

DEPARTMENT OF FISH AND GAME

South Coast Region
4949 Viewridge Avenue
San Diego, California 92123
(858) 467-4201
FAX (858) 467-4235



February 22, 2002

City of Santa Barbara
Water Resources Division, Public Works Department
Attn: Rebecca Bjork
630 Garden Street, P.O. Box 1990
Santa Barbara, CA 93101

Dear Ms. Bjork:

Enclosed is Streambed Alteration Agreement #R5-2001-0303 that authorizes work on the Laguna Creek and El Estero Drain Maintenance and Restoration project impacting an unnamed drainage to Laguna Channel in Santa Barbara County. This action is authorized under Section 1600 of the Fish and Game Code and has been approved by the California Department of Fish and Game. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the Department filed a Notice of Determination (NOD) on the project on 02/25/02. Under CEQA regulations, the project has a 30-day statute of limitations on court challenges of the Department's approval under CEQA.

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

Please contact Natasha Lohmus at (805) 684-6281 if you have any questions regarding the Streambed Alteration Agreement.

Sincerely,

A handwritten signature in cursive script that reads "C.F. Raysbrook".

C.F. Raysbrook
Regional Manager

Enclosure

cc: Natasha Lohmus

J.A.

CALIFORNIA DEPARTMENT OF FISH AND GAME

Drive, Suite 9
Santa Barbara, CA 93109

Notification No. 5-2001-0303.

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AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Rebecca Bjork of City of Santa Barbara, Water Resources Division, Public Works, State of California, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 28th day of September, 2001, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of the following water(s): unnamed drainage to Laguna Channel, **Santa Barbara** County, California.

WHEREAS, the Department (represented by Natasha Lohmus) has made an inspection of subject area on the 2nd day of November, 2001, and has determined that such operations may substantially adversely affect existing fish and wildlife resources including: fishes (n/a), amphibians (pacific tree frogs), reptiles (southwestern pond turtle), songbirds (blackbirds, sparrows), raptors (), mammals (ground squirrel), native plants (cattails, saltgrass) non native plants (castor beans, eucalyptus, palm, fennel, milk thistle) and other aquatic and wildlife resources in the area.

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

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5901, 5931, 5937, and 5948, may result in prosecution.

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

11/10/06 RB W

This Agreement becomes effective on the Departments signature and the construction portion terminates on 11/10/06 This Agreement shall remain in effect until 11/1/06 to satisfy the mitigation/maintenance terms/conditions of this Agreement.

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: 5-2001-0303

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

2. The Operator proposes to alter the streambed to restore 520 feet of a drainage ditch leading to Laguna Channel. The drainage ditch will be relocated toward the rail road tracks, deepened, ~~widened to allow the existence of three islands~~, and replanted with native vegetation. A culvert will be replaced, and a small turtle ramp will be constructed at the outfall of the culvert, to allow the pond turtles better access to the ditch. ~~The City of Santa Barbara will provide water for the turtles during the dry periods.~~ The area now consists of non native weedy species such as castor bean, and has been sprayed to remove weed seeds. The ditch is located between El Estero Waste Water Treatment plant and the Union Pacific Rail Road tracks. The area is extremely impacted with homeless, and people using the area as a pedestrian corridor.

3. The agreed work includes activities associated with No. 2 above. The project area is located in **Santa Barbara** County, behind 520 Yanonali Street, and the rail road tracks, in downtown Santa Barbara. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator and shall be implemented as proposed, unless directed differently by this agreement. Contact **Rebecca Bjork** at **Phone: 805-897-1914** for additional information.

4. COPIES OF THIS AGREEMENT AND ALL REQUIRED PERMITS AND SUPPORTING DOCUMENTS, PROVIDED WITH NOTIFICATION OR REQUIRED BY THIS AGREEMENT SHALL BE READILY AVAILABLE AT WORK SITES AT ALL TIMES DURING PERIODS OF ACTIVE WORK.

5. The Operator shall request an extension of this agreement prior to its termination. Extensions may be granted for up to 12 months from the date of termination of the agreement and are subject to Departmental approval. The extension request and fees shall be submitted to the Department's Region 5 Office at the above address. If the Operator fails to request the extension prior to the agreement's termination, then the Operator shall submit a new notification with fees and required information to the Department. Any activities conducted under an expired agreement are a violation of Fish and Game Code Section 1600 et. seq.

<<WORK AREAS AND VEGETATION REMOVAL>>

6. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel or lake margin, within the high water mark of the stream or lake, shall be restored to their original condition under the direction of the Department.

7. Restoration shall include the revegetation of stripped or exposed work and/or mitigation areas with vegetation native to the area.

8. Vegetation removed from the stream shall not be stockpiled in the stream bed or on its bank. The sites selected on which to push this material out of the stream should be selected in compliance with the other provisions of this Agreement.

<<EQUIPMENT AND ACCESS>>

9. Staging/storage areas for equipment and materials shall be located outside of the stream/lake.

10. Vehicles shall not be driven or equipment operated in water covered portions of a stream or lake, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, except as otherwise provided for in the Agreement and as necessary to complete authorized work.

<<FILL AND SPOIL>>

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

<<STRUCTURES>>

12. The Operator shall construct an effective water velocity dissipation device at the outlet structure to minimize erosion, and a ramp to allow the southwestern pond turtle to access the culvert from Laguna Channel.

13. Installation of bridges, culverts, or other structures shall be such that water flow (velocity and low flow channel width) is not impaired. Bottoms of temporary culverts shall be placed at or below stream channel grade. Bottoms of permanent culverts shall be placed below stream channel grade.

14. Any temporary dam or other artificial obstruction, shall only be built from materials such as clean gravel which will cause little or no siltation, and shall be approved by the Department ~~20~~ prior to construction.

15. The drainage may be moved toward the rail road tracks, and shall be widened, *W* ~~to allow for the construction of~~ *large flat basking rocks shall be provided.* ~~no less than three islands.~~ The actual ditch shall contain several small meanders to slow the water. The drainage shall be deepened to allow water to pool and create ponds for the turtles. The new drainage shall be established prior to the existing drainage being filled in. The two drainages shall be separated by small unexcavated soil plugs during the project, and the plugs shall be removed and/or realigned upon completion, to close off the existing drainage, to prevent migration of species into the old drainage.

<<CLEAN UP>>

16. Structures and associated materials not designed to withstand high water flows shall be moved to areas above high water before such flows occur.

17. Any materials placed in seasonally dry portions of a stream or lake that could be washed downstream or could be deleterious to aquatic life shall be removed from the project site prior to inundation by high flows.

18. Areas of disturbed soils with slopes toward a stream or lake shall be stabilized to reduce erosion potential. Planting, seeding and mulching is conditionally acceptable. Where suitable vegetation cannot reasonably be expected to become established, non-erodible materials, such as coconut fiber matting, shall be used for such stabilization. Any installation of non-erodible materials not described in the original project description shall be coordinated with the Department. Coordination may include the negotiation of additional Agreement provisions for this activity.

19. If vacuum trucks are used to clean up any contamination, the vacuum hose shall be placed in a 3 to 4 square foot area, protected on all side by exclusionary fencing to prevent the uptake of any aquatic life.

<<POLLUTION, SEDIMENTATION, AND LITTER>>

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

21. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to insure compliance.

22. Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.

23. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream/lake shall be positioned over drip pans.

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

25. The clean-up of all spills shall begin immediately. The Department shall be notified

immediately by the Operator of any spills and shall be consulted regarding clean-up procedures.

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

27. Precautions to minimize turbidity/siltation shall be taken into account during project planning and shall be installed prior to construction. This shall require that the new channel be established prior to the existing channel being filled in. Precautions may also include placement of silt fencing, hay bales, sand bags, and/or the construction of silt catchment basins, so that silt, or other deleterious materials are not allowed to pass to downstream reaches. The method used to prevent siltation shall be monitored and cleaned/repared weekly. The placement of any structure or materials in the stream for this purpose, not included in the original project description, or Department approved water pollution/water diversion plan shall be coordinated with the Department. Coordination shall include the negotiation of additional Agreement provisions.

28. Upon Department determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation, shall be halted until effective Department approved control devices are installed, or abatement procedures are initiated.

29. Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement.

30. The work area shall be secured from trespass when (as determined by the Department) fish or wildlife resources are vulnerable to damage from unsupervised public access.

<<FISH AND WILDLIFE PASSAGE>>

31. Any structure/culvert placed within a stream where southwestern pond turtles do occur, shall be designed, constructed and maintained such that it does not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by turtles that impedes their upstream or downstream movement. This includes but is not limited to the supply of water at an appropriate depth, temperature, and velocity to facilitate upstream and downstream ^{Turtle} ~~fish~~ migration. If any aspect of the proposed project results in a long term reduction in turtle movement, the operator shall be responsible for all future activities and expenditures necessary (as determined by the Department) to secure passage of turtles across the structure.

<<RESTORATION/MITIGATION>>

32. An average 30 foot wide buffer of native vegetation shall extend along the mitigation area and all riparian and wetland drainages. the buffer shall serve to minimize the amount of light, noise, and other human generated impacts to the wildlife corridor. Native vegetation shall be used to create wildlife movement corridors between mitigation areas and areas designated as open space or construction/human habitation areas.

33. In order to determine if the revegetation techniques used have been successful, any plant species required that are listed below shall achieve the minimum growth at the end of three and five years. If the minimum growth is not achieved, then the Operator shall be responsible for taking the appropriate corrective measures as determined by Department representatives. The Operator shall be responsible for any cost incurred during the revegetation or in subsequent corrective measures.

SPECIES	SIZE AT PLANTING (GALLONS)	PLANTING CENTERS	HEIGHT	
			3 years	5 years
Arroyo Willow	1 gallon	8 ft	10 ft	15 ft
Sycamore	1 gallon	20 ft	5 ft	9 ft
Cottonwood	1 gallon	*	7 ft	12 ft
Scrub	1 gallon	20 ft	2 ft	4 ft
All Shrub species	1 gallon			

34. Planting, maintenance, monitoring and reporting activities shall be overseen by a specialist familiar with restoration of native plants.

35. All plants shall be planted in randomly spaced, naturally clumped patterns. The average planting densities shall meet the criteria specified above.

36. All planting shall have a minimum of 80% survival, by species, the first year and 100% survival thereafter and/or shall attain 75% cover after 3 years and 90% cover after 4 years for the life of the project. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 4 years after planting.

37. An annual report shall be submitted to the Department by Jan. 1 of each year for 4 years after planting. This report shall include the survival, % cover, and height by species of both trees and shrubs. The number by species of plants replaced, an overview of the revegetation and exotic plant control efforts, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.

38 All planting should be done, after the first wetting rains between October 1 and February 1 to take advantage of the winter rainy season, dormancy of foliage, and rooting period to

ensure optimum survival of plantings. Should the Operator be required to plant during other times of the year, chances of survival are diminished. To compensate for decreased survival rates, the Operator shall be required to augment the specified planting density by 25 % to account for the likelihood of increased mortality of plantings. Any restoration/planting shall be completed by 12/1/02.

39 The Department recommends that the landscaping within the open spaces and common areas of the development utilize native plant species. The use of invasive non-native plants is strongly discouraged.

40. The Operator shall provide irrigation when natural moisture conditions are inadequate to ensure survival of plants. Irrigation shall be provided for a period of at least two years from planting. Irrigation shall be phased out during the fall/winter of second year unless unusually severe conditions threaten survival of plantings. All plants must survive and grow for at least three years without supplemental water for the restoration phase of the project to be eligible for acceptance by the Department.

41. A coarse mulch shall be placed around tree plantings to minimize water loss and discourage weed growth. Mulch shall be 3 to 4 inches deep and shall be placed in a minimum area 1.5 times the diameter of the dripline of the plant or 2 feet in diameter, whichever is greater. The mulched area shall be maintained throughout the course of restoration, unless otherwise authorized in writing by the Department. Mulch shall not be placed directly against the main stem of the plants.

42. Plant material for revegetation shall be derived from cuttings, materials salvaged from disturbed areas, and/or seeds obtained from randomly selected native trees and shrubs occurring locally within the same drainage.

43. Any replacement tree/shrub stock, which cannot be grown from cuttings or seeds, shall be obtained from a native plant nursery, be ant free and shall not be inoculated to prevent heart rot. The Operator shall provide a list of all materials which must be obtained from other than onsite sources.

<<REMOVING NON-NATIVE VEGETATION>>

44. The Operator shall remove any non-native vegetation (tree tobacco, castor bean, giant cane, etc.) from the work area and shall dispose of it in a manner and a location which prevents its reestablishment. Removal shall be done at least twice annually during the spring/summer season, as needed, through the term of restoration.

45. Whenever possible, invasive species shall be removed by hand or by hand-operated power tools rather than by chemical means. Where control of non-native vegetation is required within the bed, bank, or channel of the stream, the use of herbicides is necessary, and there is a possibility that the herbicides could come into contact with water, the Operator shall employ only those herbicides, such as Rodeo (Glyphosate), which are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, which are approved for aquatic use.

46. The Operator shall apply any herbicides in accordance with state and federal law. No herbicides shall be used where Threatened or Endangered species occur. No herbicides shall be used when wind velocities are above 5 miles per hour.

47. No herbicides shall be used on native vegetation unless specifically authorized, in writing, by the Department.

<<PERMITTING AND SAFEGUARDS>>

48. If permits/certification are required from the Corps of Engineers/California Coastal Commission/Regional Water Quality Control Board for this project, all terms and conditions required in the permits/certification, more restrictive than in this agreement, shall be a part of this agreement and shall be enforceable by the Department.

<<PROTECTION FOR WILDLIFE AND AQUATIC SPECIES>>

49. The Operator's activities within the stream course shall be limited to the dry period of the year from May 1 to October 1 or when the stream is not actively flowing and no measurable rain is forecasted within 72 hours. If measurable rain is predicted within 72 hours during construction, all activities shall cease and protective measures to prevent siltation/erosion shall be implemented/maintained. Once flows resume, all work shall within the existing channel for the season. If the new drainage is still separate from the existing, work may continue in the new channel only.

50. The Operator shall not allow any activity within the bed, bank, and channel of the existing drainage from (March) to (August) the recognized breeding, egg laying season of the southwestern pond turtle, a species of concern. If activity is necessary within this period, a qualified biologist shall survey the area for any turtle activity. If non is found, the work may continue, but weekly surveys shall be completed to ensure the lack of turtle breeding.

51. A biological monitor shall be on site during operations and shall survey for species prior to construction. If any species are found in the path of construction, the monitor shall relocate the species to a safe location. Exclusionary fencing shall be erected to prevent the migration into or the return of species into the work site.

<<MAINTENANCE>>

52. The Operator may control weeds and grasses (by mowing, or hand labor) as necessary to comply with the restoration plan.

53. Except as otherwise permitted in this Agreement, the removal of soil, vegetation, and vegetative debris from the stream bed or stream banks is prohibited. The Operator shall remove all human generated debris, such as lawn and farm cuttings, garbage and trash. The Operator shall remove washed out culverts, and other construction materials, that the

Operator places within, or where they may enter the stream.

54. Spoil shall not be placed on the stream side slope, or where it could enter the stream. Spoil shall not be placed over vegetation except as specifically noticed to and accepted by the Department.

<<ADMINISTRATIVE-MISC.>>

55. All provisions of this Agreement remain in force throughout the term of the Agreement. Any provisions of the Agreement may be amended or the Agreement may be terminated at any time provided such amendment and/or termination is agreed to in writing by both parties. Mutually approved amendments become part of the original Agreement and are subject to all previously negotiated provisions.

56. If the Operator or any employees, agents, contractors and/or subcontractors violate any of the terms or conditions of this agreement, all work shall terminate immediately and shall not proceed until the Department has taken all of its legal actions.

57. The Operator shall **provide a copy of this Agreement, to all contractors, subcontractors, and the Operator's project supervisors. COPIES OF THIS AGREEMENT AND ALL REQUIRED PERMITS AND SUPPORTING DOCUMENTS, SHALL BE READILY AVAILABLE AT WORK SITES AT ALL TIMES DURING PERIODS OF ACTIVE WORK** and must be presented to any Department personnel, or personnel from another agency upon demand. **ALL CONTRACTORS SHALL READ AND BECOME FAMILIAR WITH THE CONTENTS OF THIS AGREEMENT.**

58. A pre-construction meeting/briefing shall be held involving all the contractors and subcontractors, concerning the conditions in this Agreement.

59. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities (**) and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 4949 Viewridge Avenue, San Diego 92123, Attn: ES. FAX Number (858) 467-4235. (**) The Department's signature on this agreement shall suffice for 5 day notice of intent to commence activities under this agreement.

60. The Operator herein grants to Department employees and/or their consultants (accompanied by a Department employee) the right to enter the project site at any time, to ensure compliance with the terms and conditions of this Agreement and/or to determine the impacts of the project on wildlife and aquatic resources and/or their habitats.

61. The Department reserves the right to cancel this Agreement, after giving notice to the Operator, if the Department determines that the Operator has breached any of the terms or conditions of the Agreement.

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

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

Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of the notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification as resulting in a substantial adverse effect on the environment and which will continue to substantially adversely affect the environment during the response period. The Operator may continue the specified activities if the Department and the Operator agree on a method to adequately mitigate or eliminate the substantial adverse effect.

CONCURRENCE

This Agreement becomes effective on the Departments signature and the construction portion terminates on 11/1/02. This Agreement shall remain in effect until 11/1/06 to satisfy the mitigation/maintenance terms/conditions of this Agreement.

This agreement was prepared by Natasha Lohmus

(Operator's name)

Anthony J. Nisich
Name (signature)

1-9-02
Date

Anthony J. Nisich
Name (printed)

Public Works Director
Title

California Department of Fish and Game

C. F. Raysbrook

02/25/02

C. F. Raysbrook
Regional Manager

Date

5-2001-0303