

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
REGION 1 – NORTHERN REGION
619 Second Street
Eureka, CA 95501

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CDFW - EUREKA



STREAMBED ALTERATION AGREEMENT

NOTIFICATION No. 1600-2016-0086-R1

Butcher Slough, Gannon Slough, Jacoby Creek, and Old Jacoby Creek,
Tributaries to Humboldt Bay and the Pacific Ocean

City of Arcata
Humboldt Bay Trail Project – North Section
1 Encroachment

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and City of Arcata (Permittee) as represented by Mr. Mark Andre.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, the Permittee initially notified CDFW on March 7, 2016, that the Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, the Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, the Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project to be completed is located within the Humboldt Bay watershed, within the city of Arcata, County of Humboldt, State of California. The project is located in Sections 4, 9, 29, and 32, T5N and T6N, R1E, Humboldt Base and Meridian; in the Arcata South U.S. Geological Survey 7.5-minute quadrangle; Assessor's Parcel Numbers 501-091-006, 021-191-02, 021-191-03, 503-251-02, 503-251-08, 503-232-13, 503-251-03, 503-241-01, 503-241-05, 503-251-12, 503-241-11, 503-241-16, 503-241-12, 503-241-10, 503-241-09, 503-241-14, 503-241-13, 503-211-04, 501-043-01, 501-043-04, 201-043-05, 501-061-01 and 501-061-02; from latitude 40.8638 N and longitude 124.0931 W to latitude 40.8316 N and longitude 124.0827 W.

PROJECT DESCRIPTION

The project is limited to one encroachment that includes elements for Phase II of the Humboldt Bay Trail North project. The trail will have a width of 14 feet (10 feet paved with 2 foot shoulders) and will be approximately 3 miles in length. A total of 5 bridges will be constructed along the route including 5 water crossings (Table 1). Bridge construction work within the wetted channel will be limited to periods of negative low tides between July 1 and September 31 when water is not present.

There will be 1.78 acres of permanent wetland impacts, which have a 4:1 mitigation ratio. Mitigation of wetland impacts will be conducted in accordance with the Humboldt Bay Area Mitigation and the Memorandum of Understanding in place between Caltrans and the City of Arcata.

Table 1. Proposed water crossings included in Humboldt Bay North Trail Project.

ID	Latitude/Longitude	Description
Arcata Marsh to Butcher Slough	40.8635, -124.0933	A new bridge spanning approximately 93 feet
Butcher Slough	40.8563, -124.0907	A new bridge spanning approximately 80 feet
Gannon Slough	40.8465, -124.0823	A new bridge spanning a minimum of 180 feet
Jacoby Creek	40.8436, -124.0823	A new bridge spanning approximately 80 feet
Old Jacoby Creek	40.8405, -124.0823	A new bridge spanning approximately 80 feet

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), steelhead trout (*O. mykiss*), amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

The adverse effects the project could have on the fish or wildlife resources identified above include:

Impacts to bed, channel, or bank and effects on habitat structure:
soil compaction or other disturbance to soil layer;
temporary increase in fine sediment transport;

Impacts to bed, channel, or bank and direct effects on fish, wildlife, and their habitat:
temporary loss of riparian and/or emergent marsh habitat;
temporary change to natural bed substrate;
direct take of fish and other aquatic species;
direct impacts from dredging on benthic organisms;
disruption to nesting birds and other wildlife;
direct take of terrestrial species;
disturbance from project activity

Impacts to water quality:

temporary increased turbidity;

Impacts to bed, channel, or bank and direct effects on fish, wildlife, and their habitat:

direct impacts on benthic organisms;

change in flow depth, width or velocity;

flow deflection;

flow restriction (with risk of culvert or bridge failure);

change in channel form (e.g., loss of pools or riffles)

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

The Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. The Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. The Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of the Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Change of Conditions and Need to Cease Operations. If conditions arise, or change, in such a manner as to be considered deleterious to the stream or wildlife, operations shall cease until corrective measures approved by CDFW are taken. This includes new information becoming available that indicates that the bypass flows and diversion rates provided in this agreement are not providing adequate protection to keep aquatic life downstream in good condition or to avoid "take" or "incidental take" of federal or State listed species.
- 1.4 Notification of Conflicting Provisions. The Permittee shall notify CDFW if the Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact the Permittee to resolve any conflict.
- 1.5 Project Site Entry. The Permittee agrees to allow CDFW employees access to any property it owns and/or manages for the purpose of inspecting and/or monitoring the activities covered by this Agreement, provided CDFW: a) provides 24 hours

advance notice; and b) allows the Permittee or representatives to participate in the inspection and/or monitoring. This condition does not apply to CDFW enforcement personnel.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, the Permittee shall implement each measure listed below.

- 2.1 **Permitted Project Activities.** Except where otherwise stipulated in this Agreement, all work shall be in accordance with the Permittee Notification received with fees paid in full on March 7, 2016, together with all maps, BMP's, photographs, drawings, and other supporting documents submitted with the Notification.
- 2.2 **Work Period.** All work shall be confined to the period June 1 through October 15 of each year. Excavation work shall be restricted to periods of **dry weather**. Precipitation forecasts and potential increases in stream flow shall be considered when planning construction activities. Construction activities shall cease and all necessary erosion control measures shall be implemented prior to the onset of precipitation.
- 2.3 **Extension of the Work Period.** If weather conditions permit, and the Permittee wishes to extend work after October 15, a written request shall be made to CDFW at least 5 working days before the proposed work period variance. Written approval (letter, e-mail, or fax) for the proposed time extension must be received from CDFW before work begins within the extension period.
- 2.4 **Bird Survey before Construction Activity.** If construction, grading, or other project-related improvements are scheduled during the nesting season of protected raptors and migratory birds, a focused survey for active nests of such birds shall be conducted within 100 feet of the project activity by a qualified biologist within 7 days prior to the beginning of project-related activities. The results of the survey shall be submitted to CDFW before the commencement of construction. Refer to Notification 1600-2016-0086-R1 when submitting the survey to CDFW. If an active nest is found, the Permittee shall consult with CDFW regarding appropriate action to comply with FGC.
- 2.5 **Vegetation Disturbance.** Vegetation disturbance shall not exceed the minimum necessary to perform the work.
- 2.6 **Excavated Fill.** Excavated fill material shall be placed in locations where it cannot deliver to a watercourse. To minimize the potential for material to enter the watercourse during the winter period, all excavated and relocated fill material shall be tractor contoured (to drain water) and tractor compacted to effectively incorporate and stabilize loose material into existing road and/or landing features.

2.7 Rock Armor Placement.

- 2.7.1 If there is flowing water prior to rock placement in the channel, a qualified fisheries biologist shall survey project area for presence of fish. If fish are present, a qualified fisheries biologist shall direct fish away from the project area with seines or other nets, and install fish exclusion fencing upstream and downstream of the project area.
- 2.7.2 No heavy equipment shall enter the wetted stream channel.
- 2.7.3 No fill material, other than clean rock and river-run gravel backfill, shall be placed in the stream channel.
- 2.7.4 Rock shall be sized to withstand washout from high stream flows, and extend above the ordinary high water level.
- 2.7.5 Rock placed in the wetted stream channel shall be carefully placed to minimize disturbance, and to allow aquatic species to move out of the placement area
- 2.7.6 Rock armoring shall not constrict the natural stream channel width and shall be keyed into a footing trench with a depth sufficient prevent instability.

- 2.8 **Erosion Control.** Adequate and effective erosion control measures shall be used on exposed soils to prevent sediment or turbid water from entering the stream. Erosion control measures shall be employed prior to the onset of precipitation capable of generating run-off or the end of the yearly work period, whichever comes first. Vegetative (e.g., seeding) or other non-vegetative methods shall be utilized such as jute mat, coir mat, wood chip mat, straw mat or wattle, straw mulch, native duff (leaves, needles, fine twigs, etc.), or lopped native slash to protect and stabilize soils. Straw mulching shall utilize at least 2 to 4 inches of clean straw (such as rice, barley, wheat) or weed-free straw. Seeding in riparian areas shall use regional native seed or non-native seed that is known not to persist or spread [e.g., barley (*Hordeum vulgare*), or wheat (*Triticum aestivum*)]. No known invasive grass seed such as annual or perennial ryegrass (*Lolium multiflorum* or *L. perenne*, which are now referred to as *Festuca perennis*), shall be used.
- 2.9 **Permanent Erosion Control Materials.** The Permittee shall utilize wildlife-friendly 100 percent biodegradable erosion control products that will not entrap or harm wildlife.
- 2.10 **Stream Protection.** No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other deleterious material from project activities shall be allowed to enter into or be placed where it

may be washed by rainfall or runoff into the stream. All project materials and debris shall be removed from the project site and properly disposed of off-site upon project completion.

- 2.11 Staging and Storage Areas. Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located more than fifty (50) feet from the stream channel and banks. All equipment and fuel stored on site shall be bermed to contain any spilled material and shall be protected from rain. Berms shall consist of plastic covered dirt or sand bags.
- 2.12 Excavation Equipment. Prior to working within the stream, all equipment shall be closely examined for oil and fuel discharges. Any contaminants shall be cleaned prior to any work within a streambed and shall be maintained daily. In addition, equipment shall be cleaned daily to ensure non-natives are not introduced into mitigation areas, or spread throughout Project sites.
- 2.13 Operating Equipment and Vehicle Leaks. Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian habitat.
- 2.14 Equipment Maintenance. Refueling of machinery or heavy equipment, or adding or draining oil, lubricants, coolants or hydraulic fluids shall not take place within stream bed, channel and bank. All such fluids and containers shall be disposed of properly off-site. Heavy equipment used or stored within stream bed, channel and bank shall use drip pans or other devices (e.g., absorbent blankets, sheet barriers or other materials) as needed to prevent soil and water contamination.
- 2.15 Vehicle and Equipment Use. Any vehicles or equipment driven or operated in stream channel and riparian buffer zone shall be checked and maintained daily to prevent leaks of deleterious materials that could be introduced into the stream. All mobile equipment maintenance, lubrication, and refueling shall be done outside of the stream channel and riparian buffer zone.
- 2.16 Clean Up Equipment. Clean up equipment such as extra boom, absorbent pads, skimmers, shall be on site prior to the start of dredging.
- 2.17 Hazardous Spills. Any material, which could be hazardous or toxic to aquatic life and enters a stream (i.e. a piece of equipment tipping-over in a stream and dumping oil, fuel or hydraulic fluid), the Permittee shall immediately notify the California Emergency Management Agency State Warning Center at 1-800-852-7550, and immediately initiate clean-up activities. CDFW shall be notified by the Permittee within 24 hours at 707-445-6493 and consulted regarding clean-up procedures.

CONTACT INFORMATION

Written communication that the Permittee or CDFW submits to the other shall be delivered to the address below unless the Permittee or CDFW specifies otherwise.

To Permittee:

City of Arcata
736 F Street
Arcata, California 95521

To CDFW:

Department of Fish and Wildlife
Northern Region
619 Second Street
Eureka, California 95501
Attn: Lake and Streambed Alteration Program
Notification #1600-2016-0086-R1

LIABILITY

The Permittee shall be solely liable for any violation of the Agreement, whether committed by the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require the Permittee to proceed with the project. The decision to proceed with the project is the Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety this Agreement if it determines that the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide the Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide the Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to the Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against the Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

The Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and the Permittee. To request an amendment, the Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by the Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, the Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), the Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, the Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If the Permittee fails to submit a request to extend the Agreement prior to its expiration, the Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (FGC section 1605(f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after the Permittee signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall **expire five years** from date of execution, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. The Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of the Permittee, the signatory hereby acknowledges that he or she is doing so on the Permittee's behalf and represents and warrants that he or she has the authority to legally bind the Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If the Permittee begins or completes a project different from the project the Agreement authorizes, the Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR CITY OF ARCATA

Mark Andre

Mark Andre

Date
6-17-14

FOR DEPARTMENT OF FISH AND WILDLIFE

Gordon Leppig
Senior Environmental Scientist Supervisor

Gordon Leppig

Date
6/22/16