



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: ROWLAND BAR GRAVEL EXTRACTION

PUBLIC NOTICE NUMBER: 2014-00193N

PUBLIC NOTICE DATE: June 10-2014

COMMENTS DUE DATE: June 24-2014

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1. INTRODUCTION: George Rau of Rau and Associates, Inc in Ukiah (707-743-1784), acting as agent for Brian Hurt of Wylatti Resource Management, Inc. in Covelo, California has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District for a Department of the Army Permit to harvest gravel from the Rowland Gravel Bar. 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.*). The Rowland Gravel Bar is located within the Middle Fork of the Eel River, just east of the confluence with the main stem Eel River.

2. PROPOSED PROJECT:

Project Site Location: The Rowland Gravel Bar is identified by the APN 035-040-45 with a mailing address of 48800 Covelo Road in Covelo, California, Mendocino County. Access to the Bar is from west of State Highway 162 bridge, mile post (MP) 15.14. Dos Rios is the nearest town to the north and Willits is nearest to the south.

Project Site Description: Surrounding land uses are rangeland, open space and rural residential including the residence of the property owner Richard Rowland. The thirteen acre gravel bar has historically supported gravel mining utilizing a variety of techniques. The gentle terrain of the riverbed where the Bar is located is surrounded by canyons and steep terrain supporting current land uses described above. A vicinity map (Figure 1) and an aerial photograph of the Rowland Gravel Bar (Figure 2) are at the end of this notice.

Project Description: As shown in the drawing (Figures 3), the applicant proposes to remove a maximum of 50,000 cubic yards of river aggregate of variously sized

gravel. Since 2003 gravel extraction has been according to the “alcove skimming” method required in Mendocino County and preferred by National Marine Fisheries Service (NMFS). In addition to the excavated alcove which provides slow water refugia for salmonids, the method removes gravel from a middle “slot” created within the center of the bar by leaving approximately 30 percent of the upstream bar intact. A lateral buffer remains on the river side of the bar and NMFS field verifies the pre-extraction plan prior to the start of harvest. In coordination with local agencies, NMFS will review cross sections before and after extraction has been completed. Extraction activities are limited to the period between July 15 and October 15 and are dependent upon river flows to deposit an amount of gravel deemed adequate by the resource agencies to ensure that river functions will not be compromised by the removal. This application is under review for a ten year approval subject to annual review by the resource agencies to manage adverse impacts.

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 remove gravel and is not water dependent.

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 remove a maximum of 50,000 cubic yards of gravel for commercial sale. Equipment will consist of an excavator, front-end

loader and grizzly screen to separate gravel into two sizes. Sized gravel will be hauled by truck offsite to the Processing Plant located within 20 miles of the project. Upon completion of gravel removal the Bar will be regraded to meet agency requirements avoiding water quality impacts and fish entrapment.

Project Impacts: The Rowland Bar Gravel extraction does not include fill discharges for access. Excavation of gravel will include removal of gravel using heavy machinery such as an excavator, front end loader, grizzly for sorting and bulldozer to grade the bar. Utilizing the NMFS preferred method for sediment removal from the interior of the bar and creating an alcove to provide slow water refugia for salmonids avoids and reduces impacts.

Proposed Mitigation: As previously outlined avoidance and minimization measures include creation of an alcove to provide salmonid habitat. The alcove will be adjusted each time gravel is harvested. NMFS preferred “Sediment Removal Guidelines” dated April 2004 preserves gravel sorting, bar armoring and reduces fine sediment discharge. The activities will take place during low flow, warm water conditions, usually July 15 through October 15 when migrating salmonid are least likely to be present. The “Guidelines” preserve lateral buffers, the upstream head of the bar and the project will avoid disturbance of mature woody riparian vegetation. During the ten year duration of the approval, the applicant will not be able to extract gravel unless there is a minimum of 3,000 cubic yards of material available within the alcove or shallow refugia area for salmonids. The applicant will first construct salmonid habitat before removing aggregate in larger quantities.

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.

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 Executive Director, North Coast District Office, 710 E Street, Suite 200, Eureka, California 95501.

Other Local Approvals: The applicant has obtained the following additional governmental authorizations for the project: Final Findings and Conditions of Approval Case #REC 2-2013 – Richard and Margaret Rowland April 22, 2014 from County of Mendocino Department of Planning and Building Services. Application for approval has been filed with California Department of Fish and Wildlife.

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 including a Biological Assessment for Southern Oregon Northern California Coasts Coho Salmon 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 present at the project location or in its vicinity, and that consultation with NMFS will be required. Based on this review, USACE has made a preliminary determination that 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 submitted Biological Assessment addresses SONCC coho salmon (*Oncorhynchus kisutch*), California Coastal Chinook salmon (*O. tshawytscha*) and Northern California steelhead (*Oncorhynchus mykiss*). To address project related impacts to these species designated critical habitat, USACE initiated informal consultation with NMFS, pursuant to Section 7(a) of the Act on May 29, 2014. 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 consultation will 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. To address project related impacts to EFH, USACE initiated consultation with NMFS on May 29, 2014, 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, 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. 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)). Since the project does not entail the discharge of dredged or fill material into waters of the United States,

application of the Guidelines will not be required.

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, 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 *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/regulatory/>.