horizontal buffer from the water's edge, whichever is greater. Temporary extraction stockpiles, located within the limits of bar extraction areas, would be removed at the end of each work week. Efforts would be made to keep any and all bar stockpiles as small a possible to reduce viewshed impacts and maintain a more natural scene within the river corridor. All roads and areas used by

trucks and equipment would be treated for dust control. In order to eliminate any potential petroleum products from entering the river, all vehicles and equipment used near the Trinity River for excavation would be inspected daily for any leaks. If any leaks are detected, the vehicles or equipment would be immediately repaired or removed from the site for maintenance. Any and all affected soil or aggregate would be gathered, stored and treated in the proper manner (e.g. used in asphalt or directed to an approved waste treatment facility). Any storage containment area used would isolate the affected material from the environment to further prevent any additional contamination. HVT recommends that extraction and construction equipment contain a spill response kit which operators would be trained to use.

Vegetation on the Tish Tang Bar was examined in February 2004 and was found to be predominantly annual, although the outboard edge of the bar supports small woody vegetation. The annual species are present for a single year, and then the habitat is inundated. Pacific Affiliates states that disruption of these species does not require mitigation (Pacific Affiliates, April 5, 2004). Disruption of the woody species, when more than 0.125 acres in size, would require mitigation, although this is not anticipated for the Tish Tang Bar. Aggregate extraction would commence June 1 (or later) and would cease by October 1, with all post-extraction grading completed by October 15 without approved extensions.

The Corps would require annual monitoring of the gravel bar before and

after seasonal extraction, including extraction and monitoring cross sections of the river channel at the extraction site and for a distance upstream and downstream of the extraction area. The cross sections would be used to monitor bar integrity and other conditions with respect to fisheries habitat. At the Tish Tang Bar, as well as the other gravel bars that would be extracted by HVT, the permittee would be required to adhere to the Reasonable and Prudent Measures and Terms and Conditions of the National Marine Fisheries Service (NOAA Fisheries) Biological Opinion for gravel extraction on the Trinity River. See the Endangered Species section of this Public Notice for more information on the Endangered Species consultation.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and Corps' Regulations, 33 C.F.R. Part 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment are on file with the Eureka Office, U.S. Army Corps of Engineers, P.O. Box 4863, Eureka, California 95502.

Endangered Species Act of 1973 (ESA):

Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. The Trinity River within the Hoopa Valley Indian Reservation boundaries contains migratory runs of coho salmon (*Oncorhynchus kisutch*) which is listed as threatened by NOAA Fisheries. Since the project site is on tribal land, this reach of the Trinity River has NOT been designated as critical habitat for the coho salmon, as the critical habitat designation does not apply on tribal lands. For the previously authorized Corps Permit No. 27840, dated October 15, 2003, the Corps initiated formal Section 7 consultation with NOAA Fisheries. NOAA Fisheries responded with a Biological Opinion dated September 17, 2003 with an Incidental Take Statement for the extraction of gravel on five gravel bars on an annual basis over five year permit duration. The Biological Opinion contains an Incidental Take Statement with Terms and Conditions which were added to the Special Conditions of the current Corps Permit. For the added Tish Tang Bar gravel extraction, the Corps will re-initiate Section 7 consultation with NOAA Fisheries and ask for an amended Biological Opinion from the NOAA Fisheries to cover the added Tish Tang Bar.

Magnuson-Stevens Fisheries Conservation and Management Act: NOAA Fisheries and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and

Management Act. Specific EFH concerns associated with the Tish Tang Bar extraction is proposal include habitat for Chinook salmon (*O. tshawytscha*) and coho salmon. Coordination with the NMFS in regard to EFH will be initiated concurrently with the amended ESA consultation, if necessary.

Clean Water Act of 1972 (CWA):

Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), in general, a Federally-recognized Native American Tribal applicant for a Corps permit must first obtain a water quality certification from the United States Environmental Protection Agency (EPA) before a Corps permit may be issued. In the case of the Hoopa Valley Tribe (HVT), EPA delegated to the HVT the authority to administer the Water Quality Certification Program under Section 401 of the Clean Water Act on May 17, 1996. Henceforth from that date, all activities within the boundaries of the HVT that require Corps permits must obtain Section 401 Water Quality Certification from HVT's Riparian Review Committee. The HVT Roads Department is expected to apply to the Riparian Review Committee for the amended gravel extraction at Tish Tang Bar. No Corps permit will be granted until the Roads Department obtains the HVT 401 water quality certification or amends the existing HVT Certification issued on September 19, 2003. The applicant has not yet provided the Corps with evidence that the Roads Department has submitted a valid request for water quality certification to the HVT tribal council and Riparian Review Committee.

National Historic Preservation Act of 1966 (NHPA): It is anticipated that the Hoopa Valley Tribal Council will advise its Road Department of any cultural resources of significance and importance to the Hoopa Valley Tribe that may be found at any of the five gravel bars as well as the requested addition of the Tish Tang Bar near the Tish Tang Campground. The HVT would advise Hoopa Valley Aggregate Enterprises (the gravel operator) and the Road Department of any actions that should be taken to prevent adverse impact to cultural resources.

4. 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]).

5. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historical 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, considerations of property ownership, and, in general, the needs and welfare of the people.

6. CONSIDERATION OF COMMENTS:

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 to determine whether to issue, 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 in the proposed activity.

7. SUBMISSION OF COMMENTS:

Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197. It is the

Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public 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. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting David Ammerman of our Eureka Office at telephone 707-443-0855 or E-mail: David.A.Ammerman@spd.usace.army.mil. Details on any changes of a minor nature which are made in the final permit action will be provided upon request.

