INFORMATION HANDOUT

For Contract No. 01-499104
At 01-DN-101-0.9/23.9

Identified by
Project ID 0100000697

PLAC CONDITION RESPONSIBILITY

PLAC Condition Responsibility (PCR) Summary

PERMITS

California Department of Parks and Recreation Del Norte Redwoods

Right of Entry Permit

United States Army Corps of Engineers

Non-Reporting Nationwide Permit Nos. 3 and 33

WATER QUALITY

California Regional Water Quality Control Board

North Coast Region
Board Order No. WDID No. 1A13142WNDN

AGREEMENTS

California Department of Fish and Wildlife

Notification No. 1600-2013-0343-R1

INFORMATION HANDOUT

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MATERIALS INFORMATION

PLAC Condition Responsibility (PCR) Summary

PLAC CONDITION RESPONSIBILITY (PCR) SUMMARY

General:
This PCR Summary clarifies various PLAC requirements. Perform all work described in the PLACs on behalf of the Department unless otherwise stated below in Table 2. If a discrepancy exists between the PCR Summary and the PLAC, the PCR Summary governs.

Definitions:
Agency: A board, agency, or other entity that issues a PLAC
Activity: A task, event or other project element
PLAC Condition: a work activity and/or submittal required by a PLAC

Table 1 - Clarification of PLAC Requirements

PLAC Name	Section of the PLAC	PLAC Requirement
All PLACs	Applicable PLAC sections	**Submittals:** Submit to the Engineer when PLAC conditions require: 1. Communications. The Engineer will contact the agencies. 2. Records to be maintained, within 5 working days after the activity. 3. Submittals 5 days before the agencies require them. The Engineer will review and submit to the agencies.
North Coast Regional Water Quality Control Board Water Quality Certification WDID#1A13142WNDN	Pages 5-7	Project Specific Condition 2 – Comply with section 14-6.02 Standard Conditions 3 to 18 – Comply with section 13.
California Department of Fish and Wildlife Streambed Alteration Agreement Notification No: 1600-2013-0343-R1	Measures to Protect Fish and Wildlife Resources - Administrative Measures	Measure 1.4. Both you and the Department will agree to allow DFG personnel to enter the project site at any time, after notifying the Resident Engineer, to verify compliance with the Agreement
	Measures to Protect Fish and Wildlife Resources - Avoidance and Minimization Measures	Measure 2.2- Comply with section 10-1.03 for culvert work. Measure 2.4 to 2.17. – Comply with section 13. Measure 2.18, to 2.20 – Comply with plans on culvert replacement and size. Measure 2.21 – Include in requirements of section 15-6.

California Department of Parks and Recreation Del Norte Redwoods Right of Entry Permit	Page 5 of 9	Condition 10 Temporary Construction Easements at Plan Sheets D-4 and D-6. Access is only allowed directly off Highway Right of Way
	Page 6 of 9	Condition 13. Furnish and install ESA fencing will be directed by the Engineer if necessary and will be change order work.

Table 2 - Work to be Performed by the Department		
PLAC Name	**Section of the PLAC**	**PLAC Requirement**
North Coast Regional Water Quality Control Board Water Quality Certification WDID#1A13142WNDN	Page 4	Project Specific Condition 1
	Pages 7, 8	Standard Conditions 19 to 25
California Department of Fish and Wildlife Streambed Alteration Agreement Notification No: 1600-2013-0343-R1	Measures to Protect Fish and Wildlife Resources – Administrative Measures	Measures 1.1 to 1.3
	Measures to Protect Fish and Wildlife Resources - Avoidance and Minimization Measures	Measure 2.3. Minimization measures for required by you will be change order work. Measure 2.5. Any required temporary clear water diversion will be change order work.
	Measures to Protect Fish and Wildlife Resources – Reporting Measures	Measure 3.1

INFORMATION HANDOUT

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PERMIT

California Department of Parks and Recreation

Del Norte Redwoods

Right of Entry Permit

RIGHT OF ENTRY PERMIT

Coast Redwoods SP
Caltrans DN 101, PM 15.65 and 22.69
Culvert Rehabilitation

Agency: Department of Parks and Recreation

Project: North Coast Redwoods District/ Del Norte

This Right of Entry Permit (Permit) is made and entered into this 25th day of March, 2014, between the State of California, acting by and through its Department of Parks and Recreation, hereinafter called State, and State of California, Department of Transportation, hereinafter called Permittee; State and Permittee may hereinafter be referred to as a Party, or collectively the Parties.

RECITALS

- **Whereas**, the State owns, operates and maintains the State Park known as Del Norte Coast Redwoods, in the County of Del Norte, State of California; and
- **Whereas**, Permittee has applied to State for permission to access Del Norte Coast Redwoods for purposes of carrying out Permittee's Caltrans DN 101, PM 15.65 and 22.69 Culvert Rehabilitation project; and
- **Whereas**, the State desires to accommodate Permittee's application for permission to enter Del Norte Coast Redwoods for purposes of the Project, as provided herein and as, and to the extent, such Project may be ultimately described, permitted, approved and conditioned by Permittee's environmental document entitled "49910 signed CE" and dated the Environmental Document "49910_signed CE", attached hereto as Exhibit "A" and herein incorporated by reference, and as may be conditioned by any other regulatory agency having jurisdiction, if applicable.

TERMS AND CONDITIONS

Now therefore, the State Parks by this Permit hereby grants to the Permittee permission to enter upon State Park property, conditioned upon the agreement of the Parties that this Permit does not create or vest in Permittee any interest in the real property herein described or depicted, that the Permit is revocable and non-transferable, and that the Permit is further subject to the following terms and conditions:

1. Project Description: By this Permit, the State Parks hereby grants to the Permittee permission to enter onto those lands depicted in Exhibit "B" (the Property), attached hereto and herein incorporated by this reference, solely for the purpose of

Two culverts extending partially onto State Parks land will be repaired and/or replaced by the California Department of Transportation (Caltrans) on Highway 101 within Del Norte Coast Redwoods State Park. Caltrans is requesting a temporary easement at both locations. Temporary rights for construction will be needed at these locations, only during construction of the project.

Execution of a Right of Entry Permit (ROE) is a project under CEQA (reference: Right of Entry Permit Instructions). This project description is based up on information obtained from the Caltrans Biologist, Coady Reynolds, and the Caltrans Project Engineer and Manager, Mike Vina during a site review on January 22 and upon Caltrans-provided supporting materials (see attached).

These two culvert rehabilitations are part of a larger maintenance project planned by Caltrans. The purpose of the project is to rehabilitate culvert crossings and stormwater drainage at 11 facilities in Del Norte County. The project will correct drains and culverts that are currently near or at the end of their operational functionality. These culverts were identified as needing to be upgraded through routine inspections of Caltrans' facilities. Construction is expected to last 12 months for the entire project.

Location 1, PM 15.65

The southernmost culvert for which a ROE is requested is located at PM 15.65. The existing 36-inch welded steel pipe (WSP) will be lined with a new 32" x 202' plastic liner. Work will likely take place over a one-week period and will only occur at the culvert inlet. There will be minor, temporary ground disturbance and grading, and some vegetation trimming to access the site with large equipment. No

trees will be removed. Access will require widening a previously cleared footpath to a width of approximately 20 feet, in close proximity to two large old growth redwood trees (approximately 8-10 feet dbh).

It is anticipated that a compact track loader, excavator, or back-hoe will be used to push the liner from the inlet to the outlet. Once the liner has been installed, the voids will be filled with grout. A person on-foot with a wheelbarrow will walk to the outlet and plug it with a concrete plug while grouting occurs to prevent grout from exiting the outlet. The outlet will be sealed with an appropriate material that will not allow wet grout to escape and make contact with downstream flows. The sealed end may include fitting a form, sleeve or cap over the outlet to prevent any outflow of grout. Tarps, wheelbarrows, buckets or other materials may be used to capture any grout that may work its way out of the end caps. Any grout spillage will be captured and hauled off-site.

The location at Post Mile 15.65 occurs within federally designated critical habitat for Marbled Murrelet (MAMU) and is suitable habitat for Northern Spotted Owl (NSO) and MAMU. In order to avoid any direct effects to NSO and MAMU, Operations will not occur during the NSO or MAMU critical breeding season, February 1 through September 15". Work at this location will also take place in the dry season; typically, work will need to be completed after September 15 and before October 15.No suitable NSO or MAMU nest and habitat trees (trees greater than 12" dbh) will be removed or altered.

Location 2, PM 22.69

The northernmost culvert for which a construction ROE is requested is located at PM 22.69. The existing 36-in culvert will be abandoned in place and capped; slurry or sand will be pumped into the existing pipe. A new 36" x 190' corrugated steel pipe will be installed at a slightly different alignment than the existing pipe. Installation will occur in an open trench that will extend through the roadway. Work will likely be completed within a week. Additionally, a headwall at the inlet will be installed. The headwall is 12-ft long, 4-ft 8-inches tall, and 2-ft wide; excavation within the Construction Easement (ROE) will need to accommodate the headwall. This excavation will be approximately 14 ft long by 5 ft 8 inches deep, and 4 ft wide. The downdrain at the outlet will be reconstructed. All work will occur in the dry season (typically June 15 – October 15).

Most of the excavation will occur in the roadway; none is necessary for reconstructing the downdrain, as it lays above ground, on the surface of fill. However, minor soil disturbance will occur during the operation. Excavation will occur at the inlet to install the new headwall.

A portion of the culvert inlet is not contained within the current Caltrans' right of way. Caltrans needs to obtain a small area at the inlet to have the drainage system fully within their right-of-way.

Caltrans will not close the Hamilton Road or the road approach, though the work may have minor impact on access to Hamilton Road.

There will be no grading at either location. And there may be some minor soil disturbance at both locations for access. The access areas will not need to be graded, and vegetation removal will be limited.

If the need for any vegetation trimming or ground disturbance arises, a qualified biologist must first evaluate and clear the areas for work to occur. Nesting surveys for, and subsequent protection of, active migratory bird nests must be conducted in accordance with the Migratory Bird Treaty Act (MBTA) if such activities occur during the migratory bird nesting season (February 1 to September 15). No surveys or nest protection are required under the MBTA outside the nesting season, or if nests found during the nesting season are determined to be "inactive" (i.e., no eggs or young in nest).

Location 1 and Location 2

Appropriate Best Management Practices (BMPs) will be employed to protect water quality. Earthwork will not take place during the winter months; this will reduce erosion potential to waters. Access is mostly upland areas, with only temporary impacts to "other waters" from the work areas. Other avoidance measures include the use of rock energy dissipaters treatment on all culvert systems as needed to minimize or eliminate erosion. Erosion control BMPs will be used on all disturbed soil areas. Examples include but are not limited to: Erosion control will be used on all disturbed soil areas (i.e., no areas of bare soil), use of temporary fiber rolls across slopes to prevent erosion, use of gravel bag check dams, use of drainage inlet protection, use of concrete washouts.

If water is still present at any location in the dry season, a clear water diversion will be used and a qualified biologist will be on-site to monitor, document, and recover any aquatic species. Any aquatic species that is recovered will be placed at a safe location just downstream of any project activity. This

will ensure that any species encountered during a clear water diversion will not be harmed by project activities.

To prevent attracting corvids (birds of the Corvidae family which include jays, crows and ravens), no trash or foodstuffs will be left or stored on-site. All trash must be deposited in a secure container and disposed of at an approved garbage facility. Also, on-site workers will not attempt to attract or feed any wildlife. The limits of which are described in the Environmental Document.

2. **Permit Subject to Laws and Regulatory Agency Permits:** This Permit is expressly conditioned upon Permittee's obtaining any and all regulatory permits or approvals required by the relevant regulatory agencies for the Project and Permittee's use of the Property, and upon Permittee's compliance with all applicable municipal, state and federal laws, rules and regulations, including all State Park regulations. Permittee shall, at Permittee's sole cost and expense, comply with the Project Description, and requirements and mitigations contained in the Environmental Document.

   Prior to commencement of any work, Permittee shall obtain all such legally required permits or approvals and submit to the State Parks full and complete copies of all permits and approvals, including documentation related to or referenced in such permits and approvals, along with the corresponding agency contact and telephone numbers, and related California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) documentation as applicable.

3. **Term of Permit:** This Permit shall only be for the period beginning on July 01, 2014, and ending on July 01, 2015, or as may be reasonably extended by written mutual agreement of the Parties.

4. **Consideration:** Permittee agrees to pay State the sum of 0.00 and No/100 Dollars ($) as consideration for the rights granted by this Permit. Payment is due upon execution of this Permit. The State Parks agrees not to accept any consideration for the rights granted by this permit due to the broad public safety benefit of the repair and maintenance.

5. **Permit Subject to Existing Claims:** This Permit is subject to existing contracts, permits, licenses, encumbrances and claims which may affect the Property.

6. **Waiver of Claims and Indemnity:** Permittee waives all claims against State, its officers, agents and/or employees, for loss, injury, death or damage caused by, arising out of, or in any way connected with the condition or use of the Property, the issuance, exercise, use or implementation of this Permit, and/or the rights herein granted. Permittee further agrees to protect, save, hold harmless, indemnify and defend State, its officers, agents and/or employees from any and all loss, damage, claims, demands, costs and liability which may be suffered or incurred by State, its officers, agents and/or employees from any cause whatsoever, arising out of, or in any way connected with this Permit, exercise by Permittee of the rights herein granted, Permittee's use of the Property and/or the Project for which this Permit is granted, except those arising out of the sole active negligence or willful misconduct of State. Permittee will further cause such indemnification and waiver of claims in favor of State to be inserted in each contract that Permittee executes for the provision of services in connection with the Project for which this Permit is granted.

7. **Contractors:** Permittee shall incorporate the terms, conditions and requirements contained herein when contracting out all or any portion of the work permitted hereunder. Permittee shall be responsible for ensuring contractor/subcontractor compliance with the terms and conditions contained herein. Failure of Permittee's contractors to abide by State Parks' terms and conditions shall constitute default by Permittee (see DEFAULT paragraph below) allowing State Parks to terminate this Permit and seek all legal remedies.

8. **Insurance Requirements:** : As a condition of this Permit and in connection with Permittee's indemnification and waiver of claims contained herein, Permittee shall require and ensure that all contractors and subcontractors have adequate insurance meeting the coverage requirements in this provision as follows:

   A. Commercial Contractors/Subcontractors

   Contractor/subcontractor(s) shall maintain motor vehicle liability with limits of not less than $1,000,000 per accident. Such insurance shall cover liability arising out of a motor vehicle, including all owned, hired, and non-owned motor vehicles.

   Contractor/subcontractor(s) shall maintain statutory Workers' Compensation and employer's liability insurance coverage in the amount of $1,000,000/employee/disease/each accident, for all its employees who will be engaged in the performance of work on the Property, including special extensions where applicable. Said policy shall include a waiver of subrogation in favor of State Parks. If the permittee has no employees and/or the owner(s) have elected not to be covered by workers' compensation, Contractor/subcontractor shall provide State Parks with a written

confirmation that Contractor/subcontractor is not required to be, and/or has elected not to be, covered by Workers' Compensation.

Contractor/subcontractor(s) shall procure commercial general liability insurance at least as broad as the most commonly available ISO policy form CG 0001 covering premises operations, products/completed operations, personal/advertising injury and contractual liability with limits not less than $1,000,000 per occurrence and $2,000,000 general aggregate. Said policy shall apply separately to each insured against whom any claim is made or suit is brought subject to the Contractor/subcontractor limits of liability

Each policy of insurance required by this provision shall: (a) be in a form, and written by an insurer, reasonably acceptable to State Parks; (b) be maintained at Contractor/subcontractor's sole expense; and (c) require at least thirty (30) days written notice to State Parks prior to any cancellation, non-renewal or material modification of insurance coverage.

Insurance companies issuing such policies shall have a rating classification of "A-" or better and financial size category ratings of "VII" or better according to the latest edition of the A.M. Best Key Rating Guide. All Insurance companies issuing such policies shall be licensed admitted insurers or eligible surplus lines insurers authorized to do business in the State of California.

Said motor vehicle liability and commercial general liability policies shall contain an endorsement naming the CALIFORNIA DEPARTMENT OF PARKS AND RECREATION as an additional insured at no cost to State Parks.

Permittee shall provide to State Parks evidence that the insurance required to be carried by this Permit, including the endorsements affecting the additional insured status and waiver of subrogation, is in full force and effect and that premiums therefore have been paid. Such evidence shall, at State's discretion, be in either the form of an ACORD Form (Certificate of Insurance) or DPR Form 169A (Certificate of Insurance for Concession Contracts/Special Events), or a certified copy of the original policy, including all endorsements.

Permittee's contractor/subcontractor(s) shall be responsible for any deductible or self-insured retention contained within the insurance program.

Should Permittee's contractor/subcontractor(s) fail to keep the specified insurance in effect at all times, Permittee shall be considered to be in default of this Permit, and State Parks may, in addition to any other remedies it has, terminate this Permit.

Any insurance required to be carried shall be primary and not excess to any other insurance carried by State.

Coverage shall be in force for the complete term of this Permit, including any extension thereof, and for all work being done for which this Permit is required.

9. **Reservation of Rights:** State Parks reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with Permittee's rights herein.

10. **Access Limits and Conditions:** Access to the Property shall be limited to the access designated by State Parks, see Exhibit B.

11. **Notice of Work:** Any required notices to State Parks shall be sent to the authorities in charge of Del Norte Coast Redwoods. State Park named below. At least forty-eight (48) hours prior to any entry upon the Property for any of the purposes hereinabove set forth, Permittee shall provide the State Parks contact named below with written notice of Permittee's intent to enter the Property. Permittee shall also notify the State Parks contact listed below in writing at least forty-eight (48) hours prior to any change in the Project schedule or cessation or completion of work. Should State Parks personnel need to contact Permittee, State Parks shall notify Permittee's contact person listed below:

STATE:
Contact:, Roger Goddard, District Superintendent
District: North Coast Redwoods
Address:P.O. Box 2006
Eureka, CA 95502

Telephone: (707) 445-6547 x25

PERMITTEE'S CONTACT:
Contact: Scott Lee, Sr. Transp. Engineer
Caltrans

Address: 1656 Union St.
Eureka, CA 90501

Telephone (707) 445-6556

12. **Limits of Work:** In no event shall this Permit authorize work in excess or contrary to the terms and conditions of any regulatory agency permit or approval. Under no circumstances, whether or not authorized by any regulatory agency, other permit or any person or entity other than State, shall work exceed that which is authorized by this Permit.

13. **Public Safety:** Permittee shall erect orange plastic temporary construction fencing and appropriate signage prior to commencement of work to prevent public access to the construction zone. Permittee shall remove such fencing within two (2) days after the completion of work. Permittee shall take, and shall cause its contractors or subcontractors to take, any and all necessary and reasonable steps to protect the public from harm in connection with the Project or implementation of this Permit.

14. **Compliance with Project Requirements, Monitoring and Mitigation Measures (if applicable):** Resource monitoring identified by CDPR Carol Wilson and Caltrans 49910_signed CE (Oct 15, 2013) shall be completed in accordance with and to the satisfaction of the District Superintendent or designee.

    Permittee's activities conducted under this Permit shall comply with all State and Federal environmental laws, including, but not limited to, the Endangered Species Act, CEQA, and Section 5024 of the Public Resources Code.

    Any of Permittee's archaeological consultants working within the boundaries of the Property shall obtain a permit from the California State Parks Archaeology, History & Museums Division prior to commencing any archaeological or cultural investigations of the Property.

    Permittee shall immediately advise State Parks's contact person if any new site conditions are found during the course of permitted work. State Parks will advise Permittee if any new historical resources (including archaeological sites), special status species, threatened/endangered species protocols, or other resource issues are identified within the Project site. Permittee shall abide by District Superintendent or designee's instructions to protect the resource(s) during the permitted work or risk revocation of the Permit.

    Permittee shall make all excavation activities on the Property available to the State Parks Archaeologist for observation and monitoring. During excavation, the State Parks archaeological monitor may observe and report to the State Parks on all excavation activities. State Parks archaeological monitor shall be empowered to stop any construction activities as necessary to protect significant cultural resources from being disturbed.

    In the event that previously unknown cultural resources, including, but not limited to, dark soil containing shell, bone, flaked stone, groundstone, or deposits of historic trash are encountered during Project construction by anyone, work will be suspended at that specific location, and the Permittee's work will be redirected to other tasks, until after a State-qualified archaeologist has evaluated the find and implemented appropriate treatment measures and disposition of artifacts, as appropriate, in compliance with all applicable laws and department resource directives.

    If human remains are discovered during the Project, work will be immediately suspended at that specific location and the District Superintendent or designee shall be notified by Permittee. The specific protocol, guidelines and channels of communication outlined by the California Native American Heritage Commission (NAHC), and/or contained in Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.9 et seq., will be followed. Those statutes will guide the potential Native American involvement in the event of discovery of human remains.

    Permittee shall provide a written work schedule to State Parks so that the State Parks archaeological monitor can arrange to be on site on the necessary days. Permittee shall provide reasonable advance notice of and invite the District Superintendent or designee to any preconstruction meetings with the prime contractor or subcontractors.

15. **Restoration of Property:** Permittee shall complete the restoration, repair, and revegetation of the Property in consultation with, and to the satisfaction of, the State Parks Environmental Scientist within one (1) year after completion of the Project or the expiration or termination of this Permit, whichever comes first. This obligation shall survive the expiration or termination of this Permit.

    See conditions which were incorporated into the Project Description above, under "Terms and Conditions"

16. **Right to Halt Work:** The State Parks reserves the right to halt work and demand mitigation measures at any time, with or without prior notice to Permittee, in the event the State Parks

determines that any provision contained herein has been violated, or in the event that cessation of work is necessary to prevent, avoid, mitigate or remediate any threat to the health and safety of the public or State Parks park personnel, or to the natural or cultural resources of the state park.

17. **Use Restrictions:** The use of the Property by Permittee, including its guests, invitees, employees, contractors and agents, shall be restricted to the daytime hours between sunrise and sunset on a day-by-day basis, unless otherwise approved in advance in writing by State. No person shall use or occupy the Property overnight.

Activities on the Property shall be conducted only in a manner which will not interfere with the orderly operation of the state park. Permittee shall not engage in any disorderly conduct and shall not maintain, possess, store or allow any contraband on the Property. Contraband includes, but is not limited to: any illegal alcoholic beverages, drugs, firearms, explosives and weapons.

Roads and trails where motorized vehicles are normally prohibited may be used for vehicle access by Permittee, its employees, agents or contractors for patrol, maintenance or repair purposes only, and only to the extent specified by State, and shall be otherwise subject to all other conditions and/or restrictions of this Permit and any applicable laws, state park regulations and state park policies.

Permittee shall not use or allow the Property to be used, either in whole or in part, for any purpose other than as set forth in this Permit, without the prior written consent of the State.

18. **State Parks' Right to Enter:** At all times during the term of this Permit and any extension thereof, there shall be and is hereby expressly reserved to State Parks and to any of its agencies, contractors, agents, employees, representatives, invitees or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Property to survey, inspect, or perform any other lawful State Parks purposes.

Permittee shall not interfere with State Parks' right to enter.

19. **Protection of Property:** Permittee shall protect the Property, including all improvements and all natural and cultural features thereon, at all times at Permittee's sole cost and expense, and Permittee shall strictly adhere to the following restrictions:

(a) Permittee shall not place or dump garbage, trash or refuse anywhere upon or within the Property, except in self-contained trash receptacles that are maintained to State Parks' satisfaction by Permittee.

(b) Permittee shall not commit or create, or suffer to be committed or created, any waste, hazardous condition or nuisance in, on, under, above or adjacent to the Property.

(c) Permittee shall not cut, prune or remove any vegetation upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.

(d) Permittee shall not disturb, move or remove any rocks or boulders upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.

(e) Permittee shall not grade or regrade, or alter in any way, the ground surface of the Property, except as herein permitted, or subsequently approved in writing by the District Superintendent.

(f) Permittee shall not bait, poison, trap, hunt, pursue, catch, kill or engage in any other activity which results in the taking, maiming or injury of wildlife upon the Property, except as identified in the Project description and herein permitted or subsequently approved in writing by the District Superintendent.

(g) Permittee shall not use, create, store, possess or dispose of hazardous substances (as defined in the California Hazardous Substances Act) on the Property except as herein permitted, or subsequently approved in writing by the District Superintendent.

(h) Permittee shall exercise due diligence to protect the Property against damage or destruction by fire, vandalism and any other causes.

20. **Default:** In the event of a default or breach by Permittee of any of the terms or conditions set forth in this Permit, State Parks may at any time thereafter, without limiting State Parks in the exercise of any right of remedy at law or in equity which State Parks may have by reason of such default or breach:

    (a) Maintain this Permit in full force and effect and recover the consideration, if any, and other monetary charges as they become due, without terminating Permittee's right to use of the Property, regardless of whether Permittee has abandoned the Property; or

    (b) Immediately terminate this Permit upon giving written notice to Permittee, whereupon Permittee shall immediately surrender possession of the Property to State Parks and remove all of Permittee's equipment and other personal property from the Property. In such event, State Parks shall be entitled to recover from Permittee all damages incurred or suffered by State Parks by reason of Permittee's default, including, but not limited to, the following:

    (i) any amount necessary to compensate State Parks for all the detriment proximately caused by Permittee's failure to perform its obligations under this Permit, including, but not limited to, compensation for the cost of restoration, repair and revegetation of the Property, which shall be done at State Parks' sole discretion and compensation for the detriment which in the ordinary course of events would be likely to result from the default; plus

    (ii) at State Parks' election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

21. **State Parks' Right to Cure Permittee's Default:** At any time after Permittee is in default or in material breach of this Permit, State Parks may, but shall not be required to, cure such default or breach at Permittee's cost. If State Parks at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by State Parks shall be due immediately from Permittee to State Parks at the time the sum is paid. The sum due from Permittee to State Parks shall bear the maximum interest allowed by California law from the date the sum was paid by State Parks until the date on which Permittee reimburses State Parks.

22. **Revocation of Permit:** The State Parks shall have the absolute right to revoke this Permit for any reason upon ten (10) days written notice to Permittee. Written notice to Permittee may be accomplished by electronic or facsimile transmission, and the notice period set forth in this paragraph shall begin on the date of the electronic or facsimile transmission, or, if sent by mail, on the date of delivery. If Permittee is in breach of the Permit or owes money to the State Parks pursuant to this Permit, any prepaid monies paid by Permittee to State Parks shall be held and applied by the State Parks as an offset toward damages and/or amounts owed. Nothing stated herein shall limit the State Parks' exercise of its legal and equitable remedies.

23. **Recovery of Legal Fees:** In any action brought to enforce or interpret any provisions of this Permit or to restrain the breach of any agreement contained herein, or for the recovery of possession of the Property, or to protect any rights given to the State Parks against Permittee, and in any actions or proceedings under Title 11 of the United States Code, if the State Parks shall prevail in such action on trial or appeal, the Permittee shall pay to the State Parks such amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.

24. **Voluntary Execution and Independence of Counsel:** By their respective signatures below, each Party hereto affirms that they have read and understood this Permit and have received independent counsel and advice from their attorneys with respect to the advisability of executing this Permit.

25. **Reliance on Investigations:** Permittee declares that it has made such investigation of the facts pertaining to this Permit, the Property and all the matters pertaining thereto as it deems necessary, and on that basis accepts the terms and conditions contained in this Permit. Permittee acknowledges that State has made, and makes, no representations or warranties as to the condition of the Property, and Permittee expressly agrees to accept the Property in its as-is condition for use as herein permitted.

26. **Entire Agreement:** The Parties further declare and represent that no inducement, promise or agreement not herein expressed has been made to them and this Permit contains the entire agreement of the Parties, and that the terms of this agreement are contractual and not a mere recital.

27. **Warranty of Authority:** The undersigned represents that they have the authority to, and do, bind the person or entity on whose behalf and for whom they are signing this Permit and the attendant

documents provided for herein, and this Permit and said additional documents are, accordingly, binding on said person or entity.

28. **Assignment:** This Permit shall not be assigned, mortgaged, hypothecated, or transferred by Permittee, whether voluntarily or involuntarily or by operation of law, nor shall Permittee let, sublet or grant any license or permit with respect to the use and occupancy of the Property or any portion thereof, without the prior written consent of State Parks.

29. **Choice of Law:** This Permit will be governed and construed by the laws of the State of California.

30. **Separate Counterparts:** Right of Entry may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

STATE OF CALIFORNIA
Department of Parks and Recreation

By: _____
Name: Roger Goddard
Title: District Superintendent
North Coast Redwoods

STATE OF CALIFORNIA
Department of Transportation

By: _____
Name: Scott Lee
Title: Sr. Transportation Engineer
Address: 1656 Union Street, Eureka, CA 95501
Phone: (707) 445-6556
Fax: (707) 441-2048

documents provided for herein, and this Permit and said additional documents are, accordingly, binding on said person or entity.

28. **Assignment:** This Permit shall not be assigned, mortgaged, hypothecated, or transferred by Permittee, whether voluntarily or involuntarily or by operation of law, nor shall Permittee let, sublet or grant any license or permit with respect to the use and occupancy of the Property or any portion thereof, without the prior written consent of State Parks.

29. **Choice of Law:** This Permit will be governed and construed by the laws of the State of California.

30. **Separate Counterparts:** Right of Entry may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

STATE OF CALIFORNIA
Department of Parks and Recreation

By: _____
Name: Roger Goddard
Title: District Superintendent
North Coast Redwoods

STATE OF CALIFORNIA
Department of Transportation

By: Michael D. Vieira for
Name: Scott Lee
Title: Sr. Transportation Engineer
Address: 1656 Union Street, Eureka, CA 95501
Phone: (707) 445-6556
Fax: (707) 441-2048

EXHIBIT A

CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM

01-DN-101	0.95/23.87	49910	N/A
Dist.-Co.-Rte.	P.M/P.M.	E.A.	Federal-Aid Project No.

PROJECT DESCRIPTION:
(Briefly describe project, purpose, location, limits, right-of-way requirements, and activities involved in this box.

Caltrans proposes to repair the drainage facilities at 11 locations along Highway 101 in Del Norte County.

..See Continuation Sheet for more details…

Biological, cultural, visual, water quality, and hazardous material reviews have been completed by qualified specialists and there are no anticipated significant impacts on these resources.

CEQA COMPLIANCE *(for State Projects only)*

Based on an examination of this proposal, supporting information, and the following statements (See 14 CCR 15300 et seq.):

- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law.
- There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time.
- There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
- This project does not damage a scenic resource within an officially designated state scenic highway.
- This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 ("Cortese List").
- This project does not cause a substantial adverse change in the significance of a historical resource.

CALTRANS CEQA DETERMINATION (Check one)

☐ **Exempt by Statute.** (PRC 21080[b]; 14 CCR 15260 et seq.)

Based on an examination of this proposal, supporting information, and the above statements, the project is:

☒ **Categorically Exempt. Class** 1c. (PRC 21084; 14 CCR 15300 et seq.)

☐ **Categorically Exempt. General Rule exemption.** [This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CCR 15061[b][3])

Jason Meyer (acting)		Scott Lee	
Environmental Branch Chief		Project Manager	
Signature	Date 10/15/13	Signature	Date 10/15/13

NEPA COMPLIANCE

In accordance with 23 CFR 771.117, and based on an examination of this proposal and supporting information, the State has determined that this project:

- does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and
- has considered unusual circumstances pursuant to 23 CFR 771.117(b) (http://www.fhwa.dot.gov/hep/23cfr771.htm - sec.771.117).

In non-attainment or maintenance areas for Federal air quality standards, the project is either exempt from all conformity requirements, or conformity analysis has been completed pursuant to 42 USC 7506(c) and40 CFR 93.126, 40 CFR 93.127, 40 CFR 93.128.

CALTRANS NEPA DETERMINATION (Check one)

☐ **23 USC 326:** The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding (MOU) dated June 7, 2010, executed between the FHWA and the State. The State has determined that the project is a Categorical Exclusion under:

- ☐ **23 CFR 771.117(c): activity (c)(___)**
- ☐ **23 CFR 771.117(d): activity (d)(___)**
- ☐ **Activity ___ listed in Appendix A of the MOU between FHWA and the State**

☐ **23 USC 327:** Based on an examination of this proposal and supporting information, the State has determined that the project is a CE under 23 USC 327.

N/A		N/A	
Environmental Branch Chief		Project Manager	
Signature	Date	Signature	Date

Date of Categorical Exclusion Checklist completion: Date of ECR or equivalent:

CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM
Continuation Sheet

01-DN-101	0.95/23.87	49910	N/A
Dist.-Co.-Rte.	P.M/P.M.	E.A.	Federal-Aid Project No.

Continued from page 1:

Project Description:

The work at each location is as follows:

1. PM 0.95: Remove and replace existing 24" downdrain.
2. PM 13.42: Remove existing culvert and drop inlet (DI). Replace with new 24" culvert, DI, rock energy dissipater.
3. PM 13.57: Remove existing culvert and DI. Replace with new 24" culvert, DI, rock energy dissipater.
4. PM 15.65: Line existing 36" WSP with plastic pipe liner.
5. PM 16.93: Remove existing culvert and DI. Replace with new 24" culvert, DI, rock energy dissipater.
6. PM 22.69: Abandon existing culvert. Remove existing downdrain. Place new 36" culvert and SFES. Place new downdrain. Reuse existing CIDH piling for downdrain anchorage.
7. PM 23.08: Remove existing culvert and downdrain. Place new 24" culvert with headwall at inlet and downdrain with dead-man anchorage.
8. PM 23.43: Line existing 42" WSP with plastic pipe liner.
9. PM 23.60: Remove and replace existing driveway culvert with 24" culvert and FES.
10. PM 23.60A: Repair drainage ditch at out let of culvert. Fill in length of scour in ditch with rock and plant willows cuttings to enhance stability of the channel.
11. PM 23.87: Remove and replace existing driveway culvert with 24" culvert and FES.

The purpose of this project is to prevent the collapse of the roadway due to failing culverts by repairing and replacing the damaged facilities.

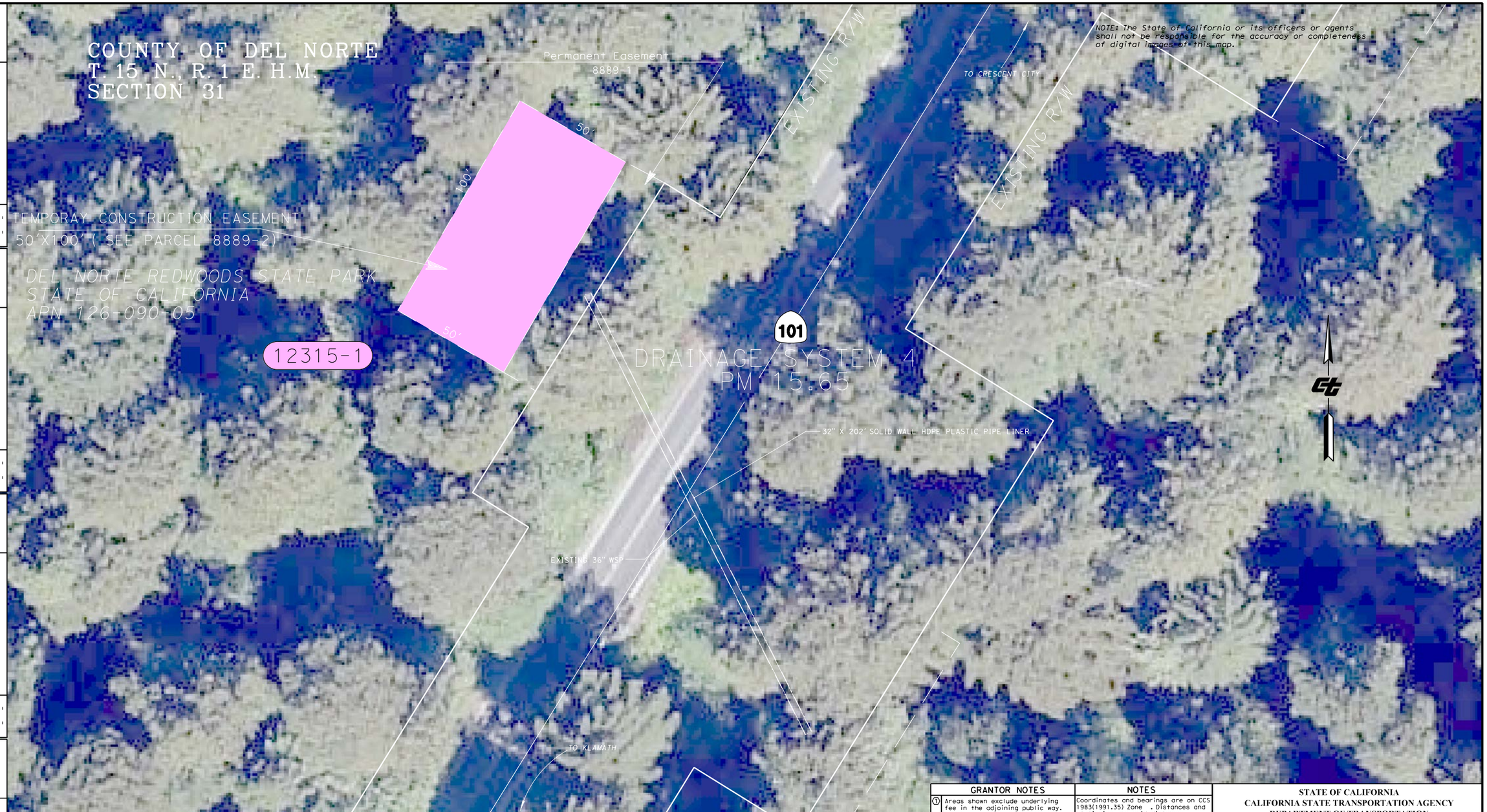
Staging will only occur on non-vegetated turnouts and shoulders. In locations where culverts and DIs will be replaced by trenching through the highway, lane closures will be necessary and staging will more than likely occur there.

Five of the locations (PM 0.95, 13.42, 13.57, 15.65 and 16.93) are located in suitable habitat for northern spotted owl (NSO) and marbled murrelet (MMO). These locations are also located in designated critical habitat for marbled murrelet. In order to avoid any direct effects to NSO and MAMU, Caltrans will not work at these five locations until after the breeding season of these species which will be after September 15 (and before January 31). No suitable NSO or MAMU nest trees will be removed or altered. Work at these locations will also take place in the dry season, which is typically prior to October 15, but may be extended beyond this date if approved by appropriate agency.

If the need for any vegetation trimming or ground disturbance arises, a qualified biologist must first evaluate and clear the areas for work to occur. Nesting surveys for and subsequent protection of active migratory bird nests must be conducted in accordance with the Migratory Bird Treaty Act (MBTA) if such activities occur during the migratory bird nesting season (February 1 to September 15).

The following locations will require a Section 404 of the Clean Water Act *Nationwide Permit* #3 (US Army Corps of Engineers), a Section 401 of the Clean Water Act *Water Quality Certification* (North Coast Regional Water Quality Control Board), and Section 1602 of the California Fish and Game Code *Lake and Streambed Alteration Agreement*: PM 0.95, 15.65, 22.69, 23.08, 23.43, 23.60, and 23.87.

EXHIBIT B



PARCEL#	TITLE CODE ②	GRANTOR	AREAS (square feet or as noted) TOTAL	REQUIRED ① [UF]	EXCESS ① [UF]	REMAINDER	REMARKS
12315-1	O	STATE OF CALIFORNIA	LARGE	5000		LARGE	RIGHT OF ENTRY APN: 126-090-05
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-							
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GRANTOR NOTES

① Areas shown exclude underlying fee in the adjoining public way. Ac=acres
[ ] Indicates Underlying Fee (UF) Area
(Y) Indicates Indeterminate UF
② TITLE CODES:
A=Access Rights Only
F=Fee
E=Easement (Ease)
TCE=Temp Construction Ease
T=Other Temp Ease (see Remarks)
O=Other (see Remarks)

NOTES

Coordinates and bearings are on CCS 1983(1991.35) Zone . Distances and stationing are grid distances. Divide by to obtain ground distances.
All distances are in feet unless otherwise noted.

LEGEND

Access Prohibited
Access Superseded
Existing R/W Superseded
Access Opening (Private)
(R) Indicates Radial Bearing
● Indicates Found Monument as noted
○ Indicates calculated point. (Does not imply monument set)
Title to State
Required for Others

STATE OF CALIFORNIA
CALIFORNIA STATE TRANSPORTATION AGENCY
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY RIGHT OF ENTRY MAP DN 101 VARIOUS

FOR PREVIOUS R/W INFORMATION SEE MAP(S)

FEET 0 10 20 40 60

TO DESIGN: 11/8/13 EA(s): 49910 FA#:

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
1	DN	101	15.65	1	2

PROJECT ID: 01 0000 0697

R/W PROJECT SURVEYOR: JASON LONG

DATE	REVISIONS	BY
12-8-13	INITIAL SUBMITTAL	JML

DATE	REVISIONS	BY

DATE	REVISIONS	BY

DATE	REVISIONS	BY

DATE	REVISIONS	BY

PARCEL#	TITLE CODE ②	GRANTOR	AREAS (square feet or as noted) TOTAL	REQUIRED ① [UF]	EXCESS ① [UF]	REMAINDER	REMARKS
12316- 1		STATE PARK	LARGE	1593		LARGE	RIGHT OF ENTRY TO REHAB CULVERT APN 126-030-17 STATE PARKS
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GRANTOR NOTES

① Areas shown exclude underlying fee in the adjoining public way.
Ac=acres
[ ] Indicates Underlying Fee (UF) Area
[Y] Indicates Indeterminate UF
② TITLE CODES:
A=Access Rights Only
F=Fee
E=Easement (Ease)
TCE=Temp Construction Ease
T=Other Temp Ease (see Remarks)
O=Other (see Remarks)

NOTES

Coordinates and bearings are on CCS 1983(1991.35) Zone . Distances and stationing are grid distances. Divide by to obtain ground distances.
All distances are in feet unless otherwise noted.

LEGEND

Access Prohibited
Access Superseded
Existing R/W Superseded
Access Opening (Private)
(R) Indicates Radial Bearing
● Indicates Found Monument as noted
○ Indicates calculated point. (Does not imply monument set)
Title to State
Required for Others

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY
RIGHT OF ENTRY MAP
DN 101-VARIOUS

FOR PREVIOUS R/W INFORMATION SEE MAP(S)

FEET 0 10 20 40 60

TO DESIGN: 11/8/13 EA(s): 49910 FA#:

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
1	DN	101	22.69	2	2

PROJECT ID: 01 0000 0697

R/W PROJECT SURVEYOR:

DATE	REVISIONS	BY

DATE	REVISIONS	BY

DATE	REVISIONS	BY

DATE	REVISIONS	BY

INFORMATION HANDOUT

For Contract No. 01-499104
At 01-DN-101-0.9/23.9

Identified by
Project ID 0100000697

PERMIT

United States Army Corps of Engineers

Non-Reporting Nationwide Permits 3 and 33

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16th Floor
SAN FRANCISCO, CALIFORNIA 94103-1398

REPLY TO
ATTENTION OF

NOV 21 2013

Regulatory Division (1145b)

SUBJECT: File No. 2013-00400N

Mr. Coady Reynolds
Department of Transportation
District 1, P.O. Box 3700
Eureka, CA. 95502-3700

Dear Mr. Reynolds:

This letter is in reference to your submittal dated October 29, 2013, concerning Department of the Army (Corps) permit authorization to complete culvert rehabilitation and repairs at the following locations: PM 0.95, PM 15.65, PM 22.69, PM 23.08, PM 23.43, PM 23.64, and PM 23.87. All work would occur during the dry season (June 15-October 15). If water is present during construction a diversion would be utilized. All work would be completed in less than a week at each location. In most cases, portions of culverts would be repaired, rehabilitated, or replaced. The sites are located along Highway 101, Del Norte County, California. All work shall be completed in general accordance with the previously submitted drawings (12 sheets, dated September 11, 2013) entitled: "Project Plans for Construction of State Highway in Del Norte County on Route 101 at Various Location (PM 0.2-PM 24.6)."

Work within U.S. Army Corps of Engineers' (Corps) jurisdiction would include permanent impacts to others waters we regulate through the installation of about 70-cubic yards of fill permanently impacting about 350-linear feet with 230-linear feet of temporary impacts. Fill will only be placed at PM 23.64 to alleviate an eroding bank. The other site impacts do not involve fill and are in an existing footprint.

Section 404 of the Clean Water Act (CWA) generally regulates the discharge of dredged or fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters.

Section 10 of the Rivers and Harbors Act generally regulates construction of structures and work, including excavation, dredging, and discharges of dredged or fill material, occurring below the plane of mean high water in tidal waters of the United States; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States. Navigable waters of the United States generally include all waters subject to the ebb and flow of the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or

foreign commerce.

A Preliminary JD has been completed for your site. Preliminary JDs are written indications that there may be waters of the U.S. on a parcel or indications of the approximate location(s) of waters of the U.S. on a parcel. Preliminary JDs are advisory in nature and may not be appealed.

Based on a review of the information you submitted, your project qualifies for reauthorization under Department of the Army Nationwide Permit (NWP) 3 for *Maintenance* and NWP 33 for *Temporary Construction, Access, and Dewatering* (77 Fed. Reg. 10, February 21, 2012), pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403). Section 404 water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters. Section 10 generally regulates all structures and work, including excavation, dredging, and discharges of dredged material, occurring below the plane of mean high water in tidal waters of the United States, below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States, or outside the limits of mean high water but affecting the navigable capacity of tidal waters.

The project must be in compliance with the Terms and Conditions of the NWPs cited in Enclosure 1 and any Special Conditions specified in this letter for the NWP authorization to remain valid. Non-compliance with any Term or Condition could result in the revocation of the NWP authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps of Engineers (Corps). Upon completion of the project and all associated mitigation and monitoring requirements, you shall sign and return the statement cited in Enclosure 2, certifying all work complies with the Terms and Conditions of the NWPs. Project authorization under the NWPs does not obviate any requirement to obtain other Federal, State, or local approvals necessitated by law.

This verification will remain valid until March 17, 2017. Activities which have commenced (i.e, are under construction) or are under contract to commence in reliance upon an NWP will remain authorized provided the activity is completed within 12 months of the date of an NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5 (c) or (d). The Chief of Engineers will periodically review NWPs and their conditions and will decide to either modify, reissue, or revoke the permits. If an NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. It is incumbent upon you to remain informed of any changes to the NWPs. Changes to the NWPs would be announced by Public Notice posted on our website (http://www.spn.usace.army.mil/regulatory/index.html). Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance verifying that you have complied with the terms and conditions of the permit.

Project authorization will not be effective until you have obtained Section 401 water quality certification from the Regional Water Quality Control Board (RWQCB), North Coast Region. If

the RWQCB fails to act on a valid request for certification within two (2) months after receipt of a complete application, the Corps will presume a waiver of water quality certification has been obtained. You shall submit a copy of the certification to the Corps prior to the commencement of work. You shall comply with any condition of certification required by the RWQCB, and you shall consider any such conditions to be an integral part of the NWP authorization for the project.

To ensure compliance with this NWP authorization and to further minimize adverse impacts to water quality and other aquatic resources, including federally listed threatened and endangered species and designated critical and essential fish habitat, the project is subject to the following Special Conditions:

1. All minimization measures described on page 8 of your Pre-Construction Notification (PCN), dated October 29, 2013, shall be implemented.

2. Best Management Practices shall be implemented.

You may refer any questions on this matter to Carol Heidsiek of our Regulatory staff by telephone at 707-443-0855. All correspondence should be addressed to the Regulatory Division, North Branch, Eureka Field Office, 601 Startare Drive, Box 14, Eureka, California 95501, referencing the file number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at our website: http://per2.nwp.usace.army.mil/survey.html.

Sincerely,

Jamie Monanes

for Jane M. Hicks
Chief, Regulatory Division

Enclosures

Copy Furnished (w/o encls):

CA RWQCB, Santa Rosa, CA

Enclosure

Permittee: Caltrans

File Number: 2013-00400N

Certification of Compliance
for
Nationwide Permit

"I hereby certify that the work authorized by the above referenced File Number and all required mitigation have been completed in accordance with the terms and conditions of the Nationwide Permit."

PERMITTEE	DATE

Return to:

Carol Heidsiek
U.S. Army Corps of Engineers
San Francisco District
Eureka Field Office, CESPN-R-N-EK
601 Startare Drive, Box 14
Eureka, California 95501

Nationwide Permit 3 - *Maintenance*

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and/or the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. The placement of new or additional riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

Nationwide Permit 33 - Temporary Construction, Access, and Dewatering

Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

NWP Program General Conditions (2012)

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. *Suitable Material.* No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows.* To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100–Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. *Removal of Temporary Fills.* Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. *Single and Complete Project.* The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to,\ reserved water rights and treaty fishing and hunting rights.

18. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non- Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until

Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species specific regional endangered species conditions to the NWPs. (e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at *http://www.fws.gov/* or *http:// www.fws.gov/ipac* and *http://www.noaa.gov/fisheries.html* respectively.

19. *Migratory Birds and Bald and Golden Eagles.* The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. *Historic Properties.* (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete preconstruction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h–2(k)) prevents the Corps from granting a permit or

other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. *Discovery of Previously Unknown Remains and Artifacts.* If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment. (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal. will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal: (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site). (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332. (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment. (2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered. (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2)–(14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely

completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). (4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided. (5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan. (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment. (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs. (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses. (g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management. (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. *Safety of Impoundment Structures.* To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. *Water Quality.* Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State

may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)_____
(Date) _____

30. *Compliance Certification.* Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include: (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions; (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and (c) The signature of the permittee certifying the completion of the work and mitigation.

31. *Pre-Construction Notification*—(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify

the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2). (b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information: (1) Name, address and telephone numbers of the prospective permittee; (2) Location of the proposed project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans); (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate; (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act. (c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used. (d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the

district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

San Francisco District Regional Conditions

A. General Regional Conditions that apply to all NWPs in the Sacramento, San Francisco, and Los Angeles Districts:

1. When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, San Francisco District (Corps) in accordance with General Condition 31 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:

    a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;

    b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for activities located within the boundaries of the Los Angeles District shall comply with the September 15, 2010 Special Public Notice: *Map and Drawing Standards for the Los Angeles District Regulatory Division*, (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

    c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the activities site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart b of this Regional Condition.

2. The permittee shall submit a PCN, in accordance with General Condition 31, For all activities located in areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007, 72 C.F.R. 11,092, in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: http://www.swr.noaa.gov/efh.htm.

3. For activities in which the Corps designates another Federal agency as the lead for compliance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended, 16 U.S.C. §§ 1531-1544, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH), 16 U.S.C. § 1855(b)(4)(B) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended , 16 U.S.C. §§ 470-470h, the lead Federal agency shall provide all relevant documentation to the appropriate Corps demonstrating any previous consultation efforts, as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.

4. For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed unless determined to be impracticable by the Corps.

5. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

6. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51 and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:

    a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;

    b. An analysis of the proposed impacts to the waterbody, in accordance with General Condition 31;

    c. Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and

    d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be offset, in accordance with 33 CFR 332.

B. General Regional Conditions that apply to all NWPs in the San Francisco District:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **San Francisco Bay diked baylands** (see figure 1) (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)). The notification shall explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable (see General Condition 23).

2. Notification to the Corps (in accordance with General Condition No. 31) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **Santa Rosa Plain** (see figure 2). The notification will explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable in accordance with General Condition No. 23.

3. Notification to the Corps (in accordance with General Condition No. 31), including a compensatory mitigation plan, habitat assessment, and extent of proposed-project impacts

to Eelgrass Beds are required for any activity permitted by NWP if it will take place within or adjacent to **Eelgrass Beds**.

C. Regional Conditions that apply to specific NWPs in the San Francisco District:

3. MAINTENANCE:

1. To the extent practicable, excavation equipment shall work from an upland site (e.g., from the top of the bank, the road bed of the bridge, or culverted road crossing) to minimize adding fill into waters of the U.S. If it is not practicable to work from an upland site, or if working from the upland site would cause more environmental damage than working in the stream channel, the excavation equipment can be located within the stream channel but it must minimize disturbance to the channel (other than the removal of accumulated sediments or debris). As part of the notification to the Corps (in accordance with General Condition No. 31), an explanation as to the need to place excavation equipment in waters of the U.S. is required, as well as a statement of any additional necessary fill (e.g., cofferdams, access road, fill below the OHW mark for a staging area, etc.).

2. If the activity is proposed in a special aquatic site, the notification to the Corps (in accordance with General Condition No. 31) shall include an explanation of why the special aquatic site cannot be avoided, and the measures to be taken to minimize impacts to the special aquatic site.

11. TEMPORARY RECREATIONAL STRUCTURES:

1. Notification to the Corps (in accordance with General Condition No. 31) is required if any temporary structures are proposed in wetlands or vegetated shallow water areas (e.g. in eelgrass beds). The notification shall include the type of habitat and areal extent affected by the structures.

12. UTILITY LINE ACTIVITIES:

1. Excess material removed from a trench, associated with utility line construction, shall be disposed of at an upland site away from any wetlands or other waters of the U.S. so as to prevent this material from being washed into aquatic areas.

2. This NWP permit does not authorize the construction of substation facilities. Utility line substations can usually be constructed in uplands.

13. BANK STABILIZATION:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for all activities stabilizing greater than 300 linear feet of channel. Where the removal of wetland vegetation (including riparian wetland trees, shrubs and other plants) or submerged, rooted, aquatic plants over a cumulative area greater than 1/10 acre or 300 linear feet is proposed, the Corps shall be notified (in accordance with General Condition No. 31). The notification shall include the type of vegetation and extent (e.g., areal dimension or number of trees) of the proposed removal. The notification shall also address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.

2. This permit allows excavating a toe trench in waters of the U.S., and, if necessary, to use the material for backfill behind the stabilizing structure. Excess material is to be disposed of in a manner that will have only minimal impacts to the aquatic environment. The notification to the Corps (in accordance with General Condition No. 31) shall include location of the disposal site.

3. For man-made banks, roads, or levees damaged by storms or high flows, the one cubic yard per running foot limit is counted only for that additional fill which encroaches (extends) beyond the pre-flood or pre-storm shoreline condition of the waterway. It is not counted for

the fill that would be placed to reconstruct the original dimensions of the eroded, man-made shoreline.

4. For natural berms and banks, the one cubic yard per running foot limit applies to any added armoring.

5. To the maximum extent practicable, any new or additional bank stabilization must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable.

14. LINEAR TRANSPORATION PROJECTS:

1. Notification to the Corps (in accordance with General Condition No. 31) is required for all projects filling greater than 300 linear feet of channel. For projects involving greater than 300 linear feet of bank stabilization, the project proponent shall address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.

2. This permit does not authorize construction of new airport runways and taxiways.

3. If this NWP has been used to authorize previous project segments within the same linear transportation project, justification must be provided demonstrating that the cumulative impacts of the proposed and previously authorized project segments do not result in more than minimal impacts to the aquatic system.

4. To the maximum extent practicable, any new or additional bank stabilization required for the crossing must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable. Bottomless and embedded culverts are encouraged over traditional culvert stream crossings.

23. APPROVED CATEGORICAL EXCLUSIONS:

1. Use of this NWP requires notification to the Corps (in accordance with General Condition No. 31). The notification shall include the following:

   a. A copy of the Federal Categorical Exclusion (Cat/Ex) document signed by the appropriate federal agency. If the Cat/Ex is signed by a state or local agency representative instead of by a federal agency representative, then copies of all documentation authorizing alternative agency signature shall be provided.

   b. Written description of Corps authority (e.g., Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act.);

   c. a list of conditions described in the Cat/Ex and/or attachments outlining measures that must be taken prior to, during, or after project construction to minimize impacts to the aquatic environment;

   d. a copy of the jurisdictional delineation performed by qualified specialists showing the project limits and the location (delineated boundaries) of Corps jurisdiction within the overall project limits;

   e. map(s) showing the locations of potentially permanent and temporary project impacts to areas within Corps jurisdiction;

f. a clear and concise description of all project impacts including, but not necessarily limited to:
   1. quantification and description of permanent project impacts to areas within Corps jurisdiction,
   2. quantification and description of temporary impacts to areas within Corps jurisdiction, and
   3. linear extent of Corps jurisdiction affected by the project;

g. a general description of activities covered by the Cat/Ex that do not require Corps authorization but are connected or related to the activities in Corps jurisdiction;

h. a complete description of any proposed mitigation and/or restoration including, but not necessarily limited to, locations of any proposed planting, short- and long-term maintenance, proposed monitoring, success criteria and contingency plans;

i. written justification of how the project complies with the Nationwide Permit Program including less than minimal impact to the aquatic environment and compliance with the General Conditions.

j. For Federal Highway Administration (FHWA) Cat/Ex projects, the notification should describe how activities described in the Cat/Ex meet the description of the Cat/Ex project published in the August 28,1987 Federal Register part 771.117 (a)(b)(c) and (d) (Volume 52, No. 167) or any updated version published in the Federal Register.

2. Only activities specifically described in the Cat/Ex project description will be covered by the NWP 23 authorization. If other activities not described in the Cat/Ex project description will be performed (e.g., dewatering, slope protection, etc.), these activities must receive separate NWP authorizations.

3. Notification to the Corps (in accordance with General Condition 31) must include a copy of the signed Cat/Ex document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act (ESA), Essential Fish Habitat (EFH) under the Magnussen-Stevens Act, and Section 106 of the National Historic Preservation Act.

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

1. Notification to the Corps (in accordance with General Condition 31) must include documentation of a review of project impacts to demonstrate that at the conclusion of the work that the project would result in a net increase in aquatic function. Additionally, the documentation must include a review of project impacts on adjacent properties or structures and must also discuss cumulative impacts associated with the project.

29. Residential Developments:

1. When discharge of fill results in the replacement of wetlands or waters of the U.S. with impervious surfaces, to ensure that the authorized activity does not result in more than minimal degradation of water quality (in accordance with General Condition 25), the residential development shall incorporate low impact development concepts (e.g. native landscaping, bioretention and infiltration techniques, and constructed green spaces) to the extent practicable. A description of the low impact development concepts proposed in the project shall be included with the permit application. More information including low impact development concepts and definitions is available at the following website: http://www.epa.gov/owow/NPS/lid/.

2. Use of this NWP is prohibited within the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map (see figure 1) below the 5-foot

contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)).

33. TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING:

1. Access roads shall be designed to be the minimum width necessary and shall be designed to minimize changes to the hydraulic flow characteristics of the stream and degradation of water quality (in accordance with General Conditions 9 and 25). The following Best Management Practices (BMPs) shall be followed to the maximum extent practicable to ensure that flow and circulation patterns of waters are not impaired and adverse effects on the aquatic environment will be kept to a minimum:

   a. The road shall be properly stabilized and maintained during and following construction to prevent erosion.

   b. Construction of the road fill shall occur in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself.

2. Vegetative disturbance in the waters of the U.S. shall be kept to a minimum.

3. Borrow material shall be taken from upland sources whenever feasible.

4. Stream channelization is not authorized by this NWP.

35. MAINTENANCE DREDGING OF EXISTING BASINS:

1. Use of this NWP will require notification to the Corps (in accordance with General Condition No. 31). The notification information should be provided on the Consolidated Dredging-Dredged Material Reuse/Disposal Application. This application and instructions for its completion can be found on our web site at: http://www.spn.usace.army.mil/conops/applications.html. The information must include the location of the proposed upland disposal site. A jurisdictional delineation of the proposed upland disposal site prepared in accordance with the current method required by the Corps may also be required.

2. The U.S. Coast Guard will be notified by the permittee at least 14 days before dredging commences if the activity occurs in navigable waters of the U.S. (Section 10 waters).

3. The permittee will be required to provide the following information to the Corps:
   a. Dredge Operation Plan: Submit, for approval by this office, no earlier than 60 calendar days and no later than 20 calendar days before the proposed commencement of dredging, a plan which includes the following: **Corps file number,** a copy of the dredging contract or description of the work under which the contractor will do the permitted work; name and telephone numbers of the dredging contractor's representative on site; proposed dredging start and completion dates; quantity of material to be removed; dredging design depth and typical cross section including overdepth; and date of last dredging episode and design depth. The Dredge Operational Plan shall also provide the following information: The controls being established to insure that dredging operations occur within the limits defined by the basin or channel dimensions and typical channel section.

   b. Pre-Dredge Survey: Submit no earlier than 60 calendar days and no later than 20 calendar days before commencement of dredging, a survey with accuracy to one-tenth foot that delineates and labels the following: areas to be dredged with overdepth allowances; existing depths; estimated quantities to be dredged to the design depth; and

estimated quantities for overdepth dredging. **All surveys shall be signed by the permittee to certify their accuracy. Please include the Corps file number.**

c. Solid Debris Management Plan: Submit no earlier than 60 calendar days and no later than 20 calendar days before commencement of work, a plan which describes measures to ensure that solid debris generated during any dredging operation is retained and properly disposed in areas not under Corps jurisdiction. **At a minimum, the plan shall include the following: source and expected type of debris; debris retrieval method; Corps file number; disposal method and site; schedule of disposal operations; and debris containment method to be used, if floatable debris is involved. (Please note that failure to provide all of the information requested in a, b, and c above may result in delays to your project. When your Dredge Operation Plan has been approved, you will receive a written authorization to commence with your project.)**

d. Post-Dredge Survey: Submit, **within 30 days of the last disposal activity** ("last" is defined as that activity after which no further activity occurs for 15 calendar days), a survey with accuracy to one-tenth foot that delineates and labels the areas dredged and provides the dredged depths. **Also, include the Corps file number, actual dates of dredging commencement and completion, actual quantities dredged for the project to the design depth, and actual quantities of overdepth.** The permittee shall substantiate the total quantity dredged by including calculations used to determine the volume difference (in cubic yards) between the Pre- and Post-Dredge Surveys and **explain any variation in quantities greater than 15% beyond estimated quantities or dredging deeper than is permitted (design plus overdepth allowance). All surveys shall be accomplished by a licensed surveyor and signed by the permittee to certify their accuracy.** A copy of the post dredge survey should be sent to the National Ocean Service for chart updating:

NOAA/National Ocean Service,
Nautical Data Branch
N/CS26, SSMC3, Room 7230
1315 East-West Highway
Silver Spring, Maryland 20910-3282.

e. **The permittee or dredge contractor shall inform this office when: 1) a dredge episode actually commences, 2) when dredging is suspended (suspension is when the dredge contractor leaves the dredge site for more than 48 hours for reasons other than equipment maintenance), 3) when dredging is restarted, and 4) when dredging is complete. Each notification should include the Corps file number.** Details for submitting these notifications will be provided in the verification letter (to whom and how).

39. Commercial and Institutional Developments:

1. When discharge of fill results in the replacement of wetlands or waters of the U.S. with impervious surfaces, to ensure that the authorized activity does not result in more than minimal degradation of water quality (in accordance with General Condition 25), the commercial and institutional development shall incorporate low impact development concepts (e.g. native landscaping, bioretention and infiltration techniques, and constructed green spaces) to the extent practicable. A description of the low impact development concepts proposed in the project shall be included with the permit application. More information including low impact development concepts and definitions is available at the following website: http://www.epa.gov/owow/NPS/lid/.

2. Use of this NWP is prohibited within the San Francisco Bay diked baylands (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map (see figure 1) below the 5-foot

contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)).

40. AGRICULTURAL ACTIVITIES:

1. This NWP does not authorize discharge of fill into the channel of a perennial or intermittent watercourse that could impede high flows. This limitation does not apply to watercourses that flow only when there is an irregular, extraordinary flood event.

41. RESHAPING EXISTING DRAINAGE DITCHES:

1. Compensatory mitigation may be required if the Corps determines there will be a detrimental impact to aquatic habitat.

2. Notification to the Corps (in accordance with General Condition 31) is required if the applicant proposes to re-grade, discharge, install channel lining, or redeposit fill material.

3. The notification to the Corps (in accordance with General Condition 31) shall include an explanation of the project's benefit to water quality and a statement demonstrating the need for the project.

42. RECREATIONAL FACILITIES:

1. If buildings are proposed to be built in waters of the United States, including wetlands, the applicant must demonstrate that there is no on-site practicable alternative that is less environmentally damaging as defined by the Section 404(b)(1) guidelines.

INFORMATION HANDOUT

For Contract No. 01-499104
At 01-DN-101-0.9/23.9

Identified by
Project ID 0100000697

WATER QUALITY

California Regional Water Quality Control Board

North Coast Region
WDID No. 1A13142WNDN

March 7, 2014

In the Matter of

Water Quality Certification

for the

California Department of Transportation
State Route 101, Del Norte Culvert and Drainage Repairs
(Caltrans EA No. 01-49910)
WDID No. 1A13142WNDN

APPLICANT:	California Department of Transportation
RECEIVING WATERS:	McGarvey and Wilson Creeks, Pacific Ocean, Elk Creek Wetlands
HYDROLOGIC UNITS:	Smith River Hydrologic Unit No. 103.00, Klamath River Hydrologic Unit No. 105.00
COUNTY:	Del Norte
FILE NAME:	140304 BJT_CDOT_DN101_CulvertDrainageRepairs.docx

FINDINGS BY THE EXECUTIVE OFFICER:

1. On November 20, 2013, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from the California Department of Transportation (Caltrans) requesting Federal Clean Water Act (CWA) section 401, Water Quality Certification (certification) for activities related to the Del Norte State Route 101 Culvert and Drainage Repairs Project (Project).

2. **Hydrologic Unit**: The proposed Project would cause disturbances to jurisdictional tributaries of:

- McGarvey Creek—Klamath Glen Hydrologic Sub Area (CalWater Number 105.11);
- Elk Creek wetlands—Smith River Plain Hydrologic Sub Area (CalWater Number 103.11);
- Wilson Creek—Klamath Glen Hydrologic Sub Area (CalWater Number 105.11); and
- Pacific Ocean, all within the Smith River Hydrologic Unit (CalWater Number 103.00). The proposed Project would also cause disturbances to jurisdictional tributaries of Wilson Creek, within the Lower Klamath River Hydrologic Area (CalWater Number 105.10).

3. **Public Notice:** The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on January 17, 2014, and posted information describing the project on the Regional Water Board's website. No comments were received.

4. **Project Description** The proposed Project would occur at seven locations along State Route (SR) 101 between post-miles 0.95 and 23.60, in Del Norte County. The purpose of the Project is to repair compromised drainage systems. Project elements would include the following work at the designated post-miles (PM):

   - **PM 0.95**: A 24-inch downdrain will be replaced, in-kind. This work would occur between September 15 and October 15;
   - **PM 15.65**: The existing 36-inch welded steel pipe would be lined with a new plastic liner. The voids between the liner and the existing pipe would be filled with grout. There will be some ground disturbance to access the site with equipment at the culvert inlet, but no vegetation or tree removal will be necessary. This work would occur between September 15 and October 15;
   - **PM 22.69**: The existing 36-inch culvert would be abandoned in place, capped and slurry or sand would be pumped into the existing pipe. A new 36-inch pipe would be placed beneath the roadway using the existing inlet and outlet locations. Rock-slope protection would not be placed at the outlet and vegetation or trees would not require removal. Work would take approximately one week;
   - **PM 23.08**: The existing 18-inch corrugated steel pipe and downdrain would be removed and a new, 24-inch culvert and inlet headwall would be placed. All work would be performed from the roadway and completed in approximately one week;
   - **PM 23.43**: The existing 42-inch welded steel pipe would be lined with a new plastic liner. The voids between the liner and the existing pipe would be filled with grout. There will be some ground disturbance to access the site with equipment at the culvert inlet, but no vegetation or tree removal will be necessary. This work would take approximately two to three days to complete; and
   - **PM 23.64**: Approximately 350-feet of an existing earthen drainage ditch, beginning at the outlet of a cross culvert at PM 26.64, would be filled with rock and planted with willow to reduce erosion along its length. This work would take approximately one week and occur between June 15 and October 15.

5. **Construction Duration:** Project implementation is expected to be completed between June 15 and October 15 of either 2014 or 2015.

6. **Permanent Impacts:** Caltrans has determined that Project implementation would result in approximately 0.04 acres (350 linear feet) of permanent impacts to jurisdictional waters, all associated with rock placement at PM 23.64.

7. **Temporary Impacts:** Caltrans has determined that the proposed Project would result in approximately 0.09 acres (230 linear feet) of temporary impacts to jurisdictional waters as a result of clearing shrubs for construction access.

8. **Mitigation for Permanent Impacts**: Caltrans shall plant 109 willows along 350 linear feet of the existing drainage ditch starting approximately at PM 26.64.

9. **Post-Construction Stormwater Treatment:** Post-construction stormwater treatment is not required because this Project will not increase the area of impervious surface.

10. **Disturbed Soil Area**: Project implementation would result in less than one acre of disturbed soil area. Caltrans shall ensure that erosion and sediment control, site housekeeping, and other appropriate pollution prevention best management practices are employed to prevent violations of water quality standards.

11. **Utility Relocations:** Utility relocations are not certified for this project.

12. **Other Agency Actions:** Caltrans has applied for coverage under United States Army Corps of Engineers Nationwide Permit No. 3, *Maintenance*, pursuant to Clean Water Act, section 404. Caltrans has also submitted a draft Streambed Alteration Agreement to the California Department of Fish and Wildlife for review.

13. **CEQA Compliance:** On October 15, 2013, the California Department of Transportation, acting as lead agency, filed a Notice of Exemption (section 15301, Existing Facilities) for the proposed Project in order to comply with the California Environmental Quality Act (CEQA). The Regional Water Board has considered the environmental documentation, and has determined that the Project is categorically exempt from CEQA and has filed a Notice of Exemption.

14. **Antidegradation Policy:** The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements,

and incorporates by reference, both the State and federal antidegradation policies. This certification is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater, and does not otherwise authorize degradation of the waters affected by this Project.

15. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this certification.

Receiving Waters:	Tributaries to McGarvey and Wilson Creeks, Pacific Ocean, and Elk Creek Wetlands	
Filled and/or Excavated Areas:	Permanent – jurisdictional waters	0.04 acres (350 linear feet)
	Temporary – jurisdictional waters	0.09 acres (230 linear feet)
Dredge Volume:	none	
Fill Volume:	Permanent – 140 cubic yards	
Mitigation proposed:	Planting 109 willows along 350 linear feet of drainage ditch starting at PM 26.64	
Latitude/Longitude:	PM 0.95: 41.477315 N, 124.046853 W PM 15.65: 41.644394 N, 124.113810 W PM 22.69: 41.723612 N, 124.139283 W PM 23.08: 41.728930 N, 124.143215 W PM 23.43: 41.732855 N, 124.147533 W PM 23.64: 41.734507 N, 124.150677 W PM 23.87: 41.736528 N, 124.154808 W	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Del Norte State Route 101 Culvert and Drainage Repairs Project (WDID No. 1A13142WNDN), as described in the application will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Caltrans complies with the following terms and conditions:

All conditions of this certification apply to Caltrans (and all its employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project (including the off-site mitigation lands) as related to this Water Quality Certification.

Project-Specific Condition Requiring Reports

1. Caltrans shall plant 109 willows along 350 linear feet of the existing drainage ditch starting approximately at PM 26.64. Planting, monitoring, and reporting shall be implemented consistent with the Route-101, Post Mile 23.64 Revegetation Plan

Project-Specific Condition Requiring Reports

(Attachment A).

Project-Specific Condition

2. Project activities shall not result in tree removal.

Standard Conditions

3. All Project activities and BMPs shall be implemented according to the submitted application materials and the findings and conditions of this certification. Subsequent changes to the Project that could significantly impact water quality shall first be submitted to Regional Water Board staff for prior review, consideration, and written concurrence. The Regional Water Board recommends Caltrans either consult with Regional Water Board staff or use the best professional judgment of Caltrans environmental staff to determine if Project changes may significantly affect water quality and warrant notification to the Regional Water Board. If the Regional Water Board is not notified of a significant alteration to the project, it will be considered a violation of this Order, and Caltrans may be subject to Regional Water Board enforcement actions.

4. All conditions required by this Order shall be included in the Contract Documents prepared by Caltrans for the contractor. In addition, Caltrans shall require compliance with all conditions included in this Order in the bid contract for this Project.

5. Caltrans shall ensure that erosion and sediment control, site housekeeping, and other appropriate pollution prevention best management practices are employed to prevent violations of water quality standards.

6. Caltrans is prohibited from discharging waste to waters of the State, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or concrete washings, welding slag, 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 State waters.

7. Except for temporary stockpiling of waste generated during demolition operations ("temporary" in this instance means generated and removed during the same working day), waste materials shall not be placed in a manner where the materials may be transported into waters of the State. Waste materials shall not be placed within 100 linear feet of State waters. Exceptions to the 100-foot limit may be granted on a case-by-case basis provided Caltrans first submits a proposal in writing that is found acceptable by Regional Water Board staff.

8. Caltrans is liable and responsible for the proper disposal of Project-generated waste. Additionally, when handling, transporting, and disposing of Project-generated waste,

Standard Conditions (continued)

Caltrans and their contractors shall:

i) Comply with all applicable State and Federal laws and regulations;
ii) Make appropriate arrangements to dispose of the material, including, but not limited to, property owner agreements, permits, licenses, and environmental clearances;
iii) Obtain satisfactory evidence that the work in 8.i has been completed; and
iv) Obtain a dated, signed manifest from the disposal site owner, or authorized representative, that identifies the type and quantity of disposed waste.

9. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be prohibited within waters of the State (e.g., gravel bars, seeps, ephemeral streams) and riparian areas. Caltrans shall not use leaking vehicles or equipment within State waters or riparian areas.

10. Caltrans shall prioritize the use of wildlife-friendly biodegradable (not photo-degradable) erosion control products wherever feasible. Caltrans shall not use or allow the use of erosion control products that contain synthetic netting for permanent erosion control (i.e., erosion control materials to be left in place for two years or after the completion date of the project). If Caltrans finds that erosion control netting or products have entrapped or harmed wildlife, personnel shall remove the netting or product and replace it with wildlife-friendly biodegradable products.

11. Caltrans shall not use or allow the use of erosion control products that contain synthetic materials within waters of the United States or waters of the State at any time, with the exception of plastic sheeting used in water diversion and dewatering activities. Caltrans shall first request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.

12. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.

13. Non-stormwater discharges are prohibited unless the discharge is first approved by the Regional Water Board and in compliance with the Basin Plan. If construction dewatering of groundwater is necessary, then Caltrans shall use a method of water disposal other than disposal to surface waters, such as land disposal. Groundwater disposed of to land shall not enter State waters. Alternatively, Caltrans may apply for coverage under the Low Threat Discharge Permit or an individual National Pollutant Discharge Elimination System (NPDES) Permit. If Caltrans applies for coverage under either of these permits, then discharge is prohibited until Caltrans has received notification of coverage under the respective permit.

Standard Conditions (continued)

14. Herbicides and pesticides shall not be used within the Project limits. If Caltrans has a compelling case as to why herbicides and pesticides should be used, then a request for herbicide use and a BMP plan may be submitted to the Regional Water Board staff for review and authorization to proceed.

15. This Order does not authorize drafting of surface waters.

16. Caltrans shall provide a copy of this certification and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ (web link referenced below) to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. Caltrans shall be responsible for work conducted by its contractor and subcontractors.

17. If an unauthorized discharge to surface waters (including wetlands, rivers or streams) occurs, or any other threat to water quality arises as a result of Project implementation, the associated Project activities shall cease immediately until the threat to water quality is otherwise abated. If there is a discharge to State waters, the Regional Water Board shall be notified, with photographs of the discharge and area contributing to the discharge, no more than 24 hours after the discharge occurs.

18. Any imported fill material shall be clean and free of pollutants. All fill material shall be imported from a source that has the appropriate environmental clearances and permits. The reuse of low-level contaminated solids as fill on-site shall be performed in accordance with all State and Federal policies and established guidelines and must be submitted to the Regional Water Board for review and consideration of acceptance.

19. The validity this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by Caltrans. The Regional Water Board received $9,027 from Caltrans on November 21, 2013.

20. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

21. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any

Standard Conditions (continued)

state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

22. This certification action is subject to modification or revocation upon administrative or judicial review; including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.

23. This certification is not transferable. In the event of any change in control of ownership of land presently owned or controlled by Caltrans, Caltrans shall notify the successor-in-interest of the existence of this certification by letter and shall forward a copy of the letter to the Regional Water Board. The successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of this certification to discharge dredged or fill material under this Order. The request must contain the following:
    i) requesting entity's full legal name;
    ii) the state of incorporation, if a corporation;
    iii) address and phone number of contact person; and
    iv) a description of any changes to the project or confirmation that the successor-in-interest intends to implement the project as described in this Order.

24. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited, and all proposed revegetation, avoidance, minimization, and mitigation measures being completed, in strict compliance with Caltrans's project description and CEQA documentation, as approved herein; and b) compliance with all applicable water quality requirements and water quality control plans including the requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan), and amendments thereto.

25. The authorization of this certification for any dredge and fill activities expires on March 31, 2019. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Condition 1 is a requirement for information and reports. Any requirement for information and reports made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, Section 13268.

The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.

Please contact our staff Environmental Specialist/Caltrans liaison, Brendan Thompson at (707) 576-2699, or via e-mail, at Brendan.Thompson@waterboards.ca.gov, if you have any questions.

Original signed by

_____

Matthias St. John
Executive Officer

140307_BJT_dp_CDOT_DN101_CulvertDrainageRepairs_401

Web link: State Water Resources Control Board Order No. 2003-0017 -DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification can be found at: http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Original to: Mr. Scott Lee, Caltrans, 1656 Union St., Eureka, CA 95501 Scott.Lee@dot.ca.gov

cc: U.S. Army Corps of Engineers, Regulatory Functions - San Francisco District
Laurie.A.Monarres@usace.army.mil
Paula.C.Gill@usace.army.mil
Jane.M.Hicks@usace.army.mil
California Department of Fish and Wildlife, Bay Delta Region
JoAnn.Dunn@wildlife.ca.gov
Environmental Protection Agency, Region IX
R9-WTR8-Mailbox@epa.gov
David.Melendrez@dot.ca.gov
Coady.Reynolds@dot.ca.gov
Stateboard401@waterboards.ca.gov
Stephen.Bargsten@waterboards.ca.gov

Attachment A

Route-101, Post Mile 23.64
Revegetation Plan

Introduction

The following revegetation and monitoring plan is for a project to install rock rip-rap downstream from the culvert outlet at PM 23.64 that carries an unnamed intermittent drainage (ditch) along the west side of Route-101 just north of Crescent City. The rock rip-rap will reduce the opportunity for further erosion that is currently occurring.

The ditch now carries an intermittent stream that eventually drains into the Elk Creek Wetlands Wildlife Area. The ditch in its current condition is eroding at its banks creating an incised ditch with steep banks. The bank in its current condition is steep, and poses a potential risk to the driving public as any vehicle that would make its way off the highway could end up in the upended in this ditch. Currently the ditch is only vegetated at the tops of the banks with bunch grasses, no riparian or wetlands species are present inside the banks of this feature.

The addition of rock rip-rap would serve to gently slope the banks, and to prevent further incision and erosion. Incorporating willows into this feature would create a bioengineered solution that would serve as an enhancement of the existing condition and provide a more permanent fix to the erosion problem. As well, the bioengineered solution would increase the current beneficial uses by providing shading, aquatic wildlife habitat, erosion control, and more substrate for filtration.

Revegetation Goal

The goal of this revegetation effort is to offset the permanent fill to the intermittent ditch that will result from installation of the rock rip rap. The revegetation will enhance the natural plant community, provide additional stability to the stream banks, and decrease invasive species' establishment. In addition, successful revegetation will help shade the watercourse, which will provide cooler water temperatures for aquatic species.

Revegetation Methods

The nature of the permanent impacts to jurisdictional features will include the placement of 140-cy rock slope protection (RSP) that will extend 350-linear ft. downstream from culvert outlet. This impact will serve as an increase of beneficial uses by preventing further incising of the drainage ditch. All work will be completed in the dry season to avoid impacts such as turbidity. Temporary disturbances will be necessary of ground cover for access to make repairs to currently failing eroding ditch. These repairs should be an increase to beneficial uses.

In order to fulfill the requirement to plant within the confines of the available right-of-way and the ditch, revegetation will consist of planting approximately 130 Hooker's willow (*Salix hookeriana*) cuttings. It was calculated that 109 willows would be sufficient for the area needed for planting, a 20 percent increase was added to account of loss of survival. Willows have not

been observed in the project area, possibly due to the amount of scour currently occurring at the site. The choice of using willow cuttings is based on the following:

- Willows have been seen along other streams and in ditches not far from this site.
- Planting willow cuttings would result in quicker plant growth adjacent to the stream than if container plants were used.
- Site conditions, including the limited area for planting and potential for high stream flows, are not suitable for installing container plants.

Willow sprigging will be implemented as follows:

- Harvest and plant cuttings when willows are dormant (early winter to early spring), after first set of seasonal rains and no later than March.
- A staggered line or group planting of willows 5 to 10 feet on center.
- Cuttings should be harvested from local and native sources, and include a variety of willows present to maintain genetic and sexual diversity (generally willows have separate sexes). Also any collection efforts should be well dispersed so as to not adversely impact existing riparian vegetation.
- Cuttings should be selected from young shoots/wood with small cuttings approximately 1 inch by 18 inches and larger cuttings 2 to 3 inches by 18 to 36 inches. Length of the cutting can vary depending on depth to ground water contact.
- Cuttings need to be hydrated between harvest and planting. Preferably soaked in water several days to a week to stimulate rooting prior to planting, but not over two weeks when rooting begins and shearing of new roots would occur with sprigging.
- Branches should be trimmed off of the cuttings above the branch collar with the bottom end cut to a point for easier installation and identification of the bottom end during installation. A wooden or plastic mallet is recommended for driving in the cuttings as it tends not to split the shoot, and a dab of pruning tar on the top of the cutting will help minimize desiccation.
- Cuttings should be planted to depth of 75 to 80 percent of their length, and care taken to plant cutting with buds pointing up and bottom end of cutting in ground water throughout growing season.
- A total of $35,000 has been allocated to perform the revegetation efforts, and will include hiring crews for collecting and planting native willow vegetation.

Monitoring and Success Criteria

Monitoring will be performed to ensure that the revegetation goals are met, and provide a mechanism for corrective action if necessary. Monitoring will characterize extant conditions in the field, and data collection will be reproducible and collected in a consistent manner. Monitoring will be conducted for five years by a Caltrans Revegetation Specialist and/or project Biologist with appropriate field survey experience.

Monitoring will consist of:

- Evaluation of cover by willow cuttings. The qualitative method for evaluating cover will include use of a percent cover reference guide.

- Monitoring weed cover qualitatively through the use of and comparison with standard vegetation percent cover diagrams to estimate cover in the revegetation area.

- Establishing reproducible photo points prior to plant installation and revisited each year to document vegetation establishment and cover changes. Photos will be provided with the annual and final monitoring reports. Additional or alternate photo points may need to be installed if the original photo points fail to capture enough visual data.

- During the first two years, monitoring will be conducted to assess progress toward the success criteria and identify and/or implement remedial or adaptive management measures. The final monitoring will assess whether the success criteria have been met. If survival is lower than expected, but natural recruitment of native species has supplemented this shortfall, the success criteria may be adjusted.

Success Criteria will consist of:

- Cover by cuttings will be evaluated annually to ensure canopy (shade) cover is increasing over time. Less than 5% relative cover of noxious weed species (per the most recent USDA California State noxious weed list). It can be very difficult to keep noxious weeds out of a recently-disturbed construction area. Factors contributing to why and how noxious weed species infiltrate revegetation sites include amount of disturbance; amount of weed species on adjacent lands; direction from which wind and water is coming from and whether they may bring weed seeds into the planted area; seed dispersal by birds; and non-use of herbicides on Caltrans' revegetation areas. An objective of revegetation efforts at this site is that eventually, a mature woody canopy will shade out many noxious weeds.

- Less than 10% cover of bare soil (to prevent soil erosion).

- The timeline for meeting the success criteria will be five years after planting. Species richness or diversity should be similar to previous and adjacent vegetation types. If during the monitoring period it appears the success criteria may not be met by the end of year five, Caltrans and the agencies will work together to determine potential reasons for failure to meet the criteria and develop remediation measures and/or revised criteria.

Remedial Actions and Adaptive Management

Dead or low vigor (less than 25% green material) plant material will be replaced as needed in the fall or winter following the start of the seasonal rains during the plant establishment and monitoring period to fill planting gaps, and to meet the revegetation goal and monitoring success criteria. If any particular plant species within the revegetation areas demonstrates failure to thrive, then other regionally appropriate native species may be substituted within the planted area. Other remedial or adaptive management measures may be undertaken as necessary to achieve compliance with the monitoring success criteria. All remedial or adaptive management measures will be documented in the annual monitoring reports.

If sprigging methods are unsuccessful, container pots of suitable species may be installed. However, due to the limited space, this may not be a viable option.

Reporting

Monitoring will occur for a minimal of three years (if success criteria are met) to five years. Annual revegetation monitoring reports will be submitted to the California North Coast Regional Water Quality Control Board by the end of January, beginning three years after the bioengineered solutions has been completed. The reports will include site photos. A final monitoring report will be drafted in year three (or five if success has yet to be met) and submitted for approval by the California North Coast Regional Water Quality Control Board. The report will evaluate how successful the restoration was with regard to the revegetation plan's goal, objectives, and success criteria. The report will include a compilation of all monitoring data and photo point documentation.

INFORMATION HANDOUT

For Contract No. 01-499104
At 01-DN-101-0.9/23.9

Identified by
Project ID 0100000697

AGREEMENT

California Department of Fish and Wildlife

Notification No. 1600-2013-0343-R1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
REGION 1 - NORTHERN
601 LOCUST STREET
REDDING, CALIFORNIA, 96001

RECEIVED
MAR 03 2014
D. F. G. – EUREKA

STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2013-0343-R1
UNNAMED TRIBUTARIES TO MCGARVEY CREEK, WILSON CREEK AND PACIFIC OCEAN

CALIFORNIA DEPARTMENT OF TRANSPORTATION
DEL NORTE COUNTY U.S. 101 CULVERT AND DRAINAGE REPAIR
EA 01-49910; U.S. 101 PMs 0.95,15.65, 22.69, 23.08, 23.43, 23.64, AND 23.87

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the California Department of Transportation (Caltrans) (Permittee) as represented by Mr. Scott Lee.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) Section 1602, Permittee notified CDFW on November 21, 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 situated on Unnamed Tributary to McGarvey Creek, tributary to Klamath River, tributary to Pacific Ocean; on Unnamed Tributary to Wilson Creek, tributary to Pacific Ocean; and Unnamed Tributaries to Pacific Ocean. The project is located in the County of Del Norte; State of California; Section 34, Township 13 North, Range 1 East; Section 31, Township 15 North, Range 1 East; Section 2, Township 15 North, Range 1 West; and Section 35, Township 16 North, Range 1 West; Humboldt Base and Meridian; Fern Canyon, Childs Hill and Sister Rocks U.S. Geological Survey 7.5-minute quadrangles.

PROJECT DESCRIPTION

Caltrans is proposing culvert and drainage repairs and maintenance at numerous locations on U.S. Route (U.S.) 101 in Del Norte County between Post Miles (PMs) 0.95 and 23.87. This Agreement is limited to work proposed at seven sites: PMs 0.95,15.65, 22.69, 23.08, 23.43, 23.64, and 23.87.

The project will involve removal and replacement of the downdrain at PM 0.95; re-lining a 36-inch welded steel pipe and filling voids between the liner and pipe with grout at PM 15.65; abandoning in place the existing pipe using caps and slurry or sand, and installing a replacement 36-inch culvert using the existing inlet and outlet locations at PM 22.69; removing and replacing the culvert and downdrain, including installation of a new headwall at PM 23.08; relining the existing 42-inch culvert and filling voids between liner and existing pipe with grout at PM 23.43; removing and replacing a 24-inch culvert and stabilizing with rip-rap and vegetation up to 350 feet of stream at PM 23.60-23.64; and removal and replacement of a 24-inch culvert at PM 23.87.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: **Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), steelhead (*O. mykiss*), coastal cutthroat trout (*O. clarki clarki*)**, other non-game and game fishes, amphibians, reptiles, aquatic invertebrates, mammals, nesting resident and migratory birds, and other aquatic and riparian species.

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

- direct and/or indirect mortality of fish, amphibians and other aquatic species;
- impede up- and/or down- stream migration of aquatic species;
- injury to downstream fish and benthic invertebrates and spawning and/or rearing habitats through sediment transport and deposition and/or spills of deleterious materials;
- changes in channel form and contour of bed, bank, or channel;
- changes in flow depth, width, or velocity;
- temporary increase of sediment and turbidity;
- colonization by non-native and/or invasive plants.

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, 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 in responsible positions 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.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and other aquatic species, Permittee shall implement each measure listed below.

2.1 Except where otherwise stipulated in this Agreement, all work shall be in accordance with the forms, work plans, drawings, biological reports and maps submitted with Notification No. 1600-2013-0343 as submitted by February 13, 2014.

2.2 All work within the bed, bank and channel shall be confined to the period June 1 through October 15 of each year.

2.3 If sightings or den sites of ring-tailed cat (*Bassariscus astutus*), Pacific fisher (*Martes pennanti*), or marten (*Martes americana*) are encountered in the course of activities at project sites, the Permittee shall immediately notify and consult with CDFW to identify any measures that may be needed to avoid take or minimize adverse impacts to these species.

2.4 No fill material shall be placed within a stream except as specified in this Agreement.

2.5 If water is present during operations:

a) All work shall be performed in isolation from surface and subsurface flow to the maximum extent feasible.

b) A temporary clear water diversion shall be constructed prior to any work using cofferdams to catch and divert stream flow and isolate and dewater the work site, and to catch any sediment-laden water and minimize sediment transport downstream. The diversion shall be adequately sized to accommodate the full range of flows that may occur during the diversion period without overtopping into the work area and shall be adequately screened to prevent fish or wildlife entrapment or impingement. Cofferdams shall be constructed of non-polluting materials including sand bags, rock, and/or plastic tarps. Mineral soil shall not be used in the construction of cofferdams.

c) A biologist shall be on-site to survey, identify, and if necessary, remove and relocate aquatic organisms from the stream channel as flows are shifted into the clear water diversion in order to minimize mortality due to stranding.

d) Flowing water shall be cleanly bypassed and/or prevented from entering the work area through pumping or gravity flow, and cleanly returned to the stream below the work area. Flow diversions shall be done in a manner that prevents pollution and/or siltation and provides flows to downstream reaches.

e) The Permittee shall remove any turbid water and sediment present in the work area prior to restoring water flow through the project site, and place them in a location where they cannot enter the Waters of the State. Turbid water pumped from the work area may be used for construction purposes (compaction, dust abatement, etc.) or shall properly disposed of in an upland area where it will not drain to surface waters or wetlands. Once work is completed cofferdams shall be removed and stream flow restored.

2.6 Equipment shall not operate in a live (flowing) stream or wetted channel except as may be necessary to construct and remove in-stream structures to catch and contain water (i.e., cofferdams) to divert stream flow and isolate the work site, or as otherwise specifically provided for in this Agreement.

2.7 Any equipment or vehicles driven and/or operated within or adjacent to the stream channel shall be checked and maintained in a manner which prevents materials that, if introduced to water, could be deleterious to aquatic life, wildlife, or riparian habitat.

2.8 Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations unless specifically authorized to do so under this Agreement. The disturbed portions of any stream channel or banks shall be restored to as near their original condition as possible. Restoration shall include re-vegetation of areas stripped or exposed by project activities. Slash pack, rock, large wood, or other erosion protection suitable to CDFW shall be placed in areas where vegetation cannot reasonably be expected to become reestablished.

2.9 Adequate and effective erosion and siltation control measures shall be used to prevent sediment or turbid or silt-laden water from entering streams. Where needed, the Permittee shall use native vegetation or other treatments including native slash, jute netting, straw wattles, and geotextiles to protect and stabilize soils. Geotextiles, fiber rolls, and other erosion control treatments shall be made with wildlife-friendly, biodegradable[1] products that will not entrap or harm wildlife. Permanent erosion control products shall not contain synthetic (e.g., plastic or nylon) netting or materials.

2.10 All bare mineral soil outside the stream bed exposed in conjunction with crossing deconstruction, construction, maintenance or repair shall be treated for erosion prior to the onset of precipitation capable of generating run-off or the end of the yearly work period, whichever comes first. Erosion control shall include using native duff and slash or seeding and mulching with native seeds and slash. No known invasive grass, forb, or shrub seed shall be used.

2.11 Erosion control measures shall be monitored and maintained during and after major storm events. Modifications, repairs, and improvements to erosion control measures shall be made following storm events to prevent sediment from entering surface waters or wetlands as needed.

2.12 Encroachments and associated structures, fills, and other exposed soils shall be armored as needed to protect fill, abutments, and the stream channel and banks from erosion.

2.13 The Permittee shall provide site maintenance for the life of the structures, including, but not limited to, re-applying erosion control to minimize surface erosion and ensuring drainage structures, streambeds and banks remain sufficiently armored, stable, and capable of passing stream flows as designed. Following storm events,

2.14 Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the ordinary high water mark before such flows occur or the end of the yearly work period, whichever comes first.

2.15 Refueling of equipment and vehicles and storing, adding or draining lubricants, coolants or hydraulic fluids shall not take place within or adjacent to any stream. All such fluids and containers shall be disposed of properly. Heavy equipment parked within or adjacent to the stream shall use drip pans or other devices (e.g., absorbent blankets, sheet barriers or other materials) as needed to prevent soil and water contamination.

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[1] Photodegradable synthetic products are not considered biodegradable.

2.16 All activities performed in the field which involve the use of petroleum or oil based substances shall employ absorbent material designated for spill containment and clean up activity on site for use in case of accidental spill. Clean-up of all spills shall begin immediately. The Permittee shall immediately notify the State Office of Emergency Services at 1-800-852-7550 for all types of hazardous materials spills and incidents. CDFW shall be notified by the Permittee and consulted regarding clean-up procedures.

2.17 No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from construction work, or associated activity of whatever nature shall be allowed to enter into, or be placed where it may be washed by rainfall or runoff into Waters of the State. When operations are complete, any excess materials or debris within 150 feet of the stream channel shall be removed from the work area and disposed of properly prior to the first rainfall.

SITE-SPECIFIC MEASURES:

2.18 When existing culverts are removed for culvert replacement at PMs 0.95, 23.08, 23.60 and 23.87, all fill shall be excavated down to the original stream channel and outwards, horizontally, as wide as or wider than the natural channel to form a channel as close as feasible to the natural stream grade and alignment. Excavated fill shall be placed in stable areas where it cannot enter or erode into a stream.

2.19 Permanent culverts installed at PMs 0.95, 23.08, 22.69, 23.60 and 23.87 shall be sized to pass the estimated 100-year flood flow, including debris and sediment loads, without overtopping or diverting. Culvert sizing factors shall include transport of bedload, and the abundance and size of woody debris likely to be introduced to the stream upstream of the culvert crossing.

2.20 Permanent culverts and their outfall structures at PMs 0.95, 23.08, 22.69, 23.60 and 23.87 shall be aligned with the stream channel, as wide as or wider than the channel width, and shall be placed with the bottom set at or slightly below the natural streambed elevation to the maximum extent feasible. If permanent culverts cannot be set to grade, they shall have downspouts and/or energy dissipators below the outfall as needed to effectively control erosion. Downspouts shall be securely attached to the culvert and staked or otherwise anchored to the fill slope.

2.21 The following measures apply specifically to MPs 15.65, 22.69 and 23.43, and any other locations where concrete slurry may be used.

a) Groundwater and subsurface flow encountered during work with concrete slurry shall be contained or removed by placing in a tanker truck or settling basin or containment structure on stable soil outside of the channel. The settling basin shall not be allowed to drain to or be pumped to the stream unless the stored

water has a pH less than 9.0 and the water is less turbid than the stream flow into which it is released.

b) 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. When the 7-day National weather forecast of rain for Crescent City or Klamath at http://www.weather.gov includes a minimum of 5 consecutive days with any chance of precipitation, 3 consecutive days with a 30% or greater chance of precipitation, or 2 consecutive days of 50% or greater chance of precipitation, Permittee shall finish all work underway at crossings, immediately deploy erosion control materials after completing work, and refrain from starting any new work prior to the rain event. Erosion control measures shall be stockpiled on site if encroachment work occurs when the NWS forecast predicts a "chance" or greater (30% or more) of rain within the week following construction activity.

c) 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.

d) To prevent the release of materials that may be toxic to fish and other aquatic species, concrete slurry shall be isolated from surface water, and from subsurface water to the maximum extent feasible, and allowed to dry/cure for a minimum of 30 days. As an alternative, the Permittee shall monitor the pH of any water that has come into contact with the concrete. If this water has a pH of 9.0 or greater, the water shall be pumped to tanker truck or to a lined off-channel basin and allowed to evaporate or be transported to an appropriate facility for disposal. During the pH monitoring period, all water that has come in contact with poured concrete shall be isolated and not allowed to flow downslope or otherwise come in contact with fish and other aquatic resources. The water shall be retested until pH values become less than 9.0. Once this has been determined, the area no longer needs to be isolated. Results of pH monitoring shall be made available to CDFW upon request.

e) Water that has been in contact with uncured concrete shall be contained in a concrete washout facility, Baker tank, or other impervious container and shall not be discharged to surface or ground waters.

3. Reporting Measures

Permittee shall meet each reporting requirement described below.

3.1 Permittee shall notify CDFW within the 7-day period preceding the beginning of work permitted by this Agreement. Information to be disclosed shall include

Agreement number, and the anticipated start date. Subsequently, the Permittee shall notify CDFW no later than 7 days after the project is fully completed.

CONTACT INFORMATION

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

To Permittee:

Mr. Scott Lee
Caltrans
1656 Union St.
Eureka, CA 95501
Email: scott.lee@dot.ca.gov

To CDFW:

California Department of Fish and Wildlife
Northern Region
619 2nd Street
Eureka, CA 95501
Attn: Lake or Streambed Alteration Program
Notification No. 1600-2013-0343-R1
Fax: (707) 441-2021

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 Calif. Code Regs., Title 14, Section 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 Calif. Code Regs., Title 14, Section 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 Calif. Code Regs., Title 14, Section 699.5). CDFW shall process the extension request in accordance with FGC Section 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 (FGC Section 1605(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.dfg.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire ***three years*** from the effective date, 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 CALIFORNIA DEPT. OF TRANSPORTATION

Scott a. L — 2/28/14

Scott Lee — Date

Project Manager

FOR CALIFORNIA DEPT. OF FISH AND WILDLIFE

GORDON LEPPIG : FOR — 3/11/14

Curt Babcock — Date

Environmental Program Manager

Prepared by: JoAnn Dunn, Senior Environmental Scientist (Specialist), February 24, 2014