



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, CA 94103-1398

# PUBLIC NOTICE

PROJECT: Procedure for issuing Letters of Permission for Gravel Extraction in Humboldt County (LOP 2015-1)

PUBLIC NOTICE NUMBER: 2007-00857N

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COMMENTS DUE DATE: April 3, 2015

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1. **INTRODUCTION:** Since 1996, the U.S. Army Corps of Engineers (USACE), San Francisco District, has provided a Letter of Permission procedure (for example the LOP 2004-1 and LOP 2009-1) for granting expedited permits to the gravel companies operating in Humboldt County, California. The most recent LOP procedure has expired. The Corps proposes to modify the Letter of Permission procedure (LOP 2009-1) for the authorization of work described herein. The purpose of the LOP procedure is to streamline permit authorization for applicants proposing excavation and related work not posing significant adverse individual or cumulative impacts to the aquatic environment pursuant to the provisions of Section 404 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.*)

Under the LOP 2015-1, and the LOP 2009-1 before, each gravel operator complies with the standardized procedures described herein, and receives a specific Letter of Permission and a Modification in subsequent years. The site-specific LOPs issued to authorize the individual work items will continue to contain limitations intended to protect the environment and natural and cultural resources. In cases where the District Engineer (DE) considers it necessary, applications will be required for individual permits.

The enclosed Draft LOP 2015-1 details the scope and location of work, terms and conditions, and application procedures pertinent to obtaining a Department of the Army LOP under the procedure. In addition, it lists special conditions and monitoring activities that will be required to provide consistent information for decision making within this process.

The actions authorized by this LOP include certain activities at project areas, during extraction seasons, that will enhance habitat for salmonids and other riverine species. The specific details of such habitat enhancement activities shall be determined during, and follow, the same interagency pre-extraction design review process that is used for gravel extraction operations. Many of the habitat enhancement activities shall be consistent in scope, size and cost impact as restoration activities that have occurred in the past under LOP-2009. These activities included, but were not limited to, trenching designed to improve salmon migration, alcove construction, placement of edge water large woody debris, strategic placement of large wood and boulders, riparian plantings, and construction of wetland pits to improve aquatic and riparian habitat.

The biological assessment (BA) under preparation for this procedure is expected to provide a more detailed description of activities and assessment of effects of habitat enhancement activities (as well as gravel extraction activities). The extent of habitat enhancement activities will be estimated based, in part, on accomplishments under the LOP 2009-1, the previous version, as well as operational feasibility during the 10 year implementation period of the LOP 2015-1. In determining a rough target for enhancement activities, the BA will list and quantify the habitat improvement activities that were accomplished under LOP 2009-1, and describe additional, reach-specific habitat improvement activities covered under the LOP 2015-1. This procedure assumes and authorizes those habitat improvement projects of like kind, nature and quantity which would occur in the future. Please see Appendix A for typical habitat improvement activities.

Please note Appendix A, which details typical types of habitat improvement projects, and Appendix N, which provides a draft checklist for ensuring that the applicant provides a complete proposal and complies with the LOP. Other river-reach specific appendices will discuss habitat improvement needs.

## 2. 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(s) intending to use LOP 2015-1 are hereby notified that, unless USACE is provided documentation indicating a complete application for water quality certification has been submitted to the California Regional Water Quality Control Board (RWQCB) within 30 days of this Public Notice date, the District Engineer may consider the Department of the Army permit application to be withdrawn. 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. For water quality issues occurring on Federally-recognized Tribal lands, comments should be directed to the U.S. EPA Region 9 office, 75 Hawthorne Street, San Francisco, California 94105. For water quality issues occurring on lands of the Hoopa Valley Tribe, comments should be directed to the Hoopa Valley Tribal EPA, Attn: Mr. Ken Norton, P.O. Box 1130, Hoopa, California 95546.

**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(s) are hereby advised to apply for a Consistency Determination from the 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 applicants will be applying for the following additional governmental authorizations for the project: a Use Permit to be issued by the County of Humboldt; a Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife.

## 3. 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) and/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(s), 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 reach along the lower Eel River contains Federally-threatened western snowy plover (*Charadrius alexandrinus nivosus*) and designated critical habitat for this species; Federally-threatened western yellow-billed cuckoo (*Coccyzus americanus*), which is currently being proposed for designated critical habitat in this area; and the Federally-endangered tidewater goby (*Eucyclogobius newberryi*). The rivers and streams of Humboldt County support Federally-threatened Southern Oregon/Northern California coastal (SONCC) coho (*Oncorhynchus kisutch*) and Federally-threatened California Coastal Chinook salmon (*O. tshawytscha*), as well as Federally-threatened Northern California steelhead (*O. mykiss*) and their designated critical habitat. Critical habitat designated for Coho salmon includes all estuarine and river reaches accessible to salmonids below longstanding, naturally impassable barriers. Designated critical habitat consists of the water, streambed, and the adjacent riparian zone. The overall project could potentially induce changes in channel morphology, including the loss of pool and riffle habitat and degradation of the riverbed; promote the stranding of salmonids on the affected bars; result in direct mortality of salmonids and relocation of juvenile salmonids from the excavated pools; cause the loss of riparian vegetation and large wood debris; and generate turbidity and downstream sedimentation, the deposition of which would likely contribute to the degradation of spawning gravels. To address project related impacts to these species and designated critical habitat, USACE will initiate formal consultation with USFWS and NMFS, 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.

**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, and that the critical elements of EFH may be adversely affected by project implementation. The Proposed Action may result in insignificant to less than significant adverse effects on EFH conditions for adult migration, spawning, egg to fry survival, and smolt migration habitats for species managed under the *Pacific Coast Salmon FMP*. The Proposed Action may result in more than minimal, but less than substantial effects on fry rearing habitat for Chinook salmon and coho salmon. To address project related impacts to EFH, USACE will initiate 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.

**Marine Protection, Research, and Sanctuaries Act (MPRSA):** Section 302 of the MPRSA 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)). 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.

**Wild and Scenic Rivers Act (WSR) of 1968:** Section 7(a) of the Act (16 U.S.C. 1278, *et seq.*) provides that no department or agency of the United States shall assist by permit any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Most of the river reaches covered under the LOP 2015-1 are private property and thereby administered by the National Park Service. Some of the river reaches are on U.S. Forest Service, or partially on Forest Service property and thereby administered by that agency. By a copy of this public notice, the Corps is requesting consultation with the Forest Service and National Park Service regarding the possible effects to the free flowing nature of designated rivers and their outstandingly remarkable values (ORV).

**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 Mr. Jim Mazza, San Francisco District, Regulatory Division, 1455 Market Street, 16<sup>th</sup> 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>.