



US Army Corps
of Engineers®
San Francisco District

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

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Scotia Percolation Pond

PUBLIC NOTICE NUMBER: 2004-28595N

PUBLIC NOTICE DATE: FEBRUARY 2, 2011

COMMENTS DUE DATE: MARCH 2, 2011

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1. **INTRODUCTION:** The Town of Scotia, LLC (TOS), P.O. Box 245, Scotia, CA 95565, through its agent, SHN Consulting Engineers & Geologists, Inc. (SHN) (POC: Lisa Stromme, 707-441-8855) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge 6,000 cubic yards of river run gravel fill material into jurisdictional waters of the United States (below Ordinary High Water of Eel River) for the purpose of constructing, on an annual basis, a percolation pond for receiving wastewater and stormwater. 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 Scotia Percolation Pond is located near the right or east bank of the main stem of the Eel River and west of the Humboldt Redwood Company forest products mill (SE quarter of Section 7, Township 1 North, Range 1 East, Scotia quadrangle).

Project Site Description: The upland portion of the action area contains a large and still active industrial forest products mill operated by Humboldt Redwood Company located east of and above the Ordinary High Water mark of the Eel River. A strip of riparian vegetation (alders, willows and thick undergrowth) about 50-100 feet wide parallels the river and divides the river bank from the mill property. A Vicinity Map, Site Plan, and Cross-Section (2004) shows the location of the Scotia Percolation Pond and its layout, attached to this Public Notice as Enclosure One (1), in three sheets. Features of note in the Site Plan are the percolation pond itself labeled as "Perk Pond" running for a distance of 1,010 lineal feet parallel to the river bank. A berm structure, containing river run gravel,

extends for this same distance and forms the percolation pond, during May through October. The berm is mostly located below the Ordinary High Water mark of the river at this location. Since the flood stage on this portion of the river is listed as 51 feet at Mean Sea Level (US Geological Survey website for river stages), Ordinary High Water is estimated to be between 45 and 48 feet MSL or just below the established riparian corridor. The containment berm was still in place as of November 23, 2010 but the berm may be breached after future high river flows. Other features include a waste treatment facility and log pond clarifier located upland of and adjacent to the downstream end of the percolation pond berm. Due to past use of the percolation pond for impoundment of waste water, freshwater wetland plants and other water tolerant plant species have grown in substantial density inside the basin of the percolation pond. The pond, however, is not a USACE jurisdictional wetlands.

Project Description: As shown in the attached drawings, the applicant proposes to construct, on an annual basis between May 15 and October 15, a percolation pond on the dry gravel bar of the Eel River, by using bulldozers and excavator equipment to push a gravel perimeter pond berm in place. The percolation pond berm would be 800-1,000 feet in length, ten (10) feet high all around the perimeter, and an average of 100 feet wide. The applicant's agent, SHN, estimates that 6,000 cubic yards of river run gravel is required to form the berm. The gravel may come from current stockpiles placed against or on top of the river bank or if stockpiles are depleted, gravel would be obtained by excavating or scraping from the surface of the adjacent Eel River gravel bar. Gravel would be obtained only from the unvegetated portion of the gravel bar; no riparian vegetation would be removed in the process. Construction of the berm would begin after May 15, when river levels are low enough for equipment

to work on the gravel bar without entering the water flow of the river. The existing river bank is the fourth side of the pond and would be left in its natural state. The remaining three sides of the pond require construction of a gravel berm. The percolation pond would then be left in the river bar as constructed through the required period of September 30. Portions of the exterior gravel berms would be removed by heavy equipment starting on September 30. It is anticipated that after the berms are partially breached, river high flows would remove the remaining gravel berms forming the percolation pond. The high fall river flow is expected to have enough energy to redistribute the gravel back on the gravel bar. During construction of the percolation pond in the spring, the applicant (TOS) may construct an interior berm near the middle of the pond and oriented perpendicular to bank in order to separate stormwater flow draining from the Town of Scotia from the effluent draining from the Humboldt Redwood Company forest products mill clarifier pond. This interior berm would also be removed prior to onset of the fall rains and river high flows.

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 construct a berm on the gravel bar, that would impound stormwater and mill wastewater effluent, and allow this liquid to percolate into the gravel substrate, preventing this effluent from entering the Eel River directly during period of May 15 through September 30. This is a requirement by the California Regional Water Quality Control Board (RWQCB), North Coast Region in accordance with Waste Discharge Requirements under RWQCB Order No. 99-59, NPDES Permit No. CA0006017, I.D. No. 1B83104OHUM, originally issued for the Pacific Lumber Company Scotia Mill and for the Town of Scotia. The percolation pond is required on the river bed to allow percolation of wastewater and other effluent below the gravel substrate. The Pacific Lumber Company (PALCO) relinquished owner ship of the forest products mill to the Humboldt Redwood Company (HRC), which now manages the mill property. However, all of the stormwater and wastewater disposal responsibility has been turned over from HRC to the Town of Scotia, LLC, which is now the permit applicant for the construction of the Scotia percolation pond.

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 prevent direct discharge of stormwater and wastewater effluent from the lumber mill and Town of Scotia into the Eel River. Use of the percolation pond satisfies the RWQCB requirement to prevent treated or untreated effluent from entering the Eel River directly. The percolation pond would percolate effluent into the river gravel substrate, as a means of filtering pollutants from the effluent, during the summer low flow periods of the river. There is not enough technological sophistication in the lumber mill, or Town of Scotia's wastewater or stormwater systems, to allow year round discharge of treated effluent directly into the Eel River. Effluent can be discharged directly into the Eel River during the winter, without a percolation pond, because of the diluting power of high river flows and ambient sediment load in the river between October 15 and May 15. At the present time, there are no alternative means to deal with the summer time effluent situation. The TOS are looking at alternative ways to deal with wastewater and stormwater effluent without using an in-stream percolation pond, but no feasible and cost effective methods have been identified to date. Some of the effluent coming from the lumber mill includes non-contact cooling water, boiler blowdown, hydraulic barker effluent and miscellaneous process waste discharges from the milliard. From the Town of Scotia the waste is disinfected effluent from the Scotia secondary level sewage treatment plant and yard runoff (Order No. 99-59, NPDES Permit Number CA0006017, I.D. Number 1B83104OHUM, RWQCB, August 26, 1999).

Project Impacts: The proposed Scotia percolation pond berm construction project would, on an annual or seasonal basis, temporarily impact approximately 1.85 acres of unvegetated river gravel bar.

Proposed Mitigation: The applicant would be encouraged to use existing upland stockpiles of river run gravel for construction of the percolation pond berms in the spring (May 15). Should this stockpile be depleted or washed away, the applicant will be required to borrow river run gravel from the river bar only on unvegetated portions of the river gravel bar. Any depressions or mounds created during the excavation of material from the gravel bar shall be bladed smooth to near original bar contours as possible. No heavy equipment shall enter the active channel of the river or enter flowing river water to obtain gravel or form the berms. Personnel on heavy equipment for this project will be required to keep oil spill kits and be trained to clean up oil spills or other

equipment-related liquid spills from the gravel bar and from the river. The above same precautions shall be used during partial removal of the percolation pond gravel berms on September 30.

Project Alternatives: No alternatives analysis was provided by the applicant. At this time there are no practical alternatives to the proposed percolation pond operation. The Town of Scotia is considering conceptual future proposals for constructing a completely self-contained wastewater treatment system that would not require any or little direct discharge into the Eel River. However, the economic cost, logistical considerations and existing technology of such a future alternative have not been examined extensively by TOS, and such an alternative is not currently being pursued in the short term.

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.). A Section 401 Water Quality Certification was issued to the original permit applicant for the Scotia percolation pond (The Pacific Lumber Company) on May 17, 2005 (WDID Number 1B05058WNHU). This Certification expired on completion of the project in October/November 2010. 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, 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. The project does not occur in the coastal zone.

Other Local Approvals: The applicant obtained a 1601/1603 Streambed Alteration Agreement from the California Department of Fish and Game (CDFG) from the above project on December 31, 2006. Unless that agreement is for five years, the applicant must obtain a new SAA from CDFG.

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 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: The Eel River and its tributaries are 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 salmon species are listed as threatened by NMFS. To address project related impacts to these species and designated critical habitat, USACE will initiate informal consultation with the 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 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 is EFH for Chinook salmon and coho salmon. The Scotia percolation pond would be constructed on a portion of the Eel River channel where listed salmon species are known

to migrate (both adult and juvenile) through this area, rear juveniles in this habitat and possibly spawning of fish in this area. The project will cause temporary modifications (raising substrate elevation of gravel and redistribution of gravel substrate) to river channel substrate. 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.

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. As the Federal lead agency for this project, the applicant will be responsible for determining the presence or absence of historic properties or archaeological resources, 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. 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.

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 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/>.