



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: Blue Lake Bar Gravel Extraction, GLJ Construction

PUBLIC NOTICE NUMBER: 2011-00405N
PUBLIC NOTICE DATE: January 3, 2012
COMMENTS DUE DATE: January 31, 2012

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1. **INTRODUCTION:** Mr. Gary Johnston, GLJ Construction, 1325 G Street, Eureka, California 95501 through his agent (POC: Mr. Travis Schneider, Pacific Affiliates, phone: 707-445-3001), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill or grade gravel bar material (sand, gravel and aggregate) in waters of the United States (main stem Mad River) for the purpose of extracting up to 30,000 cubic yards of gravel annually (over a ten-year period: 2012-2021) from the Blue Lake Bar of the Mad River. The Blue Lake Bar (APNs 313-231-03, 312-161-07, 313-231-02, 312-161-20, and 313-231-01) is located west of the community of Blue Lake and southwest and west of Blue Lake Industrial Park off of Hatchery Road, in Humboldt County, California. 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: General location of Blue Lake Bar gravel extraction site is on right and left banks of Mad River at Section 30, Township 6 North, Range 2 East, Blue Lake USGS quadrangle (See maps 1 and 2 at end of notice). The site can be reached by entering the Town of Blue Lake. Travel south on Hatchery Road, turn right onto Blue Lake Industrial Park access road (where Mad River Brewery is located) travel to the end (not a through road). Enter through the gate of former Granite Construction property. The gravel bar is located past the weigh scales, gravel processing and stockpiling plant formerly operated by Granite Construction and now operated by GLJ Construction.

Project Site Description: The gravel bars are

immediately adjacent to the main stem Mad River on a sweeping right hand curve of the river. The extraction area starts at the upstream point of the largely un-vegetated gravel bar just south of the Blue Lake Industrial Park. The extraction extends downstream along both the right and left un-vegetated gravel bars of the Mad River. The vacant area between the gravel bar and the industrial park is Mad River floodplain terrace with broken plant communities of upland scrub vegetation, young to older willow tree patches, and isolated depressions filled with willows and some herbaceous wetland plants located a hundred feet or more from the river bank. There are some secondary side channels on this floodplain that inundate only during the highest Mad River winter flows. There are numerous gravel access roads criss-crossing this terrace to reach the gravel bar.

Project Description: The previous gravel operator on the Blue Lake Bar, Emmerson Bar and Johnson Bar was Granite Construction. Granite Construction was granted USACE individual Permit No. 2009-00016N on November 2, 2010 authorizing extraction of a combined total of 52,850 cubic yards of sand, gravel and aggregate annually from the Blue Lake, Emmerson and Johnson gravel bars. All three gravel bars are within the Blue Lake vicinity. This permit expires on December 31, 2019. However, shortly after the USACE authorization, Granite Construction relinquished ownership of the Blue Lake Bar to Gary Johnston of GLJ Construction and the Emmerson and Johnson Bars to Eureka Ready Mix Concrete Co., Inc. (ERM). By letter dated April 25, 2011, Granite Construction notified USACE, the California Regional Water Quality Control Board (RWQCB), North Coast Region and the California Department of Fish and Game (CDFG) that Granite Construction had sold the Blue Lake gravel bar property to Gary Johnston of GLJ Construction and transferred permit condition responsibility to Gary

Johnston. In a subsequent letter to ERM dated July 26, 2011, Granite Construction notified ERM that the Blue Lake Bar, Emmerson Bar and Johnson Bar have changed ownership or lease arrangements with ERM or other parties. Additionally, a letter dated August 1, 2011 notified USACE, CDFG and RWQCB of the various changes of ownership and lease arrangements from Granite Construction to other gravel operators. For the Blue Lake Bar, Granite Construction notified the agencies that ERM and Gary Johnston of GLJ Construction have a cooperative agreement for extraction of the Blue Lake gravel bar.

On August 9, 2011, Gary Johnston of GLJ Construction, through his agent (Travis Schneider of Pacific Affiliates) submitted an individual Section 404 permit application to USACE which proposed a gravel extraction operation by GLJ Construction on the Blue Lake Bar for the 2011 season. USACE issued a Letter of Modification under individual Permit No. 2009-00016N to GLJ Construction to mechanically extract sand, gravel and aggregate materials from the surface of the Blue Lake gravel bar. The Letter of Modification, issued on August 18, 2011, authorized the following work: (1) extract 17,576 cubic yards (cy) of sand and gravel from Area 1, a bar skim 1,000 feet long with a maximum width approximately 200 feet wide along the right bank of the Mad River; (2) extract 5,310 cy of gravel from Area 2, a bar skim approximately 900 feet long with a maximum width of approximately 200 feet wide along the right bank; (3) extract 540 cy of gravel from Area 3, a small alcove or bar skim along the right bank approximately 200 feet long and averaging approximately 50 feet wide; and (4) if necessary, install a 12-inch diameter HPDE culvert crossing covered with 6-inch diameter wash rock and river run gravel for approach ramps and crossing fill near the upstream end of extraction area 2. The total acreage of all three extraction areas is approximately 6 acres of Blue Lake gravel bar. GLJ Construction began extraction as proposed shortly after the authorization.

On September 21, 2011, GLJ Construction, through Pacific Affiliates, requested an amendment to their 2011 gravel extraction plan and requested (after field consultation with USACE, County of Humboldt Extraction Review Team, and National Marine Fisheries Service) extracting an additional area (Area #4) located just upstream of extraction areas 1,2, and 3 on the right bank. USACE authorized a Letter of Modification dated September 23, 2011 under Permit No. 2009-00016N to extract 2,979 cubic yards of gravel from Area 4, a narrow

offset skim. Actual total volume of gravel extracted from the Blue Lake Bar for 2011 was as follows: Area 1 - 18,311 cubic yards was extracted which exceeded the authorized amount of 17,576; Area 2 was 5,615 cubic yards which slightly exceeded the authorized amount of 5,310 cubic yards; Area 3 was 498 cubic yards which is slightly less than the authorized amount of 534 cubic yards; and Area 4 was 3,145 cubic yards, which exceeded the authorized amount of 2,980 cubic yards. For all four extraction areas 1 through 4 the total gravel extracted is approximately 27,569 cubic yards.

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 extract gravel and aggregate, deliver the aggregate to an on site processing and sorting plant and then make the finished materials available for commercial sale.

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 extract gravel and aggregate for commercial sale. The operator would crush, sort and stockpile these materials for later wholesale or retail sales. The materials (sand, other fines, gravel and aggregate) would be sold to contractors and construction industries for use in building construction, road repair or construction, and other infrastructure in the region. Sale of these materials makes up the gravel operator's business and means of making a living as well as employment for the operator's equipment operators and laborers at the gravel processing plant. Private individuals looking to home or property improvements also would benefit by purchasing such materials on either the wholesale or retail market directly or indirectly.

Project Impacts: Based on the most recent gravel extraction activity during the 2011 summer season by GLJ Construction, mechanical gravel and aggregate removal with scrapers, front-end loaders or bulldozers would occur over an approximately 6 acre area of the Blue Lake Bar. All of the extraction work, including installation of temporary bridge crossings, would occur below the Ordinary High Water mark of the Mad River (roughly below bankfull). No riparian vegetation would be

removed during extraction, all work would occur on un-vegetated portions of the gravel bar. Main impacts would be on river channel geomorphology and fish habitat. Substrate would be lowered but it is anticipated that winter storms during river high flow would replace material excavated from the channel bed during normal or above normal rainfall years. Drought conditions would result in lack of replenishment of gravel, sand and aggregate to the channel.

Proposed Mitigation: As required in USACE Permit No. 2009-00016N, the applicant must consult in the field with USACE, the National Marine Fisheries Service (NMFS), the California Department of Fish and Game (CDFG), and the County of Humboldt Extraction Review Team (CHERT) prior to each season's gravel extraction activity. The purpose of this field review is to come up with recommended gravel extraction methods that would minimize impacts to river anadromous fishery habitat, prevent bank erosion and adverse channel modification, prevent removal of riparian or wetland vegetation as well as to come up with possible extraction methods that would enhance or restore anadromous fish migration and spawning habitat. The window of authorized gravel extraction, in order to avoid upstream and downstream migration of adult or juvenile salmon, is generally June 15 to October 15, and extraction can only occur during this time period (with few exceptions for time extensions that may be granted by USACE and other resource agencies). As described by Pacific Affiliates in their gravel extraction proposal for 2011 (Travis Schnieder, Pacific Affiliates, August 17, 2011) and as approved by CHERT, USACE and the resource agencies, the first round of extractions authorized on August 18, 2011 include a dry alcove or narrow inboard skim and two narrow bar skims. The intent of these extraction methods is to extract as much gravel and aggregate as possible while at the same time keeping the footprint of impact as small and as narrow as possible. Buffer areas of bar substrate would be left undisturbed at the head or upstream portion of the gravel bar and adjacent to riparian groves and overflow channels to confine river flow to the extracted area, which would induce replenishment of gravel over the winter. After extraction of gravel is complete, the gravel operator must grade the extraction site so that the extraction area is sloped towards the center of the channel and towards downstream. In this fashion, the river flow would be free draining, preventing depressions or holes that might trap migrating fish during times of river flow fluctuation. The operator must not extract below a calculated skim floor estimated to be no more than what is termed the "35% of

exceedance flow". This is to prevent further bed scour or degradation or lowering of the channel bed and prevent possible lateral bank erosion that could occur with deepening of the channel. All of the CHERT recommended and NMFS recommended post-extraction activity must be complete before the first winter rainstorms increase flow on the Mad River. The applicant or his agent must monitor National Weather Service weather forecasts and river flow forecasts to plan extraction and post-extraction timing. Any temporary gravel stockpiles or temporary river crossings and associated fills must be removed at the end of gravel extraction work.

Project Alternatives:

No Action - Without the proposed gravel extraction project at the Blue Lake Bar, the site would generally remain as a sparsely vegetated gravel bar that may slowly be colonized by more riparian vegetation composed of willow and cottonwood tree or shrub plant communities. The gently rounded form of the gravel bars would remain. If the gravel extraction activity described above were not permitted and implemented, the applicant would have to locate another source of gravel or revenue. The construction industry with regulated standards, some public works agencies and individual homeowners would pay more (perhaps twice as much) for the gravel and concrete obtained by other gravel operators on the Eel River. On the other hand, there would be less recurring, short-term adverse impacts on fish habitat and aquatic resources on the Mad River resulting from gravel extraction activities due to the potential for increased sediment release into the river channel, increased water turbidity in the river channel, decreased aesthetic value of the Mad River corridor due to the presence of construction equipment on the gravel bars, and increased adverse noise impacts from equipment working in the river floodplain.

Other Project Designs - During the annual field site reviews with USACE, NMFS, CDFG, CHERT and the gravel operator, there is the opportunity to extract gravel by a variety of methods that would have less adverse impacts to the river environment and may present an opportunity to enhance or restore fishery or other river corridor habitat. Depending on site restraints or constraints such as property boundaries, availability and quality of desired gravel or aggregate, presence of existing river fish habitat, and other considerations, the agencies and the operator may come to an agreement on other types of extraction methods such as wetland pits on upper gravel

terraces or other terrace extraction, secondary or overflow channel skims, horseshoe skims and alcove skims that may later provide holding pools or shallow water areas for juvenile or adult salmon, and other salmon habitat improvement designs. The dry alcove and narrow bar skims proposed for the 2011 extraction season at Blue Lake Bar was determined to be the preferred and agreed upon alternative for extraction. Since river channel, gravel bar and vegetation patterns can change annually or every few years depending on weather and river flow conditions, annual field review between the gravel operator and the agencies will continue to be important in evaluating the best extraction method that would meet the gravel operator's economic needs and at the same time preventing or minimizing adverse impacts to the river environment.

Other Sites - Other suitable, authorized in-stream gravel extraction sites on the Mad River are currently used by other gravel operators. The most upstream site is adjacent to Hatchery Road south of Blue Lake and is owned by Mad River Sand and Gravel (Joel Guynup). Further downstream between the town of Blue Lake and community of Glendale, Eureka Ready Mix extracts gravel annually from the Emmerson, Leta Johnson, and Christie Bar, as well as two gravel extraction sites located downstream of the Highway 299 bridge over the Mad River in Arcata (Johnson-Spini and O'Neil Bars). The Graham Bar is inactive and is scheduled for closure and final reclamation. The applicant has the Blue Lake Bar. The adjacent downstream gravel extraction site is operated by the Blue Lake Rancheria, an American Indian Tribe. Mercer-Fraser Company has lease or ownership of one or two gravel bars in the Glendale and Essex area of the Mad River. G.R. Sundberg, Inc. operates the Miller-Almquist Bar also located downstream of the Highway 299 Bridge over the Mad River in Arcata. Remaining areas of the lower Mad River are not suitable for gravel extraction for a variety of reasons including site conditions, fishery habitat value and property ownership constraints. Hard rock or quarry mining has been considered as alternatives but it is USACE understanding that gravel operators and the construction industry use hard rock or quarry mining for more specialized uses and the materials from such mining are not necessarily suitable nor meet certain standards for concrete, asphalt or other construction and building materials desired by the construction industry. In addition, the County of Humboldt Planning Department, which issues grading and use permits for gravel extraction, has indicated on past occasions that any additional proposals for gravel extraction within the lower

12 miles of the Mad River would likely be denied, due to the current level of annual gravel extraction and resulting cumulative impacts on the Mad River environment.

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 previous gravel operator on the Blue Lake Bar, Granite Construction, received Section 401 Water Quality Certification (WDID No. 1B02120WNHU) from the California Regional Water Quality Control Board (RWQCB), North Coast Region for gravel extraction operations on the Emmerson, Johnson and Blue Lake Bars by letter dated September 29, 2010. This Certification expires on June 15, 2015. However, for the 2011 gravel extraction season, due to a temporary operating agreement between Gary Johnston of GIJ Construction and Eureka Ready Mix (ERM), and after official transfer of USACE permit responsibilities of gravel extraction on the Emmerson, Johnson and Blue Lake Bars from Granite Construction to ERM was executed (by letters dated April 25, 2011, July 26, 2011 and August 1, 2011 to the USACE, RWQCB and ERM), ERM has applied for and received from RWQCB an Amendment to the Section 401 Water Quality Certification for extraction at the Emmerson, Johnson and Blue Lake Bars by letter from RWQCB dated August 19, 2011. The current owner and gravel operator on the Blue Lake Bar (Gary Johnston), may need to initiate further transfer of RWQCB Section 401 Water Quality Certification of Blue Lake Bar gravel extraction operations from ERM to Gary Johnston of GLJ Construction for the 2012 gravel extraction season and beyond. 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. 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 a *preliminary* review by USACE indicates the project would not 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 (Gary Johnston of GLJ Construction) has obtained an Amendment of Lake or Streambed Alteration Agreement Notification No. 1600-2004-0391-R1 from the California Department of Fish and Game (CDFG) for the Blue Lake Bar gravel extraction on the Mad River by letter dated July 7, 2011. This amendment recognizes the change in responsible party for Streambed Alteration Agreement special conditions from Granite Construction to GLJ Construction. It is not clear what the expiration date is for this Agreement and whether the agreement would be valid for the 2012 gravel extraction season. The applicant is advised to contact CDFG to ensure the applicant is covered for the 2012 season.

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 Mad River is critical habitat for the Southern Oregon/Northern California Coastal (SONCC) Evolutionarily Significant Unit (ESU) coho salmon (*Oncorhynchus kisutch*), 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 the NMFS under the ESA. In addition to the above salmon species, the following listed species were evaluated in the NMFS consultation with the USACE: North American Green Sturgeon Southern DPS (*Acipenser medirostris*), the Killer Whale Southern Resident DPS (*Orcinus orca*), and the Eulachon Southern DPS (*Thaleichthys pacificus*).

To address project related impacts to these species and designated critical habitat, USACE initiated formal

consultation with NMFS, pursuant to Section 7(a) of the Act, originally by USACE letter dated May 18, 2009 as part of the original permit process for the *Letter of Permission Procedure Gravel Mining Activities Within Humboldt County, LOP 2009-1*, which was later issued as USACE Permit No. 2007-00857N on February 12, 2010. However, during the 2010 gravel season, all of the gravel operators on the lower Mad River elected not to participate in the LOP 2009-1 permit procedure and requested individual Section 404 permits from USACE for their respective gravel extraction operations. As a result of correspondence and meetings with the gravel operators, USACE, CDFG and NMFS, the USACE processed each of the gravel operations on the Mad River as individual Section 404 permits. In response to these changes and the USACE formal consultation, NMFS prepared a Biological Opinion dated July 26, 2010, which covers Incidental Take at each gravel extraction site and operation on the lower Mad River. This Biological Opinion addressed impacts to threatened fish and marine mammal species and respective salmon critical habitat for the following gravel operations covered by USACE individual permits: Eureka Ready Mix Concrete Company, Inc. (ERM), Granite Construction, Mad River Sand and Gravel (MRS), Mercer Fraser Company, and GR Sundberg, Inc. Due to the change in gravel bar ownership or lease arrangements that has occurred (and addressed above in the Public Notice), the following gravel operators are now covered under USACE individual permits (GLJ Construction and its Blue Lake Bar would be covered under the individual permit described in this Public Notice) and the NMFS BO of July 26, 2010: ERM, Mercer Fraser Company, G.R. Sundberg, Inc., Mad River Sand and Gravel, and Gary Johnston of GLJ Construction. Granite Construction is no longer in the gravel extraction business on the Mad River. As the Federal lead agency for this project, the applicant (Gary Johnston of GLJ Construction, through Pacific Affiliates) will be responsible for complying with the Incidental Take Statement and Terms and Conditions of the NMFS July 26, 2010 Biological Opinion as was the case during the 2011 gravel extraction season and for 2012 and beyond.

The July 26, 2010 Biological Opinion by NMFS made the following conclusions regarding the potential impacts to listed species and critical habitat on the Mad River from the respective gravel operations: The proposed action (collective Mad River gravel extraction operations) are (1) not likely to adversely affect the North American Green Sturgeon Southern DPS, Killer Whale Southern Resident DPS, or Eulachon DPS; (2) not likely to adversely affect

designated critical habitat for North American Green Sturgeon Southern DPS or Killer Whale Southern Resident DPS; (3) not likely to jeopardize the continued existence of SONCC coho salmon, CC Chinook salmon, or NC steelhead, and (4) not likely to result in the destruction or adverse modification of designated critical habitat for SONCC coho salmon, CC Chinook, or NC steelhead. NMFS included an Incidental Take Statement in the Biological Opinion. The Incidental Take Statement includes non-discretionary reasonable and prudent measures and terms and conditions that are expected to further reduce incidental take of SONCC coho salmon, CC Chinook salmon, and NC steelhead occurring as a result of the proposed action. This Incidental Take Statement and its reasonable and prudent measures will be added to the USACE permit for all of the gravel operations on the lower Mad River including the Blue Lake Bar extraction by Gary Johnston of GLJ Construction.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1996, 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 final 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. EFH consultation under the MSFCMA was initiated concurrently with the formal Section 7 ESA consultation described above. In the July 26, 2010 Biological Opinion by NMFS, NMFS concluded that the proposed action (collective gravel operations on the lower Mad River) would adversely affect EFH for coho salmon and Chinook salmon. However, the proposed action contains adequate measures to avoid, minimize, mitigate or otherwise offset the adverse effects to EFH; and therefore, NMFS has no additional Conservation Recommendations. EFH consultation was

concluded by NMFS with the July 26, 2010 Biological Opinion.

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 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 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 Roberta Morganstern, 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 Roberta Morganstern by telephone at 415-503-6782 or e-mail: Roberta.A.Morganstern@usace.army.mil. 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/>.