



US Army Corps  
of Engineers®  
San Francisco District

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SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

PROJECT: MARIS PIT GRAVEL EXTRACTION

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COMMENTS DUE DATE: 09-07-2011

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## INTRODUCTION:

The County of Del Norte (500 E. Cooper Ave., Crescent City, California 95531) through their agent Jeff Daniels (707-464-7229) has applied for an individual permit (10-year) for their Maris Pit gravel extraction project, located near 360 South Fred Haight Drive, on a Rowdy Creek gravel bar, in the town of Smith River, Del Norte County, California. Extraction quantities would be about 5,000 cubic yards of material annually or less frequently. This 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.*) and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

## 2. PROPOSED PROJECT:

**Project Site Location:** Maris Pit gravel extraction project, located near 360 South Fred Haight Drive, on a Rowdy Creek gravel bar, in the Town of Smith River, Del Norte County, California. The site is located at: 041° 55' 11.52" N and 124° 09' 15.49" W.

**Project Site Description:** The Maris Pit gravel bar is located on Rowdy Creek, a tributary to the Smith River. Rowdy Creek has a willow dominated riparian corridor that flows through the town of Smith River in a community involved with:

agricultural farming, cattle production, forestry, residential housing developments, and gravel extraction. Gravel extraction has occurred at three areas on Rowdy Creek. The total volume of extraction from Rowdy Creek from 1997 through 2002 was less than 5,000 cubic yards (cy). Extraction has been minimal and completed through bar skimming.

**Project Description:** As shown in the attached drawings (Figures 1 and 2), the applicant proposes to remove aggregate off the dry bar using methods previously employed at the site. Aggregates would be removed along the north edge of the bar and skimmed to the 35% flow exceedence elevation, at a maximum. A minimum skim floor elevation that corresponds to the 35% exceedence flow at each site would be implemented and a minimum of a one foot vertical above the low water flow surface would be met. The minimum skim floor elevation would protect the low flow channel.

**Bar Skimming and Scalping:** Skimming or scalping of gravel from exposed gravel bars would involve the use of excavating machinery to remove the uppermost layer of gravel. Operators would determine excavation depths prior to work through elevation surveys to meet desired post-excavation elevations and contours. Skimming would be completed above the water elevation of the low flow channel on the exposed and dry bar. This would occur within the active channel that is annually inundated. The bar would be recontoured

following skimming and left smooth and free of depressions, with a slope down-stream to the low-flow channel. Excavated aggregated would be stored and process locally at an upland site.

Bar skimming would be accomplished through skimming exposed gravel bars adjacent to the low flow channel. Work would occur above the groundwater table and at specific slope gradients with sloping towards the low-flow channel edge, during the summer months. Skimming would be completed to ensure sufficient vertical offset of the skim floor above the low-flow water surface to preserve some low-flow channel confinement. The objective would be to provide a cross-channel or downstream oriented skim floor slope, mimicking natural contours and leaving the surface free of inundations to provide drainage following inundation by post-mining flow events. About one-third of the bar would be left intact so that moderate flows would be directed around the bar feature. Also, the head of the bar would not be excavated within 100-feet of the top of the bar, to retain the existing riffle.

**Alcoves:** An alcove in the western portion of the bar would be renewed in future extractions, to previous depths with minor aggregate extraction. Both National Marine Fisheries (NOAA) and California Department of Fish and Game (CDFG) have approved the alcove extraction proposal.

Alcove extractions would be located on the downstream end of the gravel bar where alcoves naturally occur. This may provide velocity refuge for juvenile salmonids during high flows and potential thermal refuge for them in the summer. Alcove extractions would be irregularly shaped and open to the low flow channel. Extraction depths would not exceed eight feet and be either above or below the water table and are small in area.

**Annual Operation Planning:** Channel alignment and sediment deposits change annually in lower Rowdy Creek. Extraction locations and amounts would be planned based on annual changes in deposit quantities and provide for the protection of

salmonid habitats. The County would employ a sustainable strategy that would extract from areas with the highest potential for replenishment.

**Timing of Operations:** Gravel extraction operations would commence June 1 and cease by October 15, annually. Extraction would typically occur in August and September during the low-flow period. All re-grading would occur by October 15, annually.

**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 would provide an aggregate supply. The project involves the extraction of material and not the intentional discharge of fill. (40 C.F.R. Section 230.10(a)(3)).

**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 the County's extraction of about 5,000 cy of material to be used for roadway improvements throughout the County. (Paragraph 9.b.(4) of Appendix B to 33 C.F.R. Part 325 and 40 C.F.R. Section 230.10(a)(2)).

**Project Impacts:** There will be no intentional fill of jurisdictional waters; however, fallback may occur during extraction activities and would be considered minimal. Impacts to jurisdictional waters would be minimal and temporary.

**Proposed Mitigation:** No fill or discharge of material is purposed into jurisdictional waters. Minimization measures would be employed to avoid fill discharges as follows: avoid mining in spawning reaches, extract on the dry bar, mine in upland or off-channel sites (versus fish habitat areas), monitor operations to minimize impacts to migrating fish, minimize the extent of extraction to

5,000 cy and the primary bar, and implement alcove creation. (33 C.F.R. Section 332.4(b) of the New Mitigation Rule).

### 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. The applicant is hereby notified that, unless USACE is provided documentation indicating a complete application for water quality certification has been submitted to the California Regional Water Quality Control Board (RWQCB) within 30 days of this Public Notice date, the District Engineer may consider the Department of the Army permit application to be withdrawn. 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

**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. Section 07(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Determination 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 Determination or has waived its right to do so. The project does occur in the coastal zone, and a *preliminary* review by USACE indicates the project would 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 has applied for the following additional governmental authorizations for the project: California Department of Fish and Game authorizations.

### 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 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 proposed gravel extraction operations are expected to have minimal effects to federally listed fish and their habitat. The project is expected to result in impacts leading to an informal consultation with NOAA for effects to the threatened Southern Oregon/Northern California (SONCC) Evolutionarily Significant Unit (ESU) coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*O. tshawytscha*), and their critical habitat. A no effect determination is made for USFWS species and their habitat.

The Biological Assessment (April 2010) for this

action is completed and has been provided to NOAA staff. This BA is available in our Eureka Office of the Army Corps of Engineers.

To address project related the 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. As the Federal lead agency for this project, the applicant will be responsible for determining the presence or absence of Federally-listed species and designated critical habitat, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. 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*, 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 gravel extraction activities in the project area may affect, but is not likely to adversely affect EFH due to the potential for increased sedimentation and possible decrease in available foraging and migration habitat. 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. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. 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 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. However, this is the only County-owned gravel pit in the area.

About 75% of the County is in public land ownership which does not allow aggregate mining. 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 of the project.

**8. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Carol A. Heidsiek, 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/>.