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US Army Corps of Engineers ®
San Francisco District

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Shively Summer Bridge On Eel River

PUBLIC NOTICE NUMBER: 2002-26902N
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COMMENTS DUE DATE: July 14, 2011

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1. **INTRODUCTION**: The Shively Community Bridge Committee, P.O. Box 693, Scotia, CA 95565. through its agent, Anthony Michael Micheli (POC: Anthony Micheli, cell phone: 707-486-3832) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill below the Ordinary High Water of the main stem Eel River associated with annual installation of an 85-foot long by 9 foot wide railroad flatcar bridge during summer periods, over a five-year permit duration (2011-2015). 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 at Section 29, Township 1 North, Range 2E, H.B.M., Redcrest quadrangle. The site is accessed by taking the Pepperwood exit off of Highway 101 and continuing one mile south on Highway 254 (Avenue of the Giants). Precise location is at 40 degrees, 26 minutes, and 16 seconds North and -123 degrees, 58 minutes, and 45 seconds West.

Project Site Description: The area on the west side of the crossing is largely on California Department of Parks and Recreation park lands with a predominance of old growth Coast Redwood trees lining the Highway 254 (Avenue of the Giants) corridor. The approach to the Shively summer crossing would pass through state park lands. The wide gravel bar over which the Shively bridge would cross is mostly devoid of vegetation except for a narrow riparian corridor on both sides of the main stem Eel River and annual or temporary riparian growth on some portions of the gravel bar. The main channel of the Eel River currently is located along the west or left bank of the river. Persons using the bridge during the summer and moving from west to east towards the community of Shively would go through state park lands on the west, drop down on a relatively steep grade to the bridge over the river and after crossing the bridge continue on a dry, unimproved gravel access road south about a half a mile or more before turning onto a paved county road through the community of Shively. This proposed bridge crossing is about a mile or so north of the old bridge crossing and takes a smaller footprint of river bar than the old crossing. The community of Shively is composed of numerous private residences, ranch land and private orchard and vegetable farms. Shively is located in a valley and floodplain of the Eel River. East of Shively is road access to forest timber harvest lands owned by private lumber companies

Project Description: As shown in the attached drawings, the applicant proposes to install, on an annual basis over a five year permit duration (2011-2015), a summer railroad flatcar bridge over the main stem Eel River between June 15 and October 15 of each year. A single flatcar bridge 85 feet long and 9 feet wide would be placed over the river with each end resting on rock rip-rap abutments. The rock rip-rap abutments would be placed outside of the river low flow channel on dry land. The applicant estimates that less than 100 cubic yards of river run gravel from the adjacent gravel bar would be used to form the gravel approach ramps at each end of the bridge (less than 100 cubic yards of gravel at each end) with the use of a Caterpillar tractor and an excavator. The bridge is pushed onto the rip-rap abutments with a D-8 Caterpillar dozer, while the excavator lifts the bridge to keep it from entering the river. Both the excavator and dozer cross the Eel River one time and return to place the rip-rap and gravel fill for the bridge approaches. No other work

would occur in the river channel except for equipment to make the single forded crossing. No gravel causeway would be required at the new river crossing. Prior to October 15, the Shively Bridge, the rip-rap abutments and the temporary gravel fill would be removed. The gravel fill would be spread onto the gravel bar to match pre-construction contours.

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 provide summer access across the Eel River.

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 provide access for the residents of Shively to travel between Shively across the river to Highway 101 and further access to areas west of the river. The Shively bridge is considered an important emergency access to Highway 101 during the dry summer months and saves 40 minutes of travel time for the Cal-Fire to reach structural fires or wildfires as well as similar access for medical and law enforcement emergencies.

Project Impacts: There would be no impacts on the low flow river channel other than a one-time forded crossing of the river by an excavator and dozer to form the bridge approaches and install the bridge. About 100 cubic yards of gravel and rip-rap would be installed at each end of the summer bridge. There would be temporary impacts to the dry river bed from placement of gravel and rip-rap abutments or approximately 200-300 square feet of fill at both ends of the bridge with the bridge itself shading over approximately 850 square feet of river channel. The bridge would sit high enough on the gravel and rip-rap abutments to allow passage of small boats underneath the bridge during summer. At least one resident has complained of the amount of dust generated from vehicles crossing the dry part of the gravel bar after crossing the bridge towards Shively. The layer of dust has settled on fields and residences in the Shively area. Because of the relatively narrow crossing at the new location, there is anticipated to be no direct impacts on river riffle or pool habitat or other fish habitat and anadromous fish during installation or removal of the bridge each season.

Proposed Mitigation: The applicant would, after installing the bridge abutments with gravel and rip-rap, and after removal of the bridge in the fall, would spread the river run gravel back onto the dry gravel bar and return the gravel bar surface to as near to pre-construction conditions as possible. No riparian or other vegetation would be removed during the installation or removal of the bridge, the gravel bar at the project site is devoid of vegetation. The applicant has not made any plans to mitigate for dust generation as per a resident's complaint. One suggestion has been to apply water spray to the gravel road surface to keep down the dust. However, the applicant has no plans to wet down the road either during bridge installation and removal or during the bridge's use for people in vehicles crossing the gravel bar of the river and the bridge.

Project Alternatives: The only alternative access available outside of the Shively area for local residents is by a long, winding seven mile circuitous route on Shively Road located east and north of Shively. Shively Road is entered just north of the Stafford area off of Highway 101 and climbs up through timber harvest areas. This narrow road during the dry months frequently has a mix of log truck traffic and smaller pickups or autos. When the bridge is out for the winter there is still a mix of truck and auto traffic on this road. The increasing activity of timber harvest and truck traffic makes traffic conflict more apparent if residents use the longer Shively Road rather than take the much shorter and faster route across Shively Bridge from the west. A permanent bridge was briefly considered over the Eel River at this site. A permanent bridge would require clearance above the known flood elevation of the Eel River, resulting in likely very high costs for construction of a full span, high bridge over the Eel River. The costs for such a bridge would not likely be justified in private or public funds to support access for the relatively small community of Shively. There are no other alternatives to Shively Road and the summer bridge crossing.

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 Shively Community Bridge Committee obtained a Section 401 Water Quality

Certification from the California Regional Water Quality Control Board (RWQCB), North Coast Region for the above current location of the Shively summer bridge by letter dated May 12, 2008. This Water Quality Certification expires on May 12, 2013.

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 the project would not likely affect coastal zone resources.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project: California Department of Fish and Game Streambed Alteration Agreement (1601/1603); California Department of Parks and Recreation Right-of-Way authorization renewal. The Shively Community Bridge Committee currently has in possession a California State Lands Commission Right-of-Way authorization (#PRC 5336.9) which expires on May 31, 2014.

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 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 insure 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 Database, 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 main stem Eel River is critical habitat for the Southern Oregon/Northern California Coastal (SONCC) Evolutionarily Significant Unit (ESU) coho salmon (*Oncorhynchus kisutch*), the California Coastal (CC) ESU Chinook salmon (*O. tshawytscha*), and the Northern California (NC) Distinct Population Segment (DPS) steelhead (*O. mykiss*). All three of these salmon species are listed as threatened by NMFS under the ESA.

USACE initiated informal Section 7 consultation by letter dated May 26, 2004 under the ESA regarding the Shively Bridge potential impacts to the above three species of salmon and, at the time, critical habitat was designated for coho salmon only. By letter dated April 6, 2005, NMFS concurred with the USACE determination that the Shively Bridge crossing is not likely to adversely affect SONCC coho salmon, CC Chinook salmon and NC DPS steelhead, and would not adversely affect critical habitat for coho salmon. On June 23, 2005, USACE issued a five year individual Section 404 permit to the Shively Bridge Community to install the Shively Bridge at its original

location southwest of Shively. However, in 2009 the crossing site was moved further north to its current location northwest of Shively and southeast of Pepperwood (See Sheet 1 of 4).

The USACE, by letter dated December 1, 2006, requested informal Section 7 ESA consultation with NMFS on the proposed issuance of a Clean Water Act (CWA) Section 404 permit that will last for 10 years (2008-2018) to a specified group of five applicants to annually install and remove 12 seasonal bridges within the lower main stem Eel River watershed, South Fork Eel River and the Van Duzen River. After meetings with NMFS staff, including site inspections of individual summer bridge sites, USACE initiated formal Section 7 ESA consultation with NMFS (letter dated April 17, 2008) regarding 6 crossing sites, later revised to twelve (12) bridges. The Shively bridge crossing is one of the subject summer bridges in the ESA consultation. In response to the USACE initiation of formal consultation, NMFS issued a non-jeopardy Biological Opinion titled, *Permit Issuance for Seasonal Bridges in the Eel River Watershed*, File Number 151422SWR2007AR0008, dated June 17, 2008. This Biological Opinion contains an Incidental Take Statement and Reasonable and Prudent Measures requiring annual monitoring of bridge installation and removal, and steps to minimize take of listed salmonids during bridge installation and removal activities at Shively and the other bridge crossings. This Biological Opinion covers annual bridge installation between 2008 and 2018; and discusses measures to minimize the take of the three listed salmonids and minimize adverse affects to critical habitat for all three listed salmonids (steelhead and Chinook salmon critical habitat were recently designated by NMFS after 2005).

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, 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 main stem Eel River, including the bridge crossing site, is EFH for SONCC ESU coho salmon and CC ESU Chinook salmon. EFH consultation was initiated by USACE concurrently with ESA consultation, pursuant to Section 305(5)(b)(2) of the MSFCMA, in USACE's formal ESA consultation to NMFS by letter dated April 17, 2008. NMFS concurred with USACE in its Biological Opinion dated June 17, 2008 that the Shively Bridge crossing (along with several other Eel River bridge crossings) would adversely affect EFH. Several conservation recommendations are suggested as discretionary measures to minimize or avoid adverse effects of the action on listed species, to minimize or avoid adverse modification of critical habitat, or develop additional information. Copies of the EFH conservation recommendations can be obtained from USACE upon written request or the NMFS Arcata Office referencing the Biological Opinion file number above. USACE has addressed NMFS recommendations 2 and 4 elsewhere in this Public Notice regarding Project Alternatives. Due to current budgetary and staffing constraints, USACE is unable at this time to implement recommendations 1, 3, and 5.

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.

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.

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 David Ammerman, 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 *Current Public Notices* tab on the USACE website: http://www.spn.usace.army.mil/regulatory/.