



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 Sediment Remediation and Habitat Rehabilitation Pilot Project

PUBLIC NOTICE NUMBER: 2018-00169N

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COMMENTS DUE DATE: July 24, 2019

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1. **INTRODUCTION:** California Trout (POC: Darren Mireau, 707-822-0420), 1380 9<sup>th</sup> Street, Arcata, CA 95521, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to perform sediment remediation and instream habitat rehabilitation activities in the North Fork of the Elk River. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*).

## 2. PROPOSED PROJECT:

**Project Site Location:** The proposed project is located on six, privately owned properties along the lower 6,200 feet of the North Fork Elk River, at the Wrigley Orchard Reach and the Elk River Flood Curve Reach, along river mile 10.6 to 11.8, near the city of Eureka, Humboldt County, California, at center latitude 40.7012°N longitude -124.1478°W.

**Project Site Description:** The project area consists of rural residential development, with rolling hills and a large alluvial river valley. The channel in this reach is narrow and entrenched with steep banks and is characterized by a transition from predominantly gravel bed to predominantly sand bed marking the downstream extent of salmonid spawning habitat. Legacy effects from historic logging and agricultural activities have significantly impacted the river channel and current habitat conditions in the lower North Fork Elk are characterized by sediment aggradation. Fine sediment accumulation has significantly impacted water quality, channel morphology, and adult holding and juvenile rearing habitat for salmonids is confined to the upper Mainstem Elk River and lower forks.

**Project Description:** As shown in the attached drawings, the applicant proposes to remediate excessive fine sediment, nuisance flooding, loss of water quality beneficial uses, and degraded juvenile salmonid rearing habitat uses by excavating up to 22,000 cubic yards of sediment from the bed and banks of the North Fork Elk River within the Project area and to re-create a more natural channel geometry and improve rearing habitat for salmonids.

**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 reduce flooding and improve habitat.

**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 remediate sediment to decrease flooding hazards, and improve rearing habitat for listed salmonids, in the North Fork Elk River

**Project Impacts:** Work within Corps jurisdictional areas will include the placement of approximately 263 cubic yards of fill in 6,200 linear feet of the North Fork Elk River. Temporary impacts from construction include increases in turbidity, decreases in water quality, loss of riparian habitat, loss of benthic macroinvertebrates, increases in water temperature, and loss of large woody debris. Permanent impacts include changes in channel bed morphology, increases in pool and riffle habitat, increases in floodplain areas, and changes to hydrology through the

pilot project reach.

**Proposed Mitigation:** The proposed project includes a suite of best management practices (BMPs) that will minimize potential adverse effects from construction activities. Proposed BMPs include a suite of erosion and sediment control measures, limits on the area of disturbance, implementation of seasonal work windows, strategic staging and stockpiling of materials to minimize potential spills, limiting construction access points, on-site hazardous materials management, development of a spill prevention and response plan, dewatering measures, preparation of a vehicle and equipment fueling plan, and minimization of noise disturbances.

To mitigate for temporary loss of habitat, the project would create up to 8 large woody debris (lwd) habitat structures within the low flow channel in the newly constructed pools, each using 4-6 redwood logs, including one log with intact root-wad and several pinning logs. A portion of the root-wad log will be buried in the streambank to anchor the structure, and smaller logs will be positioned to pin the larger logs in place. The completed log structure will be enhanced with smaller salvage wood to recreate more complex structural characteristics. Two habitat structures will be constructed in the Wrigley Orchard Reach and 6 will be constructed in the Flood Curve reach.

**Project Alternatives:** USACE has not endorsed the submitted alternatives analysis at this time. USACE 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 thereof 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:** The project does not occur in the coastal zone, and a *preliminary* review by USACE indicates the project is not likely to affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by the California Coastal Commission.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, North Coast District Office, 710 E Street, Suite 200, Eureka, California 95501, by the close of the comment period

**Other Local Approvals:** The applicant will be applying for the following additional governmental authorizations for the project: a Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife and a grading permit from the County of Humboldt.

### 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. § 1500-1508, and USACE regulations at 33 C.F.R. § 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 ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, USACE has conducted a review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant to determine the presence or absence of such species and critical habitat in the project area. Based on this review, USACE has made a preliminary determination that the following Federally-listed species and designated critical habitat are present at the project location or in its vicinity and may be affected by project implementation: Southern Oregon/Northern California Coast coho salmon ESU, (*Oncorhynchus kisutch*) Threatened, 70 Fed. Reg. 37,160 (Jun. 28, 2005) Critical habitat, 64 Fed. Reg. 24,049 (May 5, 1999); Chinook salmon California Coastal (CC) ESU (*Oncorhynchus tshawytscha*) Threatened 70 Fed. Reg. 37,160 (Jun. 28, 2005) Critical habitat 70 Fed. Reg. 52,488 (Sep. 2, 2008); Steelhead, Northern California (NC) ESU (*Oncorhynchus mykiss*) Threatened 71 Fed. Reg. 834, (Jan. 5, 2006) Critical habitat (70 Fed. Reg. 52488, Sep. 2, 2005).

To address project related impacts to these species and designated critical habitat, USACE will initiate formal consultation with 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 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*, or 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 Pacific Coast Salmon 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 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 any required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project is not likely to 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 the 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 impacts to the aquatic ecosystem while not causing other major adverse environmental consequences. The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

**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 in 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>.