



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: Kidder Creek Gravel Removal

PUBLIC NOTICE NUMBER: 2008-00194 N

PUBLIC NOTICE DATE: May 16, 2014

COMMENTS DUE DATE: May 31, 2014

PERMIT MANAGER: Greg Brown

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1. **INTRODUCTION:** The Jenner Cattle Company (POC: Doug Jenner, 530-598-6102), 6131 Island Road, Etna, CA 96027 has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to discharge fill material into jurisdictional waters of the United States associated with gravel extraction from Kidder Creek near the city of Etna, Siskiyou 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 project is located along Kidder Creek immediately downstream of the State Highway 3 bridge (41.545°N, 122.902°W), just south of the town of Greenview and approximately 5 miles north of Etna (figure 1).

Project Site Description: The project area is within parcels owned by the applicant (APN 024-220-300 and 024-220-310), and includes 2,300 linear feet of Kidder Creek extending downstream from the Highway 3 bridge. Kidder Creek at this location is typically dry in the Summer/Fall and ranges from 100 feet wide at the bridge to up to 400 feet wide near the downstream end of the project area. The project area encompasses approximately 14.2 acres of the Kidder creek stream bed, and also includes existing facilities adjacent to the south bank of Kidder Creek including access roads and a gravel stockpile.

Project Description: As shown in the attached drawings (figure 2), the applicant proposes to excavate up to 35,000 cubic yards of stream gravel over a 6 year period from Kidder Creek, reposition/redeposit this gravel within 14.2 acres of the Kidder Creek channel, haul and stockpile

excess gravel in an upland area, and grade the creek bottom along this reach to approximately a one percent grade. Excavation would occur using 2 scrapers, an excavator, and a dump truck during six gravel excavation seasons, with the total amount of excavation to occur during this time period not to exceed 35,000 cubic yards. Project gravel excavation seasons would be between July 1 and October 30 of each year. The scrapers would reposition/redeposit excavated stream gravel within 14.2 acres of the Kidder Creek channel according to the excavation plan (figure 2), while excess stream gravel would be hauled to and stockpiled in an upland area adjacent to State Highway 3. The exact position of project excavation may change, but the overall size and shape would be as indicated in the Figure 1. The goal is to maintain target hydraulics in the project reach that contain typical storm flows, maintain water depth at 10 inches or more, provide an inset flood plain able to contain annual flood flows, and provide an outside flood plain lowered to the height of the two-year flood, extending out to the excavated gravel volume limit. The entire affected portion of the Kidder Creek channel would be graded to approximately a one percent grade. Additionally, mechanized equipment would be used to extract any large woody riparian vegetation (*i.e.*, greater than 10 feet in height) within the excavation footprint and replant it along the south bank. All equipment would enter and exit the project area using existing road surfaces, and would be fueled, serviced, and parked overnight at least 100 feet from the active Kidder Creek floodplain.

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 flood control and gravel extraction.

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 reduce flooding along this reach of Kidder Creek, as well as to harvest excess gravel removed from the stream channel.

Project Impacts: Up to 35,000 cubic yards of gravel would be excavated and/or redistributed within a 14.2-acre area of the stream bed over a 6 year period. Some of the gravel may be removed and stockpiled outside the stream channel. Additionally, some woody debris and vegetation may be moved from the center of the channel to the banks.

Proposed Mitigation: Regulated discharge of fill material would be limited to redistributing native streambed substrate in order to reduce flooding, increase surface hydrologic connectivity, and improve fish passage. Therefore no compensatory mitigation would be required.

Project Alternatives: Options available to the applicant to reduce flooding are limited to either levee construction, or removal of sediment (gravel) from the channel to increase capacity. The applicant has worked closely with resource agencies to develop a gravel removal alternative that would result in improved hydrologic connectivity and fish passage and minimize stream impacts to the 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.*). Water quality certification for this project was issued by the North Coast Regional Water Quality Control Board on August 15, 2011 (WDID #1A11077WNSI). 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 has obtained the following additional governmental authorizations for the project:

- California Department of Fish and Wildlife, Streambed Alteration Agreement # R1-08-0161
- California Office of Mine Reclamation, Mine ID 91-47-0068
- Siskiyou County Planning Commission, Reclamation Plan Amendment RP-07-02 (Mine ID 91-47-0018)

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 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 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 project reach of Kidder Creek contains Federally-listed endangered Coho salmon (*Oncorhynchus kisutch*) as well as designated critical habitat for this species. The overall project could potentially induce changes in channel morphology and degradation of the riverbed; cause the loss of riparian vegetation and large woody debris; and generate turbidity and downstream sedimentation, the deposition of which could contribute to the degradation of spawning gravels. However, all work will occur when the project reach is dry, and measures have been incorporated into the project to minimize potential negative effects. Overall the project is expected to benefit Coho salmon by improving spawning substrate and fish passage. To address project related impacts to this species and designated critical habitat, USACE initiated informal consultation with NMFS, pursuant to Section 7(a) of the ESA. By letter of October 18, 2013, NMFS concurred with the USACE determination that the project is not likely to adversely affect listed Coho salmon.

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 NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH), 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 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. USACE initiated consultation with NMFS, pursuant to Section 305(5)(b)(2) of the MSFCMA. By letter of October 18, 2013, NMFS concurred that adverse effects on EFH would be minimal and no additional conservation recommendations were necessary.

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 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 Greg Brown, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; 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 *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.