



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: Hoopa Valley Gravel Extraction

PUBLIC NOTICE NUMBER: 2003-278400

PUBLIC NOTICE DATE: August 17, 2015

COMMENTS DUE DATE: September 11, 2015

PERMIT MANAGER: Roberta Morganstern

TELEPHONE: 415-503-6782

E-MAIL: Roberta.A.Morganstern@usace.army.mil

1. **INTRODUCTION:** The applicant, Hoopa Valley Tribal Council, Roads Department, Aggregates & Readymix Enterprises, P.O. Box 789, Hoopa, California 95546, through their agent (Contact: Mr. Mike Atkins, consultant at 707-496-0054) has applied for a Department of the Army permit to discharge fill into waters of the United States associated with gravel mining for up to seven gravel bars on the Trinity River over an eleven year period (2015-2025), within the Hoopa Indian Reservation, in the community of Hoopa, in Humboldt County, California. The project sites are within American Indian lands of the Hoopa Tribe. 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.*) and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The seven extraction locations are downstream from the Highway 96 Bridge over the Trinity River, described in detail below and shown on the attached map (Figure 1). The location is identified by the coordinates 41°02'0.60"N, -123°39'24.20"W, from river mile 12 through 16 on the Trinity River in Trinity County, California. The river drainage is within Sections 5 & 6: Township 7 North, Range 5 East & Sections 31 & 32: Township 8 North, Range 5 East: Sections 24 & 25 Township 8 North, Range 4 East.

Project Site Description: The Hoopa Valley Tribe (HVT) proposes to extract gravel and aggregate from seven gravel bars located in the Trinity River, river miles 12 through 16. The extraction sites and access are described below:

(1) The Security East Bar in Figure 2 is the most downstream of the seven sites and is located on the east bank of the river. Access to the north end of the bar is via an existing gravel haul road from Tish Tang Road. Note: The truck haul routes are shown on the drawings as white lines leading from the individual sites.

(2) The Security West Bar is located on the west bank of the river, Figure 2 and contains three unimproved access roads. The southern-most road would be used to haul gravel and access the bar.

(3) Cal-Pac Bar is located on the west bank of the river, shown in Figure 2 and 3 and would be accessed from the existing road behind the Cal-Pac processing plant.

(4) Tish Tang No. 8 Bar is located on the east bank of the river, Figure 3 with no existing vehicle access. A fill discharge to support abutments for a temporary bridge is requested. The location would be chosen with guidance from the resource agencies and placed to allow a minimum of six feet between water surface and underside of the bridge. To install the bridge, usually a rail flatcar, a loader would drive across the main channel at the bridge location in order to construct temporary gravel abutments at each end of the location. Each end of the flatcar bridge would be placed on logs

at the edge of the main channel to achieve a level and safe crossing.

(5) Campbell Bar is located on the west bank of the river just upstream of Tish Tang No. 8, both shown on Figure 3 and can be accessed from an unimproved roadway via the cul-de-sac at the south end of Campbell Field Lane. Campbell Field Lane is a paved two lane roadway that leads directly to the Cal-Pac Processing Plant.

(6) Tish Tang Creek Bar, Figure 3 is located on the east bank of the river and is accessed by way of an existing unimproved road.

(7) Tish Tang Bar is accessed from the recreational area on Highway 96, just south of the Hoopa Community, Figure 3. The recreational area and campground access road would be used to access Tish Tang Bar.

Project Description: HVT requests a permit to extract a total of 100,000 cubic yards of gravel annually from one or all of the seven named sites. Gravel extraction would occur during the low water period, June 1 to October 15 and gravel would be hauled to the upland Cal-Pac processing site via existing roads. One temporary access including constructed abutments to cross the river is requested. HVT proposes to extract gravel along the active channel using a front end loader or scraper. The location of the harvest would be guided by the resource agencies. No excavation would occur in the active channel where water is flowing. Excavation would maintain a minimum vertical offset of one foot from the low flow water level. The final depth of the excavation would maintain a 50-foot horizontal buffer both upstream and downstream of the active flow. In all cases as the end of the season nears but no later than October 1, final grading will occur toward the downstream end of the gravel bar to prevent stranding of fish. Until October 1, gravel may be temporarily stockpiled on the gravel bar before hauling. After October 1, stockpiled gravel would be removed on a daily basis and the gravel bar graded at the end of each workday. Enhancement and restoration for habitat improvement may be requested.

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 and harvest gravel. The project 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 extract aggregate and gravel to supply concrete and aggregate material throughout the north coast region and Humboldt County.

Project Impacts: Approximately 200 cubic yards of native fill is required to construct the abutments for a clear span crossing of the Trinity River. Logs and/or concrete blocks may be used to stabilize the crossing. According to the application only one crossing would be required for access to Tish-Tang #8 gravel bar. Prior to the end of extraction or October 15, the bridge crossing will be removed and the native fill graded into the surrounding landscape.

Proposed Mitigation: The applicant intends to avoid and minimize impacts to jurisdictional waters, per the requirements of 33 C.F.R. Section 332.4(b) of the New Mitigation Rule by working during the prescribed work window between June 1 and October 15. Best Management Practices to reduce impacts include avoidance of vegetation and leaving the upstream third of the bar intact.

Project Alternatives: The applicant has discussed upland quarrying and terrace mining which create significant problems and are not encouraged. The Corps has not endorsed the submitted alternatives analysis at this time. The Corps will conduct an independent review of the project alternatives prior to reaching a final permit decision.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: 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 is aware of this requirement and the water certification will be supplied by the Hoopa Valley Tribal EPA. 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 Tribal EPA 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 to act.

Water quality issues should be directed to the Tribal EPA Officer: Ms. Loren Norton, Post Office Box 789, Hoopa, California 95546. For activities occurring on Federally-recognized Tribal lands, water quality certification is typically obtained from U.S. EPA or the Tribal Nation

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 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. The project is located outside of the coastal zone.

Other Local Approvals: The applicant will be applying for the following additional governmental authorizations for the project: U.S. Bureau of Indian Affairs finding of No Significant Impact.

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 Federally-listed terrestrial species and designated critical habitat are not present at the project location or in its vicinity, and that consultation with US FWS 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. To address project related impacts to Southern Oregon/Northern California Coastal (SONCC) coho salmon, informal consultation with NMFS was initiated, pursuant to Section 7(a) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. 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.

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). 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 for California Coastal coho and Coastal California Chinook salmon, and that consultation has been initiated. 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. Based on this review, USACE has made a *preliminary* determination that EFH is present at the project location or in its vicinity, and that the critical elements of EFH may be adversely affected by project implementation. To address project related impacts to EFH, USACE has initiated consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. 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.

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. 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. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are present in the permit area, and that such resources may be adversely affected by the project. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.}}{As the Federal lead agency for this project, the applicant will be responsible for determining the presence or absence of historic properties or archaeological resources, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.} If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106

consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES: Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is 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. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

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 Roberta Morganstern San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; or by e-mail to Roberta.A.Morganstern@usace.army.mil. 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>.