

DEPARTMENT OF FISH AND GAME

South Coast Region
349 Viewridge Avenue
San Diego, California 92123
(858) 467-4201
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January 10, 2000

City of San Diego Engineering
and Capitol Projects Dept.
Attn: Frank Belock
1010 Second Ave 12th Floor
San Diego, CA 92101

Dear Mr. Belock:

Enclosed is Streambed Alteration Agreement #5-049-99 that authorizes work on the Middle Segment of State Route 56 project impacting McGonigle Canyon Creek in San Diego County. This action is authorized under Section 1600 of the Fish and Game Code and has been approved by the California Department of Fish and Game. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the Department filed a Notice of Determination (NOD) on the project on 01/10/2000. Under CEQA regulations, the project has a 30-day statute of limitations on court challenges of the Department's approval under CEQA.

The Department believes that the project fully meets the requirements of the Fish and Game Code and CEQA. However, if court challenges on the NOD are received during the 30-day period, then an additional review or even modification of the project may be required. If no comments are received during the 30-day period, then any subsequent comments need not be responded to. This information is provided to you so that if you choose to undertake the project prior to the close of the 30-day period, you do so with the knowledge that additional actions may be required based on the results of any court challenges that are filed during that period.

Please contact Terri Dickerson at (949) 363-7538 if you have any questions regarding the Streambed Alteration Agreement.

Sincerely,


C.F. Raybrook
Regional Manager

Enclosure

cc: Terri Dickerson

CALIFORNIA DEPARTMENT OF FISH AND GAME

330 Golden Shore, Suite 50
Long Beach, California 90802

Notification No. 5-049-99

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AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Frank Belock of the City of San Diego Engineering and Capital Projects Department: 1010 Second Avenue 12th floor San Diego, CA 92101; 619-533-3770, State of California, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 17th day of February, 1999, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): McGonigle Canyon Creek and Deer Canyon Creek and their tributaries, and an unnamed tributary to Los Peñasquitos Creek, totaling 25 stream crossings, San Diego County, California, USGS Map Del Mar, Sections 10,11,13-17,20,21 Township 14S Range 3W.

WHEREAS, the Department has determined that such operations may substantially adversely affect those existing fish and wildlife resources within McGonigle Canyon Creek and Deer Canyon Creek and their tributaries, and an unnamed tributary to Los Peñasquitos Creek, specifically identified as follows: crustaceans: San Diego Fairy Shrimp; amphibians: pacific chorus frog, western spadefoot; reptiles: orange-throated whiptail, western fence lizard, side-blotched lizard, California striped racer, southern pacific rattlesnake, gopher snake, common kingsnake; birds: California towhee, bushtit, Anna's hummingbird, house finch, wrenit, California thrasher, California gnatcatcher, southern California rufous-crowned sparrow, loggerhead shrike, Northern harrier, red-tailed hawk, American kestrel; mammals: California ground squirrel, desert cottontail, bobcat, coyote, mule deer, San Diego black-tailed jackrabbit, mountain lion; riparian vegetation which provides habitat for those species: willows, cattails; and all other aquatic and wildlife resources, including that riparian vegetation which provides habitat for such species in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, and 5948, may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of Department's signature and terminates November 30, 2004 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.

2. The Operator proposes to alter the streambed to construct the middle portion of State Route 56, a 5.6 linear mile six-lane roadway, impacting 6.885 acres of stream. The alignment selected is Modified Northern F in the west half and the Northern Alignment in the east half. The alignment would extend from existing SR-56 West northeast approximately 8,000 feet, across Gonzales Canyon wildlife corridor, and along the north side of McGonigle Canyon. The alignment would then extend north for approximately 3,000 feet, make a wide 90-degree bend for about 5,000 feet, and then extend southeast for approximately 6,500 feet to Carmel Mountain Road, and then east for approximately 5,500 feet to Black Mountain Road interchange and connect with SR-56 East.

3. The agreed work includes activities associated with No. 2 above. The project area is located in **McGonigle Canyon Creek and Deer Canyon Creek and their tributaries, and an unnamed tributary to Los Peñasquitos Creek, totaling 25 stream crossings, in San Diego County.** Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including "Conceptual Habitat Restoration and Monitoring Program for Wetlands Mitigation Associated with the State Route 56 Construction Project", prepared by KEA Environmental, Inc. and dated October 14, 1999, and shall be implemented as proposed unless directed differently by this agreement.

4. The Operator shall not impact more than 6.885 acres of stream (4.38 acres are considered federal wetlands). Nearly all of the impacts are to riparian scrub habitat. All impacts are considered permanent.

The Operator is also impacting an additional 0.309 acre of farmed waters and 0.045 acre of vernal pools.

5. The Operator shall mitigate with a combination of mitigation areas in the vicinity of the proposed project, as described in the submitted documents, and as follows:

a. The Operator shall mitigate at 3:1 (13.14 acres) for impacts to riparian woodland and riparian scrub meeting federal wetland criteria and 2:1 (5.01 acres) for all other stream impacts, most of which are riparian scrub. Therefore the Operator shall create, restore and/or enhance 18.15 acres of riparian wetland habitat. A minimum of 13.72 acres shall consist of creation, and the balance of the mitigation may be creation, restoration and/or enhancement.

The Operator is also creating/restoring 0.135 acre of vernal pools at Greystone Preserve.

b. The Operator proposes to create 1.5 acres of riparian wetland habitat at Lower McGonigle Canyon. This will be within Coastal Commission jurisdiction. This mitigation site is a part of the larger mitigation site by Pardee Construction Company in conjunction with Pardee's Pacific Highland mitigation program. It is understood that the Operator is fully responsible for all aspects of the 1.5 acres of mitigation at this site, including the installation, maintenance, monitoring, and ultimately meeting final success criteria. This site shall be included in the overall monitoring reports the Operator submits for this project.

① = 0.309
② = 13.14
③ = 5.01
④ = 0.135
} 18.594 acres

② = 13.14
③ = 5.01
③ = 18.15

c. The Operator proposes to mitigate some of its impacts at Upper McGonigle Canyon, as described in the submitted documents. The current mitigation plan will impact a 12.88-acre area within the 116-acre MHPA of Upper McGonigle Canyon. This will create 5.5 acres of native riparian vegetation from ruderal upland habitat, enhance 2.88 acres of eucalyptus woodland within the existing stream to native riparian vegetation, and enhance a 3.914-acre area of existing riparian habitat on the site, but the actual acreage of exotic removal has not yet been determined. This will result in 17.56 acres of native riparian habitat on the site.

However, the mitigation plan also includes temporary impacts to 7.38 acres of the existing 12.06 acres of stream. The 7.38-acre temporary impact area consists of 4.1 acres of riparian scrub, 0.40 acre of willow woodland, and the 2.88 acres of eucalyptus woodland described above. The Department believes the temporary impacts to the 4.5 acres of native riparian habitat should be avoided/minimized to the greatest extent possible and has been working with the Operator regarding this concern.

A minimum of 5.5 acres of mitigation credit would be obtained at the Upper McGonigle site in the current mitigation plan. A maximum of an additional 6.794 acres (2.88 + 3.914) of mitigation credit may be available at the site, depending on the following factors: avoidance of temporary impacts to existing native riparian habitat, actual acreage of exotic species to be eradicated and replaced with native vegetation, and the ability to commence exotic eradication at the top of the watershed. The Department will determine the remaining mitigation credit to be obtained at the Upper McGonigle site after review and approval of the revised mitigation plan.

d. The Operator shall mitigate the remaining obligation (18.15 acres minus the mitigation at the upper and lower McGonigle Canyon sites) at Los Peñasquitos Canyon Preserve, located approximately 1 mile west of Black Mountain Road, south of the SR-56 alignment. The area proposed for the wetlands creation and restoration currently contains abandoned sewage treatment ponds.

e. The Operator shall submit a revised mitigation proposal for Department review and approval no later than January 15, 2000. The plan shall include the Lower McGonigle Canyon and Los Peñasquitos Canyon Reserve Mitigation sites, as well as include avoidance of the 4.5 acres of native riparian vegetation at Upper McGonigle Canyon to the greatest extent possible. It is understood that the Operator is currently examining other implementation plans, including the braiding of the stream to avoid native habitat, conversion of some of the roads to be retired, use of minor structures to expand flow, and modifying the stream in areas of exotic infestation only.

The revised mitigation plan shall also: quantify by habitat type the 6.885 acres impacted by the SR-56 project; clearly depict on map(s) the 1.5-acre portion of the mitigation site at Lower McGonigle Canyon which is the Operator's responsibility; and indicate the location of the enhancement work at Upper McGonigle Canyon, quantify the total acreage subject to enhancement, and its percent of infestation with exotic species.

f. The Operator shall submit to the Department a water table map, derived from a study of groundwater elevation within the Upper McGonigle Canyon proposed mitigation area. This map shall be submitted in advance of, or in conjunction with, the revised mitigation plan. The Operator shall include a graphic which depicts the projected future seasonal stream discharge and water table conditions of the Upper McGonigle Canyon site.

g. All mitigation at Los Peñasquitos Canyon Preserve shall be installed no later than May 31, 2000; all remaining mitigation shall be installed no later than March 30, 2001.

6. The Operator shall not remove vegetation within the stream from March 15 to July 15 to avoid impacts to nesting birds.
7. No equipment shall be operated in ponded or flowing areas. When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around the work area by a barrier, temporary culvert, new channel, or other means approved by the Department. Construction of the barrier and/or the new channel shall normally begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Channel banks or barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock rip-rap, or other protective material. The enclosure and the supportive material shall be removed when the work is completed and removal shall normally proceed from downstream in an upstream direction.
8. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel shall be restored. Restoration shall include the revegetation of stripped or exposed areas with vegetation native to the area.
9. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at stream channel grade; bottoms of permanent culverts shall be placed at or below stream channel grade.
10. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
11. Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.
12. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
13. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat.
14. Staging/storage areas for equipment and materials shall be located outside of the stream.
15. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.
16. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
17. All planting shall be done between October 1 and April 30 to take advantage of the winter rainy season or shall be irrigated to ensure survival.

18. All planting shall have a minimum of 80% survival the first year and 100% survival thereafter and/or shall attain 75% cover after 3 years and 90% cover after 5 years for the life of the project. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting.

19. A security (e.g. an irrevocable letter of credit or performance bond) for the amount of complete restoration shall be submitted to the Department within ⁴⁵~~30~~ days of signing this Agreement. The Department and the US Army Corps of Engineers may be named as co-obligees on the security. This amount shall be based on a cost estimate which shall be submitted to the Department for approval within ¹⁵~~15~~ days of signing this Agreement. The security shall be approved by the Department's legal advisors prior to its execution, and shall allow the Department at its sole discretion to recover funds immediately if the Department determines there has been a default. The legal advisors can be contacted at (916) 654-3821. ³⁰

20. An annual report shall be submitted to the Department by Jan. 1 of each year for 5 years after planting. This report shall include the survival, % cover, and height of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.

21. Access to the work site shall be via existing roads and access ramps.

22. Spoil sites shall not be located within a stream/lake, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.

23. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.

24. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

25. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.

26. The Operator shall provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand.

27. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.

28. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 330 Golden Shore, Suite 50, Long Beach, CA 90802, Attn: ES.

29. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator. The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.

30. The Department reserves the right to suspend or cancel this Agreement for other reasons, including but not limited to the following:

- a. The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;
- c. The project or project activities as described in the Notification/Agreement have changed;
- d. The conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment.

31. Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of this notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification. The Operator shall not continue the specified activities until that time when the Department notifies the Operator in writing that adequate methods and/or measures have been identified and agreed upon to mitigate or eliminate the significant adverse effect.

CONCURRENCE

(Operator's name)

California Dept. of Fish and Game

[Signature] 12-7-99
 (signature) (date)

[Signature] 01/10/00
 (signature) (date)

[Signature]
 (title)

Regional Manager
 (title)

Prepared by: Terri Dickerson, ES III