

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BAY DELTA REGION
2825 CORDELIA ROAD, SUITE 100
FAIRFIELD, CA 94534
(707) 428-2002



STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2019-0128-R3
Dark Gulch Creek

SAN MATEO COUNTY RESOURCE CONSERVATION DISTRICT
DARK GULCH CREEK CROSSING STABILIZATION PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and San Mateo Resource Conservation District (Permittee) as represented by Sara Polgar.

RECITALS

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on April 23, 2019 that Permittee intends to complete the project described herein.

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

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

PROJECT LOCATION

The project is located on Dark Gulch Creek, a tributary to Pescadero Creek, along Old Haul Road in Pescadero Creek County Park, County of San Mateo, State of California; Latitude 37.265628, Longitude -122.2606472; APNs 084-130-110 and 084-130-120.

PROJECT DESCRIPTION

The project will stabilize a failing crossing on Old Haul Road to prevent chronic and episodic erosion into the creek channel. The goal of the project is to improve habitat conditions and water quality by reducing significant, failing sediment sources. Stabilizing the crossings will also result in safe road access for recreation, administration and emergency purposes.

The project is limited to removal of soils, crib logs, and woody debris at the crossing sites and replacement of failing materials with new engineered culvert crossings. Replacement crossings will include new culverts, and rock riprap energy dissipaters and headwalls. Removal and replacement volumes and culvert specifications are summarized below:

Graded Area (acres)	Excavation Volume (cubic yards)	Culvert Diameter x Length (feet)	Engineered Fill for Crossing (cubic yards)	Rock Riprap Energy Dissipater (cy, acres)
Crossing: 1.9 acres Stockpile: 1.2 acres	37,360 cy	60" to 72" diameter x 260' long, heavy gauge steel or HDPE	22,725 cy	200 cy 0.006 acres

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect, without implementation of the Measures to Protect Fish and Wildlife, include:

- California red-legged frog (*Rana draytonii*) (CRLF), listed as threatened under the federal Endangered Species Act (ESA) and designated as a state Species of Special Concern (SSC);
- Steelhead (*Onchorhynchus mykiss*), Central California Coast Distinct Population Segment, listed as threatened under ESA and a SSC;
- Marbled murrelet (*Brachyramphus marmoratus*), listed as threatened under ESA and endangered under the California Endangered Species Act (CESA)
- California red-legged frog (*Rana draytonii*), listed as threatened under ESA
- Special-status plants
- Long-term temporary impacts to north coast coniferous forest (riparian): approximately 1.9 acres
- Temporary impacts to instream habitat: approximately 0.195 acres
- Estimated removal of 67 coastal redwoods, 8-48" dbh

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

- Loss of riparian vegetation and habitat;
- Change in gradient of bed, channel or bank;
- Change in channel cross-section;
- Direct take of terrestrial and aquatic species;
- Loss of bird nesting habitat;
- Disruption to nesting and foraging birds, and other wildlife.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. 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. 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 Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if 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 Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Qualified Biologist(s) and Biological Monitor(s) - Definitions. For the purposes of this Agreement, qualified biologists and biological monitors are defined as follows:
 - A qualified biologist is an individual who shall have a minimum of five years of academic training and professional experience in biological sciences and related resource management activities with a minimum of two seasonal years conducting surveys for each species that may be present within the project area.
 - A biological monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project, experience with construction-level biological monitoring, be able to recognize species that may be present within the project area, and be familiar with the habits and behavior of those species.
- 1.6 Unauthorized Take. This Agreement does not authorize the take, including incidental take, of any state or federally listed threatened or endangered listed species, or of species that are otherwise protected under FGC. Permittee may be required, as prescribed in the ESA and CESA, to obtain take coverage for federal

and state listed species prior to commencement of the project. Any unauthorized take of listed species may result in prosecution and nullification of this Agreement.

2. Avoidance and Minimization Measures

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

Work Periods

- 2.1 **Work Period.** To avoid or minimize adverse impacts to fish and wildlife and their habitats, work within the creek and riparian zone shall be limited to May 1 to October 31. From May 1st to June 15th, Permittee shall avoid initiation of activities that would pose a high risk of sediment discharge in the case of a rain event. “High risk” activities are: (1) activities that, once started, cannot be completed or fully stabilized within 10 days when long-term weather forecasts indicate upcoming rain events, (2) activities which have the potential to release significant amounts of sediment into the wetted channel, and/or (3) activities that could destabilize the crossing prism, such that the risk of catastrophic failure would be significantly increased. Revegetation is not confined to this work period.
- **Work Period Extensions.** If Permittee needs more time to complete project activities, extensions may be authorized on a weekly basis by CDFW representative, Randi Adair, at randi.adair@wildlife.ca.gov, (707) 576-2786, or if unavailable, through contact with the CDFW Bay Delta Regional Office by mail, phone (707-428-2002). Permittee shall submit a written request for a work period extension to CDFW for approval at least seven (7) calendar days prior to October 31. The request shall detail the activities that remain to be completed the time required to complete each of the remaining activities. Work period extensions are issued at the discretion of CDFW. CDFW may require additional measures to protect fish and wildlife resources as a condition for granting the extension. Any additional measures shall be made part of this Agreement.
- 2.2 **Work Period in Dry Weather Only.** Work within the creek and riparian area shall be restricted to periods of low rainfall (less than ¼” per 24 hour period) and dry weather as allowed during the work period specified in Measure 2.1. No work shall occur during a dry out period of 24 hours after the wet weather referenced above.
- 2.3 **Weather Forecast.** Precipitation forecasts shall be considered when planning construction activities. Permittee shall monitor the 72-hour forecast from the National Weather Service (<http://www.nws.noaa.gov>). When there is a forecast of more than 40% chance of rain, or at the onset of unanticipated precipitation, the Permittee shall remove all equipment and shall implement erosion and sediment

control measures and all project activities shall cease. From May 1st to June 15th, Permittee shall monitor 10-day forecasts as described in Measure 2.1.

General Best Management Practices

2.4 Implement General Best Management Practices (BMPs). Permittee shall implement BMPs 1 through 6 as described in Table 3 of the project Notification (Exhibit 1), which specify requirements for:

- Erosion control
- Staging and stockpiling of materials
- Equipment and vehicle maintenance and cleaning
- Onsite hazardous materials management
- Fire prevention
- Reduction of the spread of invasive species

2.5 Water Quality Control Measures. Permittee shall install and maintain temporary water quality control measures as described in the Project Description.

2.6 Equipment over Drip Pans. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the creek shall be positioned over drip-pans.

2.7 Maintenance of Vehicles. Vehicles must be moved away 150 feet from the stream prior to refueling and lubrication.

2.8 Washing of Equipment. In order to prevent the movement of invasive plant and animal species, fungi, and other biotic agents from external ecological regions, equipment shall be washed prior to entry and staging onto construction sites.

Monitors and Inspections

2.9 Monitor on Call. At least one biological monitor and/or qualified biologist shall be on call and/or on site while all project activities are being conducted. The biologists and monitors shall have authority to stop activities if deemed necessary for any reason to protect any special status species. If the biologist or monitor has requested work stoppage because of any species, CDFW shall be notified within 24 hours.

2.10 Chain of Command. Permittee shall ensure that a “chain of command” for the field crews and other on-site personnel is established prior to commencement of the activities. The qualified biologists or biological monitors shall be identified as the persons in charge of, and responsible for, compliance with avoidance and minimization measures included in this Agreement to protect biological

resources. Permittee shall explain the chain of command during the environmental awareness training.

- 2.11 Daily Species Inspections. The biological monitor or qualified biologist shall conduct daily inspections of the active work area, and staging and stockpiling areas prior to the commencement of construction activities. If the biological monitor or qualified biologist determines that sensitive species are not present within the work area, equipment or materials may be moved onto the work site and project activities may commence under the observation of the biological monitors or qualified biologists.
- 2.12 Check for Wildlife in Construction Materials. Permittee shall visually check stockpiled construction materials for presence of wildlife sheltering within them prior to use.
- 2.13 Sensitive Species Sightings. Any sightings of special-status plant and wildlife species shall be reported to CDFW within 24 hours of the sighting, and any injuries to special-status species shall be immediately reported to CDFW.
- 2.14 Worker Awareness Training. Permittee shall ensure that a CDFW-approved qualified biologist conducts an education training for all persons employed on the project prior to project commencement. Instruction shall consist of:
- A presentation by the qualified biologist that includes a discussion of the biology and general behavior of any sensitive species which may be in the area, how they may be encountered within the work area, and procedures to follow when they are encountered.
 - The status of CESA-listed species including legal protection, penalties for violations and project-specific protective management measures provided in this Agreement shall be discussed.
 - Distribution of wallet-sized cards or a factsheet handout containing this information for workers to carry on-site.
 - Upon completion of the training, employees shall sign an affidavit stating they attended the program and understand all protection measures. These forms shall be filed at the Permittee's office and be available to CDFW upon request.

In the case that workers join the project after project commencement, the qualified biologist shall provide the same education training prior to the workers commencing work on the project. Permittee shall provide interpretation for non-English speaking workers.

Protection Measures for Fish, Wildlife and Plants

- 2.15 **Special-Status Plant Surveys and Protection.** Permittee shall retain a qualified botanist to conduct seasonally appropriate surveys for rare plant species that have the potential to occur within the project area. Surveys shall be done in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (CDFW 2018). If present, special-status plants will be flagged, and if possible, avoided during construction. If plants cannot be avoided, Permittee shall consult with CDFW prior to construction on appropriate mitigation.
- 2.16 **Special-Status Reptiles and Amphibians Surveys and Protection.** Permittee shall retain a qualified biologist to conduct surveys for special-status amphibians that have the potential to occur in the project area. Surveys shall be conducted no more than 48 hours prior to construction and shall encompass a 50-foot buffer around the project area. If special-status amphibians are found, individuals shall be relocated out of harm's way under the supervision of a qualified biologist. Relocation of listed or candidate species may require an incidental take permit; the appropriate state and/or federal agency shall be consulted if listed species are encountered.
- 2.17 **Special-Status Bats Surveys and Protection.** Permittee shall retain a qualified biologist to conduct surveys for special-status bats that have the potential to occur in the project area. Surveys shall encompass all potential roosting habitat within 20 feet of the project area. If potential roost sites are to be removed or trimmed, limbs smaller than three inches in diameter should be cut and the tree should be left undisturbed overnight to allow bats using the roost to relocate.
- 2.18 **Marbled Murrelet Protection.** If the Project is scheduled to begin during the marbled murrelet nesting season (March 24th to September 15th), Permittee shall broadcast recordings of construction noise from the Dark Gulch Crossing at dawn and dusk (15 minutes before sunrise for 30 minutes and again 15 minutes after sunset for 30 minutes) beginning March 21st and continuing every day until the onset of construction activities.

Between June 15th and September 16th, construction shall start at least 30 minutes after sunrise and no earlier than 7am. Construction shall finish at least 30 minutes before sunset every day.

- 2.19 **San Francisco Dusky-footed Woodrat Protection.** Permittee shall:
- Minimize removal of trees and shrubs to the extent possible.
 - Have a qualified biologist inspect trees and construction areas that have potential to support San Francisco dusky-footed woodrat prior to conducting work in those areas.

- Demarcate work exclusion zones of at least 20 feet in diameter around active nests. If a nest is within the disturbance footprint, a qualified biologist shall relocate the nest.

3. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 3.1 Species Survey Results. If special-status species are found during surveys, Permittee shall provide the results of the surveys to CDFW for review within 5 days of completion. Refer to Notification Number 1600-2019-0128-R3 when submitting the records to CDFW.
- 3.2 Monitoring Report. An monitoring report shall be provided for the project in Years 2 and 5, including photo monitoring, briefly summarizing the status of onsite habitats, whether the project is performing as designed, and any lessons learned regarding design and/or project implementation. The report shall be no longer than ten (10) pages in length and shall be submitted to CDFW by December 31 in Years 2 and 5. Refer to Notification Number 1600-2019-0128-R3 when submitting this plan to CDFW.
- 3.3 Notification to the California Natural Diversity Database (CNDDDB). If any listed, rare, or special status species are detected during project surveys or on or around the project site during project activities, Permittee shall submit CNDDDB Field Survey Forms to CDFW in the manner described at the CNDDDB website (http://www.wildlife.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp) within 14 working days of the sightings. Copies of such submittals shall also be submitted to the CDFW regional office as specified below.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Sara Polgar
San Mateo County Resource Conservation District
625 Miramontes Street, Suite 103
Half Moon Bay, CA 94019
Phone (650) 669-9077
sara@sanmatorcd.org

To CDFW:

Department of Fish and Wildlife
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Attn: Lake and Streambed Alteration Program – Randi Adair
Notification #1600-2019-0128-R3
randi.adair@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of 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 Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of 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 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 Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to 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 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 Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, 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. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

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

Nothing in the Agreement authorizes Permittee or any person acting on behalf of 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.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, 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 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, 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 Fish and Game Code section 1605, subdivision (b), 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, 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 Fish and Game Code section 1605, subdivisions (b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall expire on December 31, 2022 unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

Exhibit 1. Notification 1600-2019-0128-R3

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's

behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

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

CONCURRENCE

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

FOR SAN MATEO RESOURCE CONSERVATION DISTRICT

Sara Polgar
Permittee's Representative

Date

FOR DEPARTMENT OF FISH AND WILDLIFE

Craig J. Weightman
Environmental Program Manager

Date

Prepared by: Randi Adair, Senior Environmental Scientist Supervisor
Date sent: May 22, 2019
Date revised: June 20, 2019