

AGENCIES and PERMITS

For gravel extraction and processing operations in the project area a total of 11 permits are required. See Table 2 for a site by site summary of permit status. The agencies involved include the Humboldt County Planning Department, North Coast Unified Air Quality Management District, State Coastal Commission, Regional Water Quality Control Board, State Water Resources Control Board, Department of Fish & Game, California Department of Boating & Waterways, Department of Transportation (Division of Structures), State Lands Commission, and Corps of Engineers.

For any new operation in the project area the County ordinances require that the applicant receive a Conditional Use Permit from the Humboldt County Planning Commission. This is required because gravel extraction and processing is a conditional use permitted within the zoning designation of the Eel River bed.

The State Surfacing Mining & Reclamation Act of 1975 required counties to adopt ordinances to implement the Act. This Act requires that each gravel extraction operation include a Reclamation Plan which must also be approved by the County Planning Commission and filed with the State Division of Mines & Geology. Recent regulations require the operator to provide financial assurance to guarantee that the Reclamation Plan will be done.

The purpose of the Reclamation Plan is to describe the gravel operation in detail and the environmental setting, and include a plan that describes measures that will be done to assure that adverse environmental effects caused by the operation will be prevented or minimized.

The County Use Permit and Reclamation Plan require that the gravel extraction process be analyzed according to the requirements of the California Environmental Quality Act (CEQA). Therefore, an environmental document would be included in the application placed before the Humboldt County Planning Commission along with the Reclamation Plan and financial assurances.

The California Coastal Act of 1972 as amended in 1976 required counties to prepare Local Coastal Plans for areas within the coastal zone of the counties. Because the project area on the Lower Eel River falls within the Coastal Zone, all new operations involving property above the bed of the river require a Coastal Development Permit from the County Planning Commission. The environmental document prepared per CEQA would be sufficient to enable the Humboldt County Planning Commission to make a decision on the Coastal Development Permit application.

The above three approvals are the first in the series of 12. Therefore, the County Planning Commission is the lead agency for all proposed gravel operations in the project area. The two projects on the Van Duzen River require the Conditional Use Permit and Reclamation Plan but are outside of the Coastal Zone.

A permit is required from the North Coast Unified Air Quality Management District for those operations that involve crushing, sorting and processing gravel, and those that include an asphalt batch plant. The district is a multi-county special district funded partially by the State of California and partially by those commercial operations that fall under its jurisdiction.

The California Coastal Commission has jurisdiction over the bed of the Eel River and therefore requires a permit for gravel extraction from the project area. Again, Sites No. 10 and No. 11 operated by Noble and Bess do not fall within the Coastal Zone.

The Coastal Act states that anyone wishing to perform or undertake any "development" within the coastal zone must obtain a coastal development permit. The word development is defined very broadly in the Act and includes mining and excavation, the placement of structures of fill, grading, and other activities that occur at gravel extraction sites.

Section 30608 of the Coastal Act states that no person who has obtained a vested right in a development prior to January 1, 1973 need obtain a coastal development permit. Thus, it is possible that some of the older gravel mining operations along the lower Eel River may not need a coastal development permit. However, to establish a vested right, among other things, a project proponent must demonstrate that he or she had obtained all necessary local, state, and federal discretionary permits to undertake the development prior to January 1, 1973. In addition, the project proponent must demonstrate that the project has not been expanded or significantly changed in any way since then.

In localities such as Humboldt County where the local government has a local coastal program (A) that has been certified by the Commission, the local government issues all of the Coastal Development Permits for development within the coastal zone except for any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled. The Commission retains the authority for issuing permits on these lands. The Commission has prepared maps for all of the certified areas that show the boundary between the Coastal Development Permit Jurisdictions of the County and the Commission. These maps are based in part, on information

about public trust lands obtained from the State Lands Commission. Map No. 29 shows that the Commission's coastal development jurisdiction covers a relatively broad area along the river. As a result, some of the gravel mining operations may be entirely within the Commission's coastal development permit and not within the County's area.

Water Quality

Some activities associated with gravel removal projects described in this EIR will require permits to be issued by the Corps of Engineers pursuant to Clean Water Act Section 404 and/or Rivers and Harbors Act Section 10. The activities within Corps jurisdiction include any filling within cove or cay (including stockpiling, diking, channelizing, bank modification, sorting and river crossings--see Corps letter of March 26, 1992) and dredging (including trench-type gravel extraction when trenching extends into the river underflow). (This may be interpreted to also include the "skimming"-type of gravel mining). Before the Corps can issue its permit, the applicant must contact the Regional Water Quality Control Board, North Coast Region regarding Water Quality Certification pursuant to Section 401 of the federal Clean Water Act.

The Regional Board's procedure for response to requests for such certification are established in State law and regulations. The applicant submits a Request for Certification including the following:

- A letter of form requesting certification, including a full description of the activity involved;
- A completed copy of the application for the Corps permit;
- Evidence of compliance with California Environmental Quality Act (CEQA) such as a Negative Declaration, reference to this EIR, or other proceeding;
- A filing fee computed according to the schedule contained in Section 2200 of the California Code of Regulations, Title 23. The schedule in effect at the time of preparation of this EIR is as follows:

"Fees for fill or dredge operations shall be assessed on an annual basis for as long as the waste discharge requirement is in effect, as follows:

Fill: One acre or less, flat fee of \$1000. More than one acre, \$1000 per acre or part thereof (not to exceed the statutory maximum).

Dredge: Less than 10,000 cubic yards, flat fee of \$500.

10,000 to 20,000 cubic yards, flat fee of \$2000.

More than 20,000 cubic yards, \$2000 plus \$250 for each additional 5000 cubic yards or part thereof (not to exceed the statutory maximum). The

statutory maximum at this time is \$10,000 -- would be reached at 10+ acres of "fill" and/or at 180,000+ CAY of "dredge".

The Regional Board staff reviews the application to verify its completeness and whether or not Waste Discharge Requirements can be waived. If the activity will not discharge to the river or can be conducted with minimal threat to water quality, it is within the matters covered by Regional Board Resolution No. 87-113 -- Waiving Waste Discharge Requirements for Specific Types of Discharges -- and a waiver is issued. This action is equivalent to "401 Certification" and enables the Corps to issue its permit. In the event that the proposed activity is beyond the scope of Resolution No. 87-113, the staff cannot issue a waiver but instead must process the matter for regulation under Waste Discharge Requirements which are adopted by the Board -- an action which is also equivalent to "401 Certification".

Should the Board find that the activity will cause uncontrollable water quality impacts, it would recommend that the State Water Resources Control Board deny certification and the Corps could not issue a permit.

Applicants for Corps permits should also be aware of Clean Water Act Section 404(b)(1) (regarding the specification of disposal sites for dredged or fill material) and its implementation by the Corps and EPA. The implementation guidelines are published as Part 230 of Title 40-Code of Federal Regulations. In general, Section 404(b)(1) and the guidelines establish very strict controls over fill-placement activities which may have adverse effects to municipal water supplies, cay, fishery habitats or recreational areas.

In addition to the regulations dealing with dredging and filling activities which attend gravel mining and processing, there are provisions of the federal Clean Water Act and State Water Code which require regulation of cay discharges from gravel processing, concrete/pavement manufacturing and stormwater discharges associated with industrial activities such as gravel mining and concrete/paving manufacturing. Finally, there are regulatory provisions governing storage and spill-prevention/detection systems for petroleum products (fuels and asphalt). The Regional Board's implementation of these regulatory measures is outlined in the following paragraphs.

Wastewater from Industrial Processes

The Board has, for many years, prohibited all discharges of waste to the Eel River and its tributaries during the May 15-September 30 low-flow period. During the October 1-May 14 period, discharges are allowed only if there are 100-to-1

dilution flows and the discharge causes no degradation of the River's natural background conditions. The result of these restrictions on aggregate-related industries has been the development of practices which comply with the Board's prohibitions. The activities described in this EIR are consistent with those practices. The Regional Board, in 1987, adopted Resolution No. 87-113 -- Waiving Waste Discharge Requirements for Specific Types of Discharges and has, since that time, found that the types of activities described in this EIR do qualify for waiver. The scope of operations described in this EIR is not expanded beyond the levels actually accomplished in the past, thus it is reasonable to expect that Resolution No. 87-113 will continue to be applicable.

Stormwater Discharges Associated with Aggregate Mining and Manufacturing of Concrete/Paving Products

In late 1991, the Regional Board was delegated responsibility to implement a Statewide General Permit which may be used by owner/operators of sites which have stormwater discharges which must be permitted under the National Pollutant Discharge Elimination System (CB) Program. The operations described in this EIR, if they have a discharge of stormwater via a conveyance to the Eel River or its tributaries from any area of industrial activity, may obtain CB permit coverage (chi permission to discharge) by following the steps set forth in the Statewide General Permit. The first step is to obtain a copy of the General Permit, Notice of Intent Form and Instructions from the Regional Board office. The second step, if there will be a stormwater discharge associated with the activity, is to read and understand the General Permit and follow its basic directions: fill out and submit the Notice of Intent along with the \$500 filing fee to the State Board office in Sacramento. The terms of the Permit point to the next steps -- eliminate any possibility of non-stormwater discharge, prepare and implement a Stormwater Pollution Prevention Plan and prepare and implement a Stormwater Discharge Monitoring Program.

The Regional Board is responsible for verifying compliance with the General Permit and may use any of its enforcement authorities to obtain compliance.

Petroleum Storage Regulation

There are differing levels of regulation regarding handling and storage of petroleum products which are especially important at the river-side facilities described in this EIR. Any underground tanks must be operated in accordance with County of Humboldt administration of State regulations. Any above-ground tanks above the jurisdictional threshold must comply with State registration and monitoring regulations.

Any tanks exceeding 700-gallon capacity must be covered by a Spill Prevention Control, Countermeasure and Contingency Plan (SPCC Plan) in accordance with federal regulations. The objective of all of these regulations is simple -- to avoid spillage of fuels and asphalt products where they may immediately affect the sensitive uses of the Eel River or its tributaries. Non-compliance with any of these regulations which causes or threatens to cause pollution of the river will result in enforcement action by the Regional Board.

In summary, the Regional Board is involved in three distinct regulatory roles which may impact gravel operators. Compliance with the discharge prohibitions, stormwater General Permit and petroleum controls will effectively minimize all water quality effects of the activities described by this EIR.

California Department of Fish & Game 1603

A Streambed Alteration Agreement must be negotiated and executed between the applicant and the Department of Fish & Game according to the Fish & Game Code Section 1603. All of the gravel operations in the project area require these every year. Recently the Department of Fish & Game has requested that the applicants consider removing gravel by trenching on the inside of gravel bars. These trenches are running up to 1,600 feet long and measure roughly 40 to 50 feet wide at the top and 15 feet deep. It is unknown at this time what the impacts of trenching will be as there was no analysis done or CEQA document prepared prior to initiation of trenching.

In a presentation to the Eel-Russian River Commission on September 27, 1991, George Heise, R.C.E., of the Department of Fish & Game explained the environmental advantages of trenching are that it can create a new more efficient channel, creates less disturbance on the bar, has a smaller impact on riparian vegetation, can be used to create pool habitat, and can be used to remedy channel braiding. He recommended that trenching be used in aggraded channels. He noted the disadvantages are that it caused the channel to degrade (not necessarily bad on the Eel or Van Duzen in highly aggraded sections) which can lead to head cutting and bank erosion, increased turbidity, and costs more to extract gravel that way. He believes the Eel River is still aggraded.

The other approach which is acceptable to the Department of Fish & Game is to skim gravel from gravel bars as long as the resultant surface has a 2% to 3% grade towards the low flow channel. Due to the five-year drought, in some cases it was difficult to find gravel bars that contained enough material above the 3% line to allow for an efficient removal operation. In some situations the DFG has negotiated 1603 permits with gravel operators that result in finished slopes below 2 percent.

California Department of Boating & Waterways

For all summer bridge crossings the California Department of Boating & Waterways requires clear markings to warn recreationists that may be floating the river in canoes, kayaks, rubber rafts or drift boats.

California Department of Transportation (CALTRANS)

In conformance with Section 2770.5 of the Surface Mining & Reclamation Act (SMARA) Caltrans requires that a gravel extractor obtain comments from the Caltrans Division of Structures for removal of gravel within one mile upstream or downstream of a State bridge. These comments are obtained through E.G. Nielson, Caltrans, Division of Structure, P.O. Box 942874, Sacramento, California, 94274.

The Division of Structures is concerned with the Potential adverse effects of long-term, large-volume extraction operations on the river environment. These concerns include the potential of inducing or accelerating channel degradation and/or lateral migration, increasing local and general scour, decreasing the ability of the Lower Eel River and Van Duzen River to maintain an efficient and stable channel, and the resulting effects of any of these on adjacent property.

The Division of Structures believes that the location of a gravel extraction operation, type of operation, and optimum rate of removal should be based on the replenishment rate plus the projection of anticipated effects upon the river environment.

The Division recommends that each gravel bar skimming operation anticipate the possibility of loss of lateral stability at or adjacent to the operation and include mitigation measures. A trenching operation should consider the probability of inducing river vertical instability. The analysis should include a half mile to a mile reach up and downstream of the trenches.

State Lands Commission

The State Lands Commission requires a permit for each gravel extraction operation occurring on the bed of the Eel River.

The State of California acquired sovereign ownership of the beds of navigable waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all the people of the State for the Statewide Public Trust purposes of waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation and open space, among others. Article 10, Section 4 of the California Constitution further protects the public's right to use the river.

In the reach of the proposed project, the Eel River is State-owned sovereign lands under the jurisdiction of the State Lands Commission. As a non-tidal navigable waterway, California holds a fee ownership in the bed of the river between the ordinary low water marks, and a Public Trust Easement over the entire river's high water marks. Both the easement and fee owned lands are under the jurisdiction of the SLC (PRC 6301 and 6216).

The Commission holds title also to the bed of the Eel River from its mouth upstream to the limit of tidal action. This sovereign public trust ownership is bounded by the high water mark.

For clarification an applicant should contact Judy Ludlow, Public Land Management Specialist, at the State Lands Commission at 1807 13th Street, Sacramento, California, (916-445-7134).

The State Lands Commission is also concerned that gravel extraction not impair the public's ability to use the project area as that would violate the easement. For additional clarification Blake Stevenson can be contacted in the San Francisco office at (415) 557-2544. His office is at 350 McAllister Street, Room 6000, San Francisco, California, 94102.

Wild & Scenic Rivers

The project area on the Eel River and Van Duzen River is included under the California Wild & Scenic Rivers System. The California Wild & Scenic Rivers Act (SB 107) of December 20, 1972, declares it is the policy of the State of California to preserve the river in its free-flowing state together with its immediate environment for the benefit and enjoyment of the people of the State. Use of the river as wild and scenic is declared to be the highest and most beneficial use, and a reasonable and beneficial use of water within the meeting of the California Constitution.

The project area is designated or classified as a recreational section of the wild river. No dam, reservoir, diversion or other water impoundment facility other than temporary flood storage facilities can be constructed on this river in this area. In regard to the streambed alteration agreement, the State Attorney General has held that the Department of Fish & Game is prohibited from entering into these agreements in any case where the agreement would alter the natural condition of the river (60 Ops. Cal. Atty. Gen. for [1977]).

In 1980, the Eel River was included in the Federal Wild and Scenic Rivers System. At the time of inclusion it was mandated that "the values which cause the river to be

qualified for the National System must be assured of permanent protection and management by or pursuant to the state statute ... the state must adopt a program of action which will provide permanent protection for the natural and cultural qualities of the river ...". (DEIS for Inclusion of Five Northcoast Rivers, U.S. Dept. of Interior, 1980). Specifically, the state statute requires that..."no department or agency of the state shall assist or cooperate, whether by loan, grant, license or otherwise with any department or agency of the federal, state or local government, in the planning or construction of any dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free-flowing condition and natural character of the river segments designated in 5093.54 as included in the system." (Public Resources Code Section 5093.56)

Corps of Engineers

The Corps of Engineers exercises jurisdiction over the project area under two acts. Section 404 of the Clean Water Act (33 U.F.C. 1344) requires and applicant to obtain a permit from the Corps for all proposed discharges of dredged or fill material into the waters of the United States. The application must also include an alternatives analysis as required by EPA Section 404 (b) (1) guidelines. The gravel extractions that involve skimming only do not require a Section 404 Permit. However, the placement of fill on the bed of the river for the approaches of the summer bridges would require a permit.

Trenching involves placement, for one week on the river bed, of a long pile of gravel to allow drainage of water and fine silt. This temporary stockpiling on the bed is interpreted by the Corps of Engineers as requiring a permit under Section 404 of the Clean Water Act.

The practice of temporarily stockpiling material for removal at a later time is a "fill" into waters of the United States under Section 404 of the Clean Water Act and requires a permit. Other gravel mining activities that may require a permit when they occur within jurisdictional area include, but are not limited to: diking, channelization, bank modifications, sorting, and river crossings.

These permits are administered out of the San Francisco District Office of the Corps of Engineers. The district cannot grant a Nationwide Permit on a wild and scenic river. On January 19, 1981, the Eel River and Van Duzen River were placed in the National Wild & Scenic River System. Therefore, Section 6 (a) of PL 89-72 requires the Corps to furnish the National Park Service a copy of the public notice. The National Park Service comments on the proposed project and returns said comments to the Corps of Engineers.

The Fish & Wildlife Coordination Act and Clean Water Act requires the Corps to offer the opportunity for comment to the National Marine Fisheries Service (NMFS) on a Section 404 and Section 10 Permit application. The NMFS is the Federal agency that is the trustee for estuarine, anadromous fishery, and marine resources, and is responsible for preserving the habitats that support these resources. Regrading the Lower Eel River, NMFS is concerned about the potential effects of gravel extraction on salmon and steelhead and the cumulative impacts on their habitat.

The Corps must determine what level of environmental document is required as it is the lead Federal agency. In recent discussions with the district staff, the question of cumulative impacts came up and whether these 11 projects would constitute cumulative impacts to a degree that would have the potential to cause a significant effect.

In summary, a Section 404 Permit will be required for the installation of summer bridges and for stockpiling gravel next to a trench.

For gravel extraction operations within the influence of tide the Corps has jurisdiction through Section 10 of the Rivers & Harbors Act of 1899 (33 USC 403). These permits are required for work occurring below mean high water (Elevation 2.46 MSL) in tidal waters or below ordinary high water, in non-tidal waters designated as navigable waters of the United States. On the Lower Eel River the Section 10 jurisdiction of the Corps reaches to river mile 7.1. near Worswick.

Navigable waters of the United States are those waters of the United States that are subject to the ebb and flow of the tide, or are presently used, or have been used in the past, or may be susceptible for use transport interstate or foreign commerce. Many rivers have reaches considered navigable from the mouth to some extent upstream.

For the purpose of gravel mining operations covered under Section 10 the term structure includes, without limitation, any obstacle or obstruction. The term work shall include, without limitation, any excavation, filling, or other modifications of a navigable water of the United States (Part 322.2). Amongst other things, stockpiling, diking, river crossing, etc. will require authorization when they occur within navigable waters.

Some river crossings may be covered under the Corps Nationwide permit (NWP) program (Part 330). However, no NWP's are approved for activities that occur in a component of the National Wild and Scenic River System or in a river officially

designated by Congress as a "study river" for possible inclusion into the system.

For river crossing in areas that are not part of the National Wild and Scenic River System, NWP No. 14 may be applicable. NWP No. 14 authorizes roads crossing waters of the United States provided:

1. The width of the fill is limited to the minimum necessary for the actual crossing;

2. The placed is limited to a filled area of no more than one-third acre and no more than a total of 200 linear feet of fill;

3. The crossing is culverted, bridged or otherwise designed to prevent restriction of, and to withstand, expected high flows and tidal flows, and to prevent the restriction of low flows and the movement of aquatic organisms;

4. There are specific general conditions that apply to all NWP's. These conditions must be adhered to. Copies of the conditions are available from the U.S. Army Corps of Engineers at the above address.

NWP No. 14 does not require notification to the Corps of Engineers. However, confirmation that your activity complies with the terms and conditions of NWP No. 14 can be obtained from the Corps. The applicability of NWP No. 14 to your activity can be determined by the Corps of Engineers in advance by contacting Roy Clark at (415) 744-3318, Ext. 238 or by writing to the above address. To receive confirmation that a road crossing will be covered by NWP No. 14, be prepared to provide site specific information on location, size and any previous river crossing dimensions including maps and plans.

Table 2 contains a summary of permits that have been received for the 13 sites. For the County's site at Worswick a special permit and vested right for 200,000 cubic yards was issued to the Public Works Department in 1987. The bed of the river at Worswick was not the original bed in 1850 when California was brought into the Union. Therefore, the County does not believe the State Lands Commission has jurisdiction over the bed in this particular part of the Eel River. The Coastal Commission does not recognize the special permit and vested right granted by the Planning Director to the Public Works Department at Worswick.

Under SMARA rules and the County ordinance for implementation of SMARA, the Planning Department will require an updated reclamation plan be filed on Worswick.

If the 200,000 cubic yards at Worswick is removed by skimming and no summer bridge is required, no Section 10 nor Section 404 Permit is required from the Corps of Engineers. However, a 1603 Streambed Alteration Agreement would have to be negotiated with the Department of Fish & Game.