



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division, Eureka Field Office  
601 Startare Drive, Box 14  
Eureka, CA 95501

# PUBLIC NOTICE

PROJECT: Elk River Estuary Enhancement and Waterfront Trail Extension Project

PUBLIC NOTICE NUMBER: 2017-00462N

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1. **INTRODUCTION:** The City of Eureka Parks and Recreation Department (POC: Miles Slattery, 707-441-4184), 531 K street, Eureka, CA 95501, through its agent, Trinity Associates (POC: Aldaron Laird, 707-845-6877), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to restore and enhance estuary and inter-tidal habitats on Elk River, and increase public access to the Elk River Spit, Elk River and Humboldt Bay by extending an existing recreational trail. 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:** This project contains two distinct areas located on the north bank (Area 1 approximately 25 acres) and south bank (Area 2 approximately 89 acres) of the Elk River. The entire project encompasses approximately 114 acres. The center point of the project area is located at latitude 40.757631 longitude -124.192669, and is within the United States Geological Survey (USGS) Eureka quadrangle in Township 4 north, Range 1 west, Section 04.

The project is bound by U.S. Highway 101 and Humboldt County's Tooby Road on the east, and the North Coast Railroad Authority/Northwestern Pacific railroad (NCRA) on the west. The City's Waterfront Trail, waste water treatment facility, and private properties border the project on the north. The southern project boundary is bordered by private property. See attachment 1 for a map of the proposed project area.

**Project Site Description:** The proposed project is in the Elk River Slough complex, which historically included

inter-tidal channels, salt marsh, windblown sand deposits, and riparian forest. The 1858 U.S. Coast Survey map shows historic mudflats at the mouth of Elk River and along the entire project area shoreline. On the right bank of Elk River (Area 1), a salt marsh and inter-tidal channel complex were present. On the left bank of Elk River (Area 2), over wash from Humboldt Bay channels drained through salt marsh to Elk River, and a wind-blown sand upland ridge and sand spit dominated the left bank. A transportation corridor (trail) traversed a minor topographic/hydrologic divide between Elk River and Buhne Slough to the south. See attachment 2 for more information.

Ultimately, the project area was diked off from Elk River Slough and drained to support agricultural development. The construction of the Northwestern Pacific Railroad (NWP) would also separate the project area from Humboldt Bay. The project area also became segmented with the construction of the Bucksport and Elk River Railroad grade in Area 1 and Highway 101. Over time, a sea wall was constructed to protect the NWP railroad from storm surges and waves and, secondarily, to protect the project area and other important infrastructure, such as the Humboldt Community Services District's (HCSD) sewer line and Highway 101. Elk River Slough is a tidal waterway, and the inter-tidal tributary channels behind tide gates in Area 1 and inboard ditch in Area 2 have a muted tide cycle. The broad habitat types mapped for existing conditions in the project area include open water, wetlands (salt, brackish, and freshwater), riparian, and upland.

The existing conditions in the project site are as follows: 1.2 acres of open water (0.8 acres in area 1 and 0.4 acres in area 2); 20.8 acres of salt marsh (17.1 in area 1 and 3.7 in area 2); 70.2 acres of seasonal wetland (1.3

acres in area 1 and 68.9 in area 2); 0.7 acres in freshwater wetlands (all in area 2); 0.2 acres of riparian (all in area 2); and 20.8 acres of upland (5.8 acres in area 1 and 15 acres in area 2) for a total project site area of 113.9 acres (attachment 2). Approximately 92.9 acres within the project site have been determined to be jurisdictional areas pursuant to Section 404 of the Clean Water Act.

**Project Description:** The City of Eureka proposes to restore and enhance estuary and inter-tidal wetland habitats on approximately 114 acres adjacent to Elk River. See attachment 3. The project would enhance and restore approximately 78 acres of salt marsh, 13 acres of riparian habitat, and 13 acres of inter-tidal channels, which may provide nearly ten acres of valuable Eelgrass (*Zostera marina*) habitat. The City also proposes to enhance public access to Elk River and Humboldt Bay with an approximately 1 mile extension of its Class 1 ADA Waterfront Trail, and the construction of a non-motorized boat launch, several causeways and viewing platforms, and a trail head parking area off Tooby Road. The project may also create approximately 2.8 miles of navigable channels connected to Elk River Slough. See attachments 4, 5, and 6.

### Area 1

1. Restore hydrologic connectivity with Elk River and enhance salt marsh resiliency to sea level rise: To restore and maximize hydrologic connectivity with Elk River, two existing tide gates and most of the dike separating Elk River from Area 1 would be removed. Short segments of the dike may be retained to provide wildlife habitat. The abandoned Bucksport Elk River railroad grade would also be removed to improve hydrologic connectivity and create additional salt marsh habitat. Excavated material would be utilized to fill in-board ditches. Filling in-board ditches would focus the tidal prism in the main channels and reduce sedimentation of these channels. Additionally, the existing freshwater marsh area at the outlet of an existing culvert on the south side of the area would be excavated and the soil would be used to raise and level the existing berm (old railroad grade) to elevation 9.0 ft (NAVD 88). A rock-lined overflow weir in the berm that allows freshwater to overflow from the wetland into the salt marsh would be created. This work would also expose the outlet of the existing culvert that drains the area east of the Highway 101 on-ramp at the southeast corner of the site. See attachment 4.

2. Expand Intertidal channel area and depth to create new eelgrass habitat: The width and depth of 3,385 linear feet of existing channels would be increased to maximize

eelgrass habitat. Additionally, approximately 2,395 linear feet of new tidal channels would be excavated. Tidal ponds or depressions would also be excavated and interspersed amongst the channels and excavation activities may occur from both sides of the channels depending on the width of the channel and the reach of the excavator. The entrance of the main navigation channel into Area 1 would be widened where the tide gate structure was removed and the channel would be deepened to provide low tide access, as it extends north to the location of the proposed non-motorized boat access. Additional tributary inter-tidal channels would be widened and deepened as they are extended east. All excavated material would be used to construct design features within Area 1. See attachment 4.

3. Create variable salt marsh topography: All excavated material would be used on-site within Area 1 to create salt marsh hummocks and marsh plain, and a living shoreline would be created on a gradient from 5 to 9 ft (NAVD 88) that would merge with the Waterfront Trail extension prism. The salt marsh hummocks would function as islands for multiple bird species and these areas would also support the migration of salt marsh habitat to higher elevations as sea levels rise. See attachment 4.

4. Providing Public Coastal Access and Recreational Opportunities: The existing recreational trail would be extended approximately 1,000 linear feet, would be approximately 14-ft wide (5-ft for each lane and 2-ft of shoulder for each side), and would be paved for its entire length. In addition to the extension of the trail, a public trail causeway and viewing platform would be constructed and would provide access to a new viewing platform. The Class 1, non-motorized paved trail would be parallel to the existing railroad and would be located atop 1,520 CY of fill derived from on-site excavation to expand the rail road prism. The causeway (250 ft total length and 3 ft wide) and platform (10 ft x10 ft) would be constructed of aluminum, plastic, or treated lumber atop helical anchors drilled into the marsh plain. See attachment 4, 7 and 8.

5. Installation of Large Woody Debris: Throughout Area 1, fill (reuse of excavated materials) would be placed to fill artificial depressions and linear in-board ditches, and spread over the existing marsh plain between channels to raise the salt marsh plain surface elevation. Soil would also be used to form tidal mounds/hummocks (islands) and to increase the elevation of upland areas. Hummocks

may be graded to promote habitat diversity and provide roosting habitat for shore birds. Approximately 18,000 CY would be excavated and graded onsite with no export of materials. Several large wood debris logs, currently in Area 1, along with imported logs would be strategically placed to increase habitat diversity and cover for wildlife.

6. Excavation of interior dikes and abandon railroad grade: Interior dikes within Area 1 (inside of the dikes on Elk River) would be excavated to restore natural topography in the estuary and salt marsh plain (200 CY of excavation). Interior dikes would be lowered as well as the abandoned Bucksport and Elk River railroad grade west of the Pound Road Park and Ride lot.

7. Construction of Non-motorized boat access: Non-motorized boat access would be provided at the north end of the widened and deepened navigation channel near the terminus of Pound Road. The boat ramp would be a textured, 12% to 15% sloping, concrete ramp approximately 15' wide and 30' long, extending from above mean annual maximum tides to minus 1 foot below mean lower low tides. It would have a 12" tall wall on one edge with a galvanized or aluminum pipe railing to hold onto. There would be 20 CYs of 4" crushed foundation rock, 10 CYs of Class 2 Aggregate Base, and 15 CYs of poured concrete below and within its footprint. See attachment 9.

8. Additional activities in Area 1: In addition to the above restoration activities, the proposed project includes activities that would result in the creation of approximately 4 acres of riparian habitat, the eradication of existing areas of Spartina (*Spartina densiflora*) through mechanical and experimental methods, and the placement and implementation of erosion and sediment control Best Management Practices (BMPs) in all applicable areas. Invasive Spartina would initially be removed with the use of an aquatic tracked vehicle ("Marsh master") and heavy equipment during construction to disturb the upper 6 inches of soil while excavating channel areas and grading fill areas. Remaining Spartina areas would be treated with mechanical and hand labor, or herbicide eradication methods currently utilized on Humboldt Bay and approved under the Humboldt Bay Regional Spartina Eradication Plan. Approved methods included in the eradication plan that would be applied to Area 1 include mowing, grinding, tilling, excavating, or treating the

invasive Spartina with approved herbicides. Additionally, a small (< ½ acre) experimental flood area would be constructed to test the efficacy of flooding Spartina with salt water as a remediation treatment. A 100 ft x 100 ft area would be enclosed with a temporary earthen berm and flooded with salt water pumped from behind the closed tide gates on Elk River for at least three months. The berm would be graded to merge with the new salt marsh plain. This activity is not covered under the approvals already obtained by the regional plan. Monitoring and retreatment would continue for at least three years. Proposed BMPs include seasonal work restrictions, installation and maintenance of silt fences, and strategically placed staging areas.

## Area 2

1. Enhance hydrologic connectivity with Elk River: The dike on Elk River would be breached in multiple locations and the existing dilapidated 12-inch culvert would be removed to reconnect the muted tide area north of the sand formation with Elk River. See attachment 6.

2. Create inter-tidal channel network to support eelgrass habitat and habitat for other species: The new secondary inter-tidal channels would be excavated to provide low velocity and shallower aquatic habitat. Salt marsh depressions would be excavated adjacent to inter-tidal channels where high tides can inundate these areas to form pond habitats. The width and depth of the new main channel has been sized to maximize creating Eelgrass habitat. Channel sinuosity emulates historic channels in former salt marsh areas of Area 2 and adjacent areas of Elk River. The new inter-tidal channel network would extend south approximately 4,200 ft. The channel depth in Area 2 would range from -4 ft at Elk River Slough to +2 ft at its southern terminus. See attachment 6.

3. Create Tidal Ridges and Living Shoreline Buffer: Tidal ridges would be constructed, to contain mean annual maximum tides (8.8 feet NAVD 88 at North Spit tide gage), along the City's property boundaries parallel to the NCRA and Caltrans properties using fill materials excavated onsite. The western tidal ridge would provide a high platform 12 to 14 foot elevation (NAVD 88) for the extension of the ADA Waterfront Trail (14 ft wide) and emergency access for HCSD to their sewer line. A second tidal ridge, 10 ft to 12 ft in elevation (NAVD 88) (16 ft wide), parallel to Highway 101 extending north from

Tooby Road would allow PG&E vehicular access to their nine electrical distribution poles. The western tidal ridge/Waterfront Trail inside slopes would be graded 3:1 down to 9 foot elevation and then grade to the top of the nearest tidal channel bank. The tidal ridge/trail slope on NWP railroad side would be 3 to 1 and may be fortified with rock from the southern property boundary north approximately 2,720 feet to prevent erosion of the Waterfront Trail from wave wash through the sea wall. See attachment 6.

4. Create variable salt marsh topography: Excavated material would be used on-site between newly excavated inter-tidal channels to create salt marsh plains from 6 to 9 ft (NAVD 88). Salt marsh hummocks greater than 9 ft in elevation would function as islands for shorebird and waterfowl species. The varying elevation of these hummocks would also support the migration of salt marsh habitat to higher elevations as sea levels rise. Excavation of fill deposited on Area 2 wetlands from erosion of the NWP railroad ballast would restore approximately 1 acre of inter-tidal wetlands. Excavated soil would be left in stockpiles or windrows and allowed to dry out before attempting to spread it to conform to the design topography. Approximately 125,200 CY would be excavated and graded onsite with no export of materials. Throughout Area 2, fill (reuse of excavated materials) would be placed to fill artificial depressions and linear in-board ditches, and spread between newly excavated channels to create a salt marsh plain with surface elevations ranging from 6 to 9 ft (NAVD 88). Soil would also be used to form tidal mounds/hummocks (islands) and to increase the elevation of upland areas. Hummocks may be graded to promote habitat diversity and provide roosting habitat for shore birds. Soil would also be used to increase the southern topographic divide to 12 ft in order to tidally separate Area 2 from private property to the south. Imported large wood debris would be strategically placed to increase habitat diversity and cover for wildlife. See attachment 6.

5. Create riparian habitat: Excavated sand material from the new tidal channel would be reused on-site to enhance the windblown sand formation and increase riparian habitat in Area 2. Other excavated materials would be used to enhance the existing topographic divide at the southern boundary of Area 2 to approximately 12 ft (NAVD 88) and link this area with the upland area along

Tooby Road to create riparian habitat. These areas, above 9-foot elevation, would be planted with appropriate native riparian species, creating approximately nine additional acres of riparian habitat. See attachment 6.

6. Eradicate Spartina: Approximately 0.02 acres of existing salt marsh dominated by Spartina is located between the dike on the left bank of Elk River and the natural sand upland. Area 2 is also included within the geographic limits of the approved Humboldt Bay Regional Spartina Eradication Plan. Approved methods included in the eradication plan that would be applied to Area 1 include mowing, grinding, tilling, excavating, and crushing, as well as approved herbicide application of the invasive Spartina. Periodic maintenance would likely be necessary to prevent the re-establishment of this invasive species in Area 2. See attachment 6.

7. Provide public coastal access: Within Area 2, the project would provide public coastal access via a 1-mile extension of the ADA Waterfront Trail to salt marsh and riparian habitats, Elk River Spit, Elk River Slough, and Humboldt Bay. The existing dirt road from Tooby Road to the NWP railroad would be removed. A paved public parking area and trailhead would be constructed at the southern end of Tooby road on the City's property. The Waterfront Trail would extend approximately one mile north to Elk River. The trail and tidal ridge parallel to the NCRA property would average 12 to 14 ft elevation (NAVD88). A public elevated causeway would also provide access out into the salt marsh plain and a viewing platform. A walking bridge may be installed at the northern end of Area 2, spanning the new channel entrance, to connect the Waterfront Trail extension, to the eastern tidal ridge. The eastern tidal ridge, located on the City's property would average 16 ft wide and 10 to 12 ft elevation (NAVD88) and provide PG&E access to their electrical distribution poles and be surfaced with crushed rock. An elevated salt marsh viewing trail causeway (550 ft total length and 3 ft wide) and platform (10 ft by 10 ft) would be constructed of aluminum, plastic, or treated lumber atop helical anchors drilled into the marsh plain. The causeway and viewing platform would be elevated 1 ft to 7ft above the marsh below and would include railings compliant with City Building Codes and ADA and would be 4.5 ft high. An elevated causeway bridge may span the newly constructed main tidal channel. The bridge would be 100 ft long and may require helical piles. Interpretive

signage would be installed on posts set into concrete footings. See attachment 7 and 8.

**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 enhance existing estuary habitat in Elk River.

**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 restore and enhance the estuary and inter-tidal habitats on Elk River, and to increase public access to Elk River Spit, Elk River, and Humboldt Bay.

**Project Impacts:** The project would have temporary adverse impacts during construction, including, increases in turbidity, decreases in water quality before, during and after dewatering, and temporary changes in access to existing channels. However, overall, upon completion of all project activities, the proposed project would result in an overall beneficial impact to the Elk River estuary through the increase of off-channel habitat, expanded wetland and salt marsh areas, removal of *Spartina*, and improvement to existing estuary habitat. All 92.9 acres of jurisdictional waters of the U.S. found on the project site would be temporarily impacted during implementation of the restoration project. Upon completion of the project, the restoration area would contain 91.8 acres of jurisdictional waters of the U.S., including 12.7 acres of open water and 79.1 acres of wetlands.

**Proposed Mitigation:** The proposed project would restore existing degraded wetlands and waters, and most of the proposed impacts to jurisdictional waters of the U.S. would be temporary. As such, compensatory mitigation has not been proposed. The project would minimize impacts by limiting the construction window to dry periods of the year, avoiding stockpiling of materials over winter, installing sediment control measures around designated stockpiling locations, and the placement of fill would occur only when the area is not inundated by tide water. Additionally, saturated soils shall be dewatered and/or transported saturated in a manner that prevents excess discharge or spillage of soils or water within the construction access areas. The restoration area would be

monitored for 5 years to ensure that additional loss of jurisdictional waters of the U.S. does not happen.

### **Project Alternatives:**

Alternative 1 – The project as proposed: This alternative is described in the Project Description section. This alternative would result in estuary habitat improvements and habitat creation and would increase public access through the proposed trail extension.

Alternative 2 – No project alternative: This alternative would result in estuary conditions and off channel habitat quantities remaining the same as current conditions. Listed species utilizing the Elk River estuary would continue to experience degraded estuary conditions and no additional off channel habitat would be created to improve over winter rearing and survival.

Alternative 3 – Area 1 only: This alternative would result in estuary habitat improvements and habitat creation only in the area known as Area 1. As compared to the proposed project, this alternative would result in less enhancements of estuary habitat, less creation of off channel habitat areas, and a smaller trail extension.

Alternative 4 – Area 2 only: This alternative would result in estuary habitat improvements and habitat creation only in the area known as Area 2. As compared to the proposed project, this alternative would result in less enhancements of estuary habitat, less creation of off channel habitat areas, and a smaller trail extension.

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:** 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 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, by the close of the comment period.

**Other Local Approvals:** The applicant has applied for the following additional governmental authorizations for the project: A Shoreline Development Permit to be granted by the Humboldt Bay Harbor, Recreation and Conservation District.

#### 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 or 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 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 the Elk River contains Federally listed threatened Southern Oregon/Northern California Coast Coho salmon (*Oncorhynchus kisutch*), threatened California Coastal Chinook salmon (*Oncorhynchus tshawytscha*) and, threatened Northern California Steelhead (*Oncorhynchus mykiss*), and designated critical habitat for Coho salmon and federally listed endangered Tidewater Goby (*Eucyclogobius newberryi*).

Impacts to listed species would be limited to those individuals that remained in the residual wetted channel area of 0.25 Acre in area 1 and 0.05 acre in Area 2 that would be sealed off from tidal inundation from Elk River Slough for implementation of the project. Removal of the tide gates would require jackhammering and excavating that would generate loud noise and vibrations, which may

affect individuals in the residual pool. Listed species in the mainstem Elk River channel could be disturbed by the noise or vibrations associated with the tide gate removal. Species could be affected by increases in suspended sediment and turbidity in the Elk River Slough and Humboldt Bay during project excavation and grading. New inter-tidal channels and salt marsh wetlands, when inundated, would be a short-term source of sediment in tidal discharges which may increase background levels of turbidity down river of the project and affect listed salmonid species. Impacts to listed species would be avoided by sequencing construction to excavate new inter-tidal channels before they are connected to the existing estuary's channel network, timing construction to coincide with low tides, and closing the tide gates in Area 1 to minimize fish presence. New channels would be inundated for the first time as a final step, reducing impacts. Construction would begin in the month of July after freshwater inflows to Area 1 diminish. Site preparation and initial dewatering would be scheduled to occur during a low tide to minimize the amount of wetted channel and potential fisheries impacts. A fish avoidance plan has been developed to minimize risk of impacting fish. It is expected that restoration of tidal influence and connection of inter-tidal channels within the Elk River Slough complex and nearby Humboldt Bay may provide an opportunity for the movement of fish into the enhanced estuary and upstream reaches of Elk River from Humboldt Bay which would be a long term benefit to listed species.

To address project related impacts to these species and designated critical habitat, USACE will initiate formal consultation with NMFS and informal consultation with USFWS, 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 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 the critical elements of EFH may be adversely affected by project implementation. Species protected under the Pacific Salmon FMP are located within the project reach of Elk River and EFH for these species may be adversely affected. Potential adverse effects to EFH include dewatering, temporary increases in sedimentation and turbidity, and temporary changes in access to existing off channel habitat. 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 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 L. Kasey Sirkin, San Francisco District, Regulatory Division, Eureka Field Office, 601 Startare Drive, Box 14, Eureka, California 95501; 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>.