Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

US Army Corps of Engineers ®
San Francisco District

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Dry Creek Flow Capacity Improvement Project

PUBLIC NOTICE NUMBER: 2012-00020N
PUBLIC NOTICE DATE: 03-29-2012
COMMENTS DUE DATE: 05-11-2012

PERMIT MANAGER: Christina Cavett-Cox TELEPHONE: 415-503-6765 E-MAIL: Christina.Cavett-Cox@usace.army.mil

1. **INTRODUCTION**: The Humboldt County Department of Public Works (HCPW) (POC: Doug Dinsmore 707-268-2687), 1106 Second Street Eureka, California 95501, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to conduct periodic sediment removal from Dry Creek in order to maintain adequate flow capacity beneath Dry Creek Bridge, 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: The Dry Creek Bridge project site is located on Mattole Road, 1.0 mile south of Singley Creek at Post Mile 25.03, Humboldt County, California (see enclosure 1.)

Project Site Description: Dry Creek is a straight, narrow, seasonally relatively permanent active first order stream, with steep gravel banks. From its point of origin the creek extends 2,236 linear feet where it then discharges into the Pacific Ocean. The surrounding topography consists of a narrow shelf of relatively flat land with rocky-sandy beach to the west with near vertical, highly unstable slopes to the east. Given that Dry Creek occurs within this variable environment material consisting of large cobble (4-8'), gravel, and associated fines are continually being transported down the hill from a landslide that exists at the head of the stream and then distributed within the channel (see enclosure 2).

Project Description: The applicant proposes to periodically perform channel maintenance activities to ensure adequate flow capacity under Dry Creek Bridge. The current bridge structure is a double railcar frame that spans Dry Creek near the streams outlet to the Pacific Ocean. Regular, moderate to large storm events create flows capable of transporting large volumes of sediment and debris downstream where they are deposited under the bridge. As a result channel maintenance is required to prevent flooding to Mattole Road. Maintenance activities would include excavating and grading excess sediment from the entire Dry Creek channel to maintain positive flow capacity within the channel and under Dry Creek Bridge. The project would occur in late summer or fall when the channel is dry. Sediment removal from the channel would consist of using bulldozers to push the sediment and debris both up and downstream to central locations adjacent to the bridge, where it would be removed with an excavator or front loader. The fill material would then be stored onsite at the two upland stockpile areas (see enclosure 3) or placed in dump trucks and hauled offsite, typically to the Coyote Gulch area for temporary storage and road fill. The area of excavation may extend upstream as much as 650 feet depending on the severity of storm events the preceding winter and a distance of 150 feet downstream of the bridge onto the shoreline any given year. The average width of the extraction area is approximately 12 feet. The volume of material removed varies from 1,000-3,000 cubic yards, but may require the removal of up to 8,000 cubic yards of sediment depending on the year. Following the transport of sediment to the upland stockpile site, most of the material would be utilized for fill material in the extremely mobile upland landslide area know as Coyote Gulch. Excess material may also be transported to the upland Bear River processing and stockpiling area located near Capetown on Prescott Drive. The timeframe for completion of the project is typically 3-5 days. This

timeframe may be extended in years following multiple and/or major storm events. All fill material removed from the channel would be placed in upland locations out of the USACE'S jurisdiction.

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 transportation.

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 maintain a bridge crossing over Dry Creek, on Mattole Road.

Project Impacts: The Dry Creek flow capacity improvement project would involve the removal and subsequent grading of up to 8,000 cubic yards of fill within Dry Creek below the ordinary high water mark (OHWM).

Proposed Mitigation: In order to avoid impacts to waters of the U.S. the applicant proposes the following avoidance measures: work would be conducted in late summer during the dry time of the year between July 15th and October 15th, the project would be concluded in as short a timeframe as is reasonable (3-5days), equipment staging areas and sediment stockpile locations would be situated in upland locations in areas previously used for staging and stockpiling, equipment would be cleaned and inspected prior to sediment removal and transport, and post construction surveys would be conducted to assure that the channel and shoreline are returned to preexisting conditions to the greatest extent practicable.

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. 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. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant is hereby advised to apply for a Consistency Certification California Coastal Commission to comply with this requirement.

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.

Other Local Approvals: The applicant has obtained additional governmental authorizations for the project: a Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Game.

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 of 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 Federally-listed species and designated critical habitat are not present at the project location or in its vicinity, and that consultation will not be required. 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 USFWS and/or NMFS 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 EFH is not present at the project location or in its vicinity, and that consultation will not be required. 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 NMFS. 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 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 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. 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. The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines

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 Nina Cavett-Cox, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-13978; 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/.