



State of California – The Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
7329 Silverado Trail  
Napa, CA 94558  
(707) 944-5500  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN JR., Governor  
CHARLTON H. BONHAM, Director



RECEIVED  
OCT 01 2014

September 25, 2014

Leslie Koenig  
Alameda County Resource Conservation District  
3585 Greenville Road, Suite 2  
Livermore, CA 94550

Subject: Final Lake or Streambed Alteration Agreement  
Notification No. 1600-2013-0467-R3  
STONYBROOK CREEK FISH PASSAGE IMPROVEMENT PROJECT

Dear Ms. Koenig:

Enclosed is the final Streambed Alteration Agreement ("Agreement") for the Stonybrook Creek Fish Passage Improvement Project] ("Project"). Before the Department may issue an Agreement, it must comply with the California Environmental Quality Act ("CEQA"). In this case, the Department, acting as a responsible agency, filed a notice of determination ("NOD") on September 25, 2014 based on information contained in the Mitigated Negative Declaration the lead agency prepared for the Project.

Under CEQA, filing a NOD starts a 30-day period within which a party may challenge the filing agency's approval of the project. You may begin your project before the 30-day period expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or [Marcia.Grefsrud@wildlife.ca.gov](mailto:Marcia.Grefsrud@wildlife.ca.gov).

Sincerely,

Craig J. Weightman  
Environmental Program Manager  
Bay Delta Region

cc: Lieutenant Christensen  
Warden Russo

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

BAY DELTA REGION  
7329 SILVERADO TRAIL  
NAPA, CALIFORNIA 94558  
(707) 944-5500

[WWW.WILDLIFE.CA.GOV](http://WWW.WILDLIFE.CA.GOV)



**STREAMBED ALTERATION AGREEMENT**

NOTIFICATION NO. 1600-2013-0467-R3  
Stonybrook Creek

ALAMEDA COUNTY RESOURCE CONSERVATION DISTRICT  
STONYBROOK CREEK FISH PASSAGE IMPROVEMENT PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Alameda County Resource Conservation District (Permittee) as represented by Leslie Koenig.

**RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on December 20, 2013 that 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, 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 at Stonybrook Creek, a tributary to Alameda Creek, at Mile Post (MP) 8.60 and 8.75 Palomares Road, approximately 1.2 miles north of Niles Canyon Road, in the County of Alameda, State of California; Latitude 37.609834, Longitude - 121.944033.

**PROJECT DESCRIPTION**

Efforts to restore runs of anadromous steelhead trout (*Onchorhynchus mkiss*) a federally listed threatened species, are ongoing within the Alameda Creek Watershed, and most recently, Stonybrook Creek. The lower 12 miles of Alameda Creek is a flood

control channel with little viable habitat for steelhead. Significant barriers preventing steelhead from reaching spawning and rearing habitat are located within the upper section of the flood control channel and consist of a concrete drop structure and two inflatable rubber dams.

Stonybrook Creek is the first major tributary to Alameda Creek upstream from the flood control channel and it provides viable upstream habitat for steelhead. Historically, this creek supported anadromous fish species and in recent times a pair of Alameda Creek steelhead that were captured in the flood control channel, radio-tagged, and released in Niles Canyon. These fish spawned in Stonybrook Creek, with the offspring rearing in a nearby pool. In addition, resident rainbow trout are present and documented within the creek (Becker, 2013).

With viable habitat evident along Stonybrook Creek, the primary purpose of this project is to improve current fish barriers located along stream crossings. The barriers are located within the lower half of Stonybrook Creek with a steep, boulder/cobble-type substrate. Stream crossings on Palomares Road are frequently under-sized and intercept coarse sediment which would naturally have passed through the canyon and exited to Alameda Creek but are now creating a complete barrier for all lifestages of fish.

Addressing these barriers by two culvert improvements will progressively bring Stonybrook Creek closer to restoration of its historic steelhead trout (*Onchorhynchus mykiss*) habitat, opening 0.7 stream-miles of aquatic habitat upstream. Additional benefits of retrofitting or removing stream barriers will be improved sediment management and reduced flood-related damages. Currently, a concern for damage to public infrastructure and private property due to undersized crossings exists.

This project includes full replacement of culvert MP 8.60 (upstream crossing) and a culvert retrofit at MP 8.75 (downstream crossing). The crossings are spaced 800 feet apart and the overall channel slope between them is 9.0 percent (MLA, 2013).

#### *Upstream Crossing, Mile Post 8.60*

The existing crossing consists of a grouted masonry channel 31 feet in length and a concrete bridge deck in good condition. The masonry channel under the bridge was constructed in 1938 and has since been grouted. It has a trapezoidal shape with a bottom width of approximately 9.0 feet and bottom slope of 3.9 percent..

The design at the upstream crossing includes: removal of the existing concrete and masonry culvert while providing temporary traffic access, re-grading of the channel in the vicinity of the crossing, with the placement of a new pre-cast concrete arch culvert and wing walls on cast-in-place strip footings, and the paving of the final roadway over the new culvert

During construction, a temporary crossing will be used. A prefabricated temporary bridge (85-foot long by eight and a half foot wide) with four-foot by twelve-foot steel sheets fastened atop and guard rails along the sides will be placed across Stonybrook Creek north of the existing arch culvert. This will be outside of the current roadway alignment to act as a temporary crossing for emergency vehicles during the construction phase of the project.

The equipment used includes: bulldozers, loaders, cranes, and dump trucks. The equipment will be staged in the eastbound lane of Palomares Road between MP 8.60 and MP 8.75. To access the project site, the equipment will be via the northeastern bank of the creek from the existing roadway pullout. Native rocks from the downstream boulder jam will be used for regrading the stream channel at the upper and lower crossings. Any excess material will be removed from the project site.

#### *Downstream Crossing, Mile Post 8.75*

The culvert crossing at MP 8.75 is located approximately 5,500 feet (1.04 miles) upstream of the Stonybrook Creek confluence with Alameda Creek. The crossing is a reinforced concrete box that is 8 feet wide and 9 feet tall. The culvert is 89.4 feet in length, including the inlet and outlet aprons, and has an overall slope of 7.3 percent. The crossing contains a large fill prism and the roadway is over 25 feet above the culvert invert.

The plan for the crossing at MP 8.75 includes installation of angled baffles throughout the box culvert and re-grading the upstream channel to eliminate the severe boulder jam in front of the culvert inlet. The preliminary baffle design optimizes fish passage conditions while avoiding a reduction in culvert capacity.

To eliminate the boulder jam at the inlet and improve upstream fish passage, this aggraded material will be removed. The channel will be regraded to have an overall slope of 10.8 percent, which is similar but slightly steeper than the natural channel grade between the two crossings. However, removal of additional material upstream to reduce the channel slope would necessitate excavation into bedrock. When regraded, the channel profile will be shaped into a step-pool morphology. The step-pool morphology will dissipate flow energy and provide fish passage conditions similar to the upstream channel. Retrofit design and boulder removal/regrading impacts are detailed in Tables 3-5 below.

Similar to MP 8.60, bulldozers, excavators, loaders, cranes, and dump trucks are anticipated to be used for construction. Equipment access for in-creek work will be via the northeastern bank of the creek to the east of the existing roadway pull off. For temporary access, regrading and vegetation removal will be required. All equipment will be staged in the eastbound lane of Palomares Road between MP 8.60 and MP 8.75.

Native rocks from the downstream boulder jam will be used for regrading the stream channel at the upper and lower crossings. Any excess material will be removed.

### On-Site Tree Mitigation

Selected native plants will be transplanted to mitigate the removal of trees. The plan includes removal of one non-native plant that will be replaced at a 1:1 ratio with an appropriate native species to offset the loss of canopy cover provided by this tree. All other native plants will be planted onsite at the proposed mitigate ratio below.

The vegetation will be installed in the winter 2014-2015. Following installation, plantings will be monitored and maintained as required. Replacement planting will be conducted as needed to establish sufficient vegetation and meet success criteria at the site.

### *Dewatering Plan/Control of Water*

Dewatering of the stream will be required for construction. A full dewatering plan will be developed and provided to CDFW for approval once construction plans are finalized. Prior to dewatering by pumping, intakes will be completely screened with wire mesh not larger than 5 millimeters. To isolate the work area, water tight coffer dams will be constructed upstream and downstream of the work area and water diverted through a lined diversion channel. The contractor will keep on site at all times a pump and flexible pipe to reroute water as necessary. Any pumps used on-site shall be placed on absorbent pads. Spill containment materials and operators trained in spill control procedures will remain on-site. Normal flows will be restored to the affected stream immediately upon completion of work at project location. A qualified biologist will be present on site during all grading, dewatering, riparian or aquatic vegetation removal, and in-stream construction activities.

## **PROJECT IMPACTS**

Existing fish or wildlife resources the project could substantially adversely affect include: native fish including rainbow trout, native amphibians including California red-legged frogs, benthic macroinvertebrates, birds, mammals, native and non-native vegetation including several large trees.

The adverse effects the project could have on the fish or wildlife resources identified above include: death or injury from project related activities, permanent and temporary loss of habitat.

### Temporary Impacts

Temporary footing and grading will be required for temporary road access and for temporary equipment access. After the project has been completed, all temporary grading of the project site will be restored to pre-project conditions. Erosion control measures and seeding will be conducted.

Permanent Impacts

Permanent impacts include widening of the culvert to meet road width requirements, removal of vegetation for road and equipment access and elimination of the outlet pool.

**Table 1. MP 8.60 - Stream Bed and Bank Impacts to Remove Existing Culvert and Regrade the Stream Bed and Install Replacement Modular Bridge**

Impacts	Length (LF)	Square Feet (sq ft)
Temporary	160	6,220
Permanent	70	3,340

**Table 2. MP 8.60 Cut/Fill Quantities**

Material	Cubic Yards (Total)	Cubic Yards (Above OHWM)	Cubic Yards (Below OHWM)	Length (LF) Permanent	Surface Area (Acres) Permanent
Soil and Rock	Cut - 600 Fill - 100	Cut - 100 Fill - 20	Cut - 500 Fill - 80	Fill - 70	Fill - 0.08

**Table 3. MP 8.75 - Stream Bed and Bank Changes to Access, Relocate and Regrade Stream**

Condition	Length (LF)	Square Feet (sq ft)
Temporary Condition	260	13,160
Permanent Condition	250	8,600

**Table 4. MP 8.75 - Stream Bed and Bank Changes to Install Baffles in Box Culvert**

Condition	Length (LF)	Square Feet (sq ft)
Temporary Condition	275	5,130
Permanent Condition	110	830

**Table 5. MP 8.75 Cut/Fill Quantities**

Material	Cubic Yards (Total)	Cubic Yards (Above OHWM)	Cubic Yards (Below OHWM)	Length (LF) Permanent	Surface Area (Acres) Permanent
Soil and Rock	Cut - 1,500 Fill - 50	Cut - 300 Fill - 50	Cut - 1,200 Fill - 0	250	Fill - 0.2
<b>Totals</b>	Cut - 1,500 Fill - 50	Cut - 300 Fill - 50	Cut - 1,200 Fill - 0	250	Fill - 0.2

**On-Site Tree Removal Impacts**

A total of nine trees will be removed as a result of project impacts: five trees from MP. 8.60 and four trees at MP 8.75. Other trees will be trimmed for construction access. In addition, some understory vegetation will be removed for both temporary and permanent project construction. Details on the trees that will be removed are below in **Table 6**.

**Table 6. On-Site Tree Removal Impacts**

<b>Species</b>	<b># of Plants Greater than 4" DBH<sup>1</sup></b>	<b>Total Plants in Survey Area</b>	<b>Proposed Mitigation Ratio</b>
<b><i>Non-natives</i></b>			
Parney's cotoneaster	1	1	1:1 <sup>2</sup>
<b><i>Natives</i></b>			
California bay laurel	2	2	9:1
Big leaf maple	2	2	9:1
White alder	2	2	9:1
Coast live oak	2	2	3:1

<sup>1</sup> Trees of a size less than 4" diameter at breast height (DBH) do not require mitigation.

<sup>2</sup> Non-natives will be replaced with an appropriate native species.

**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 Day to Day Extension If the Permittee needs more time to complete the authorized activity, the work period may be extended on a day-to-day basis by Marcia Grefsrud, Environmental Scientist at (707) 644-2812, or, alternatively, by email at [Marcia.Grefsrud@wildlife.ca.gov](mailto:Marcia.Grefsrud@wildlife.ca.gov).
- 1.6 Consistency with Notification. All work shall be completed in accordance with the plans, drawings and project description submitted with the project Notification. Impact acreages shall not exceed acreages described in the project description. If Permittee wishes to modify the project described in this Agreement, CDFW shall first be notified, and an amendment or new notification will be required.
- 1.7 Operations and Maintenance Manual. Permittee shall prepare an Operations and Maintenance Manual (O&M). The O&M shall be prepared as a working draft to be finalized within one year of the final construction. O&M shall include elements such as photographing high flows and captured debris before removal, timing of inspections, cleaning and repairs, annual reporting. The working draft O&M shall be provided to CDFW for review and comments within 30 days prior to the start of construction. Construction activities shall not commence until CDFW provides written approval for activities to begin.
- 1.8 Emergency Spill Response Plan. An emergency response plan shall be prepared and submitted to CDFW prior to the start of work. The plan shall be limited to three pages in length and may be presented in prose, table or bulleted list format. The plan shall identify the actions which would be taken in the event of spill of petroleum products, sediment or other material harmful to aquatic or plant life. The plan shall also identify the emergency response materials which will be kept at the site to allow the rapid containment and clean-up of any spilled material.



- 1.9 Access to Property Not Owned by Permittee. This agreement does not grant the Permittee authority to enter, use, or otherwise encroach upon on the property rights of individuals or organizations not party to this Agreement. Permittee shall obtain written authorization from outside parties, in accordance with applicable laws, if access to property not owned by Permittee is necessary.
- 1.10 Work Schedule. Permittee shall submit a work schedule to CDFW by mail or email to Marcia.Grefsrud@wildlife.ca.gov with reference to Agreement 1600-2013-0467-R3 at least five (5) days prior to beginning any activities covered by this Agreement. Initial notification shall include the name(s) and contact information of the person(s) overseeing the project site as well as a project schedule that includes the start date, estimated end date, weekly work days and hours of operation. Permittee shall also notify CDFW within 30 days upon the completion of the activities covered by this Agreement.
- 1.11 Training. Prior to starting any activities within the stream bed or bank, all employees, contractors, and visitors who will be present during Project activities shall receive training from a qualified biologist on the contents of this Agreement, the resources at stake, and the legal consequences of non-compliance. Interpretation shall be provided for non-English speaking employees, contractors, or personnel otherwise working on the project site prior to their performing work on-site. Upon completion of the education program, employees, contractors, or personnel otherwise working on the project sites shall sign a form stating they attended the program and understand all protection measures. These forms shall be filed at the worksite offices and be available to CDFW upon request.

## **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.

- 2.1 Work Period. Work within the stream/riparian corridor shall be confined to the period June 1 to October 31. Revegetation work is not confined to this time period.
- 2.2 Work Period. The work period for completing the work within the stream zone, shall be restricted to periods of low or no stream flow and dry weather. Excavation for and placement of the fill shall not begin unless a no precipitation forecast is obtained covering the entire construction phase (within the area covered in this agreement)

and the time necessary to implement erosion control measures. This forecast shall be documented upon request by the CDFW.

- 2.3 Flag Perimeter. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat.

### **Fish and Wildlife Protection**

- 2.4 Designated Biologist. No more than thirty (30) days prior to initiating ground-or vegetation-disturbing activities, the Permittee shall submit to the CDFW in writing the name, qualifications, business address, and contact information for a biological monitor (Designated Biologist). Permittee shall obtain CDFW's written approval of the Designated Biologist prior to commencement of project activities. The Designated Biologist shall be knowledgeable and experienced in the biology and natural history of local fish and wildlife resources present at the project site. The Designated Biologist shall be responsible for monitoring all project activities, including construction and any ground-or vegetation-disturbing activities in areas subject to this Agreement. The Designated Biologist shall be on site daily to ensure there are no impacts to fish and wildlife species.
- 2.5 Qualified Biologist. Only a qualified biologist, with all necessary State and Federal permits, may relocate wildlife within the work site prior to dewatering. Captured wildlife shall be moved to the nearest appropriate site on the stream. This condition does not allow for the take or disturbance of any state or federally listed species, or state listed species of special concern. A record shall be maintained of all fish/amphibians captured and moved, and the record shall be provided weekly to the CDFW (c/o 1600 program, 7329 Silverado Trail, Napa, Yountville, California 94558) with appropriate the Streambed Alteration Notification number.
- 2.6 Wildlife Encounters. Permittee shall allow any wildlife encountered during the course of construction to leave the construction area unharmed. This Agreement does not allow for the trapping, capture, or relocation of any state or federally listed species or other species protected under Fish and Game Code.
- 2.7 Wildlife Exclusion Fencing. No less than thirty days prior to the start of Project activities the Permittee shall provide a wildlife exclusion fencing plan for CDFW review and comments. If a wildlife exclusion fence is not feasible a written explanation and alternatives shall be provided to CDFW for review and comment. The Project activities shall not commence until CDFW has provided written approval of the fencing plan or the alternative.

- 2.8 Pre-construction surveys. Prior to the start of construction the Permittee shall have a qualified biologist survey the proposed work area to verify the presence or absence of fish and wildlife species. The results of these surveys shall be provided to the CDFW, along with copies of all field notes, prior to the initiation of work.
- 2.9 Nesting Birds. The Permittee is responsible for ensuring that the project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes. Prior to work commencing, including staging, clearing and grubbing, the Permittee shall survey a sufficient area around the work site to identify any nests that are present and determine their status. Once work begins, the survey effort shall continue to ensure any nest starts established after the work commences are identified. 'Sufficient' in the context of this condition means any nest within an area that could potentially be affected by the Project. In addition to direct impacts, such as nest destruction, nests might be affected by noise, vibration, odors and movement of workers or equipment. Identified nests should be continuously surveyed for the first 24 hours prior to any construction related activities to establish a behavioral baseline. Once work commences, all nests should be continuously monitored to detect any behavioral changes as a result of the project. If behavioral changes are observed, the work causing that change should cease and the CDFW representative contacted for guidance.
- 2.10 Raptor Nests. A Designated Biologist, experienced in raptor behavior and approved by CDFW, shall be assigned to monitor the behavior of any hawk, owl, or eagle nesting within disturbance distance of the Project activities. Even within species, disturbance distances can vary according to time of year or geographical location. The Designated Biologist shall have authority to order the cessation of all Project activities within disturbance distance of any hawk, owl, or eagle nest if the birds exhibit abnormal nesting behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to: defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. Project activities within visual distance of the nest shall not resume until the biological monitor has consulted with CDFW and both the Designated Biologist and CDFW confirm that the bird's behavior has normalized or the young have left the nest.
- 2.11 Stranded Aquatic Life. The Permittee shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded

aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This condition does not allow for the take or disturbance of any state or federally listed species, or state listed species of special concern.

- 2.12 Vegetation Removal. Disturbance or removal of vegetation shall be kept to the minimum necessary to complete project related activities. Except for trees marked for removal on plans submitted to and approved by the Department, no native trees with a trunk diameter at breast height (DBH) in excess of four (4) inches shall be removed or damaged without prior consultation and approval of a Department representative. Vegetation marked for protection may only be trimmed with hand tools to the extent necessary to gain access to the work sites.

### **Dewatering and Water Diversions**

- 2.13 Water Diversion. When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around or through the work area during the excavation and/or construction operations. Stream flow shall be diverted using gravity flow through temporary culverts/pipes or pumped around the work site with the use of hoses. Any temporary dam or other artificial obstruction constructed shall only be built from materials such as sandbags or clean gravel which will cause little or no siltation. No other diversion method shall be used without authorization of the CDFW. If another diversion method is preferred, the Permittee must submit a plan detailing the desired diversion method. Authorization of any other diversion method shall be at the discretion of the CDFW. Normal flows will be restored to the affected stream immediately upon completion of work at that location.

### **Erosion and Sediment Control**

- 2.14 Rip Rap. Streambank areas receiving rock slope protection (rip rap) shall be back-filled with appropriate topsoil. The topsoil fill should be placed to fill the voids in the rock slope protection and provide a substrate for revegetation efforts.
- 2.15 Silt Control. Silt control measures shall be utilized throughout all phases of the project where silt and/or earthen fill threaten to enter Waters of the State. Silt control structures shall be monitored for effectiveness and shall be repaired or replaced as needed. Build up

of soil behind the fence shall be removed promptly and any breaches or undermined areas repaired at once.

- 2.16 Erosion Control. All exposed/disturbed areas within the project site shall be stabilized to the greatest extent possible. Erosion control measures, such as, silt fences, straw hay bales, gravel or rock lined ditches, water check bars, and broadcasted straw shall be used where ever silt laden water has the potential to leave the work site and enter State waters. Erosion control measures shall be monitored during and after each storm event. Modifications, repairs and improvements to erosion control measures shall be made whenever it is needed. Monofilament shall not be used.
- 2.17 Culvert Size. Culverts shall be adequately sized to carry peak storm flows for the drainage to one outfall structure. The culverts and the outfall structure shall be properly aligned within the stream and otherwise engineered, installed and maintained, to assure resistance to washout, and erosion of the stream bed, stream banks and/or fill. Water velocity shall be dissipated at the outfall, to reduce erosion.
- 2.18 Compost or Mulch. Compost and/or mulch shall contain no visible glass, metal, or plastic. Paper shall be no more than 0.5% by weight or volume. Municipal compost shall not be used.
- 2.19 Mulch free zone. The mitigation area shall have mulch free zones and areas with a thinner layer of mulch (1-inch) to provide habitat for ground nesting bees. Mulch shall not be placed within 6 inches of the trunks of woody plants.

### **Equipment and Vehicles**

- 2.20 Vehicle/Equipment Maintenance and Fueling. Any equipment or vehicles driven and/or operated adjacent to the stream shall be checked and maintained daily to prevent the release of contaminants that could be deleterious to aquatic and terrestrial life or riparian habitat. No equipment maintenance or fueling shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas.
- 2.21 Clean Equipment Use. Prior to operations, all heavy equipment and vehicles shall be cleaned of all external materials, which may be deleterious to aquatic life, wildlife, and riparian habitat (such as oil, grease, or hydraulic fluid). Cleaning shall not occur within a watercourse, stream channel or stream bank.

- 2.22 Staging Areas. Staging areas shall be located in a dry upland location, above the top of bank. Staging areas shall be within a paved or gravel-lined site, if feasible. Vegetation disturbance shall be limited to the immediate work footprint and a single access pathway.
- 2.23 Storage and Stationary Equipment. Stationary equipment such as motors, pumps, generators, compressors and welders, located within adjacent to the stream, shall be positioned over drip-pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.
- 2.24 No Equipment Operated on Wet Bed of Creek. Equipment shall not be operated in wetted areas including but not limited to ponded, flowing, or wetland areas, except as may be necessary to construct coffer dams to divert stream flow and isolate the work site.

### **Hazardous Materials and Spills**

- 2.25 Staging and Storage. Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall be located more than twenty (20) feet outside of the stream channel and banks, avoiding areas of concentrated ground squirrel. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream shall be positioned over drip pans. Any equipment or vehicles driven and/or operated within or adjacent to the stream must be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Vehicles must be moved away from the stream prior to refueling and lubrication.
- 2.26 Spoils Placement. Spoils shall be placed in a stable area above the ordinary high water mark. Spoils do not include rock that is part of the project design.
- 2.27 Concrete – Primary Containment. The Permittee shall install the necessary containment structures to control the placement of wet concrete and to prevent it from entering into the channel outside of those structures. No concrete shall be poured within the high flow line if the 15 day weather forecast indicates any chance of rain.
- 2.28 Concrete – Designated Monitor. At all times when the Permittee is pouring or working with wet concrete there shall be a designated monitor to inspect the containment structures and ensure that no concrete or other debris enters into the channel outside of those structures.

- 2.29 Concrete. All concrete surfaces, which will be ultimately exposed to surface water flow shall be sufficiently cured (30-60 days), or sealed with appropriate concrete sealer, prior to inundation to avoid leaching of lime into the receiving water. Compliance with this condition shall be demonstrated when the pH of applied water on the surface of exposed concrete is 9.5 pH units or less.
- 2.30 Clean Equipment Use. Prior to operations, all heavy equipment and vehicles shall be cleaned of all external materials, which may be deleterious to aquatic life, wildlife, and riparian habitat (such as oil, grease, or hydraulic fluid). Cleaning shall not occur within a watercourse, stream channel or stream bank.

### **3. Compensatory Measures**

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

- 3.1 Revegetation and Planting Plan Revegetation Plan. At least thirty (30) days prior to the commencement of the revegetation activities, the Permittee shall submit the Revegetation Plan to the Department for review, comments and written approval. The revegetation plan shall include a plant palette of species to be used in revegetation, success criteria, a minimum of five years monitoring & reporting, and corrective actions to be taken when mitigation measures do not meet the proposed success criteria. The revegetation plan shall ensure no net loss of habitat or fish and wildlife resource values.

### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

- 4.1 Notification to the California Natural Diversity Database. If any sensitive species are observed in project surveys, Permittee shall submit California Natural Diversity Database (CNDDDB) forms to the CDFW Biogeographic Data Branch (CNDDDB@wildlife.ca.gov) with all pre-construction survey data within five working days of the sightings, and provide regional CDFW staff with copies of the CNDDDB forms and survey maps.

- 4.2 Survey Methodology. At least two weeks prior to any pre-construction nesting bird surveys Permittee shall provide nesting bird survey methodology to CDFW for review and approval. No project activities shall begin and no trees or vegetation shall be removed during the nesting season until nesting bird surveys have been completed using a method approved by CDFW. Results of the survey shall be submitted to CDFW prior to commencing project activities or removal of any trees or vegetation.
- 4.3 Annual Revegetation Monitoring Reports. Permittee shall prepare and submit annual reports to the CDFW Bay Delta Region by January 31 of each year following the initial Revegetation as described in the Revegetation Plan.
- 4.4 Annual Maintenance Reports. As described in Measure 1.7 Permittee shall prepare and submit annual maintenance reports to CDFW Bay Delta Region by June 30 of each year, as described in the O&M Plan, following construction.
- 4.5 As Built Report. Permittee shall provide a final construction report to CDFW no later than 60 days after the sediment removal is fully completed. The construction report at a minimum shall include before and after photos, baseline information, changes in original project design.

## **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:

Leslie Koenig  
Alameda County Resource Conservation District  
3585 Greenville Road, Suite #2  
Livermore, CA 94550  
[Leslie.koenig@ca.nacdn.net](mailto:Leslie.koenig@ca.nacdn.net)  
(925) 371-0154 Ex. 115

### To CDFW:

Department of Fish and Wildlife



Bay Delta Region  
7329 Silverado Trail  
Napa, California 94558  
Attn: Lake and Streambed Alteration Program – Marcia Grefsrud  
Notification #1600-2013-0467-R3  
Fax (707) 944-5553  
Marcia.Grefsrud@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 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 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 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 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 FGC section 1605(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 FGC 1605(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 FGC section 711.4 filing fee listed at [http://www.wildlife.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html).

### **TERM**

This Agreement shall expire on December 31, 2018, 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 FGC section 1605(a)(2) requires.

### **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**

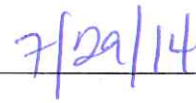
This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

### **CONCURRENCE**

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

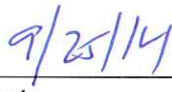
**FOR ALAMEDA COUNTY RESOURCE  
CONSERVATION DISTRICT**

  
\_\_\_\_\_  
Leslie Koenig

  
\_\_\_\_\_  
Date

**FOR DEPARTMENT OF FISH AND WILDLIFE**

  
\_\_\_\_\_  
Craig J. Weightman  
Environmental Program Manager

  
\_\_\_\_\_  
Date

Prepared by: Marcia Grefsrud  
Environmental Scientist

Date Sent: June 30, 2014, Revised July 8, 2014