

CALIFORNIA DEPARTMENT OF FISH AND GAME

4949 Viewridge Avenue
San Diego, CA 92123

February 26, 2008

Notification No.

San Diego Creek Watershed - Level 3 Streambed Alteration Agreement Template

This template is for use as follows:

- Inside aquatic resource integrity areas as designated in the Special Area Management Plan (SAMP) for the San Diego Creek Watershed, Orange County California (U.S. Army Corps of Engineers, February 2008).
- Permanent impacts must be less than or equal to 0.1 acre.
- Requires pre-application coordination.
- Please be advised that no take for threatened or endangered species is authorized in this agreement. If any threatened or endangered species could be impacted by the work proposed, the operator shall obtain the required state and federal threatened and endangered species permit.

Eligible activities include: Utility Lines (construction and/or maintenance of new and existing facilities); Flood Control Facilities Maintenance (construction and/or maintenance of new and existing facilities); Road Crossings including Bridges and Culverts (construction and/or maintenance of new and existing crossings); Land Development for Residential, Commercial, Industrial, Institutional, and Recreational Facilities (construction and/or maintenance of new and existing land development and recreational facilities); Storm Water Treatment and Management Facilities (construction and/or maintenance of new and existing facilities); Habitat Restoration and Enhancement Projects (construction and/or maintenance of new and existing projects); and Fire Abatement and Vegetative Fuel Management Activities.

Note: Pre-developed templates will allow for greater predictability and faster processing. If project proponent desires a Level 3 Streambed Alteration Agreement (SAA), the arbitration process will be removed. If the project proponent disagrees, then a standard SAA or Master SAA (MSAA) will apply. Projects would have to demonstrate compliance with the California Environmental Quality Act (CEQA). The SAMP Program/WSAA Process EIS/EIR would suffice for CEQA clearance in some cases. Otherwise, local agencies or project proponents would prepare an additional CEQA document (tiered off of the SAMP Program WSAA Process EIS/EIR) to cover impacts not associated with a SAA.

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 _____, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1602 of the Fish and Game Code, the Operator, on the _____, notified the Department that they intend to divert or obstruct the natural flow

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of, or change the bed, channel, or bank of, or use material from the streambed(s) of the following water(s): _____

WHEREAS, the Department (represented by _____) has determined that such operations may substantially adversely affect existing fish and wildlife resources specifically including: fishes: amphibians: reptiles: birds: mammals: native plants: and all other aquatic and wildlife resources in the area, including the riparian vegetation which provides habitat for such species in the area.

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

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

This Agreement becomes effective the date of the Department's signature and the construction portion terminates on <date>. This Agreement shall remain in effect to satisfy the terms/conditions of this Agreement. Any provisions of the Agreement may be amended at any time provided such amendment 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.

Pursuant to Section 1600 et. seq., the Operator may request one extension of the Agreement; the Operator shall request the extension of this Agreement prior to its termination. The one extension may be granted for up to five years from the date of termination of the Agreement and is subject to Departmental approval. The extension request and fees shall be submitted to the Department's South Coast 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 construction/impacts conducted under an expired Agreement are a violation of Fish and Game Code Section 1600 et. seq. For complete information see Fish and Game Code Section 1600 et. seq.

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.

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Project Description:

1. The Operator intends to alter the streambed by *Project Description*
2. The agreed work includes activities associated with No. 2 above. *Project location described in detail, list by SAMP document also section of drainage and major stream outside of aquatic resource integrity area.*

Impacts:

3. The Operator shall not temporarily impact more than _____ habitat within the stream, and shall not permanently impacts more than _____ habitat within the stream.

Mitigation:

Mitigation Standards: Mitigation ratios shall be determined by standards set forth in the SAMP for calculating mitigation ratios. Please see Master Streambed Conditions List for detailed formulas for calculating mitigation ratios (included in Appendix D of Draft SAMP EIS/EIR).

Mitigation Conditions:

4. Mitigation for areas of temporary disturbance – The Operator shall mitigate with the restoration of *<insert habitat type>* habitat within the stream. Mitigation shall include the revegetation of stripped or exposed work areas within the banks, bed, and channel of the stream (including construction areas, access roads, etc.) with native vegetation local to the area.
5. Mitigation for areas of permanent disturbance – The Operator shall mitigate with the enhancement/restoration of ___ acres on-site with an additional ___ acres off-site. The location and type of restoration shall be approved by the Department within 30 days of execution of this Agreement. Mitigation shall be completed by *<date>*. *This condition would be excluded from any project only having temporary impacts.*

General Mitigation Success Criteria:

6. The Operator(s) shall submit a Final Habitat Mitigation and Monitoring Plan for Department review and written approval for all mitigation sites at least 60 days prior to commencing project activities. Plans for creation, restoration, and/or enhancement shall be prepared by persons with expertise in southern California ecosystems and native plant re-vegetation techniques. The plan should include at minimum: (a) the location of the mitigation site; (b) the plant species to be used; (c) a schematic depicting the mitigation area; (d) identification of suitable locations, soils, aspect, etc.; (e) time of year that the planting will occur; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) use of local propagules; (h) protection from herbivory; (i) success criteria; (j) a detailed monitoring program; and (k) contingency measures should the success criteria not be met.

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- An annual report shall be submitted to the Department by January 1st of each year for 5 years after planting. This report shall include the survival, % cover, and height of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.
- The Operator(s) shall have a qualified biologist conduct surveys of the mitigation area to document the bird, wildlife, and fish use of the site. The surveys shall be conducted at appropriate times of the year and day. Quarterly summary reports shall be submitted to the Department along with copies of all field notes. The surveys shall be initiated one year after the revegetation has occurred and shall continue until the monitoring of the revegetation site is completed or a minimum of 5 years.
- Survey techniques and scheduling shall be approved by the Department. Recovery shall be based on the presence/absence of "indicator" species which shall be proposed by the biologist and approved by the Department.
- The Operator(s) shall have a qualified biologist identify those areas of best opportunity on the site (e.g. adequate hydrology) and ensure the proper installation occurs no later than <date>. The Operator(s) shall have the biologist submit a letter report verifying the amount and location of the exotic eradication and installation of the native plants.

7. All plantings shall have a minimum of 80% survival the first year, 95% the second year, and 100% survival thereafter, and/or shall attain 75% cover of native woody species after 3 years and 90% cover of native woody species after 5 years until the end of the monitoring period. Nonnative species shall comprise less than 5% of the cover after 5 years. Invasive species shall comprise 0% of the cover at the end of the 5-year monitoring period. If the survival and cover requirements have not been met, the Operator(s) is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting. Irrigation shall be stopped two years prior to achieving the success criteria.

- If after 3 years of monitoring the mitigation meets the 5-year success criteria, AND the Department reviews and approves the mitigation status in writing, the Operator(s) may consider the sites have been successful and cease monitoring.
- The Operator(s) shall not be released from these maintenance and monitoring obligations until such time as the Operator has requested and received written concurrence from the Department that the success criteria have been met.
- The Department recommends the use of native plants to the greatest extent feasible in the landscape areas adjacent and/or near the mitigation/open space areas. The Operator(s) shall not plant, seed or otherwise introduce invasive exotic plant species to the landscaped areas adjacent and/or near the mitigation/open space areas. Exotic plant species not to be used include those species listed on Lists A&B of the California Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999." This list includes such species as: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom. A copy of the complete list can be obtained on the web site of the California Exotic Pest Council at <http://www.caleppc.org>. In addition, adjacent to the open space area, the landscaping should not use plants that require intensive irrigation, fertilizers,

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or pesticides. Water runoff from landscaped areas should be directed away from the open space and contained and/or treated within the development footprint. The Operator(s) shall submit a copy of the draft landscape/planting plan to the Department's representative for review at least 30 days prior to the acquisition and/or use of any plant materials (seeds or container plants) adjacent to the mitigation/open space site. A site visit by the Department representative to review the presence (or absence) of exotic pest plants is required prior to the Department's acceptance of the completed project.

- All planting shall be done between October 1st and April 30th to take advantage of the winter rainy season.
- 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(s) shall be responsible for taking the appropriate corrective measures as determined by Department representatives. The Operator(s) shall be responsible for any cost occurred during the revegetation or in subsequent corrective measures.

SPECIES	SIZE AT PLANTING	PLANTING CENTERS	HEIGHT	
			3 years	5 years
Arroyo Willow	PB	8 ft	10 ft	15 ft
	1 gallon	8 ft	10 ft	15 ft
Black Willow	PB	8 ft	12 ft	18 ft
	1 gallon	8 ft	12 ft	18 ft
Sandbar Willow	PB	5 ft	4 ft	6 ft
	1 gallon	5 ft	4 ft	6 ft
Red Willow	PB	8 ft	9 ft	15 ft
	1 gallon	8 ft	9 ft	15 ft
Cottonwood	1 gallon	*	7 ft	12 ft
	5 gallon	*	9 ft	15 ft
White Alder	1 gallon	*	6 ft	11 ft
	5 gallon	*	8 ft	13 ft

* = Depending if used as supplemental species (40 ft O.C.) or if dominate species (15 ft O.C.)

All Shrub species

1 gallon	**
5 gallon	**

** = Plant in naturalized clumps and randomly scattered.

8. If native trees have been removed from the stream's banks, they shall be replaced in-kind, and maintained until established, under the direction of a Department representative according to the following guidelines.

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- The Final Habitat Mitigation and Monitoring Plan shall also be designed to identify and meet the objectives of the successful establishment and long-term survival of riparian habitat. In addition, associated understory and early-successional native species must be planted and monitored along with trees to achieve viable habitat and adequately compensate for biological functions lost. Specific woodland and understory performance criteria for the riparian oak woodland habitat shall be monitored for a minimum of 10 years (5 years for understory) and shall meet the overall success criteria as described below.
- The location of the mitigation site shall avoid the conversion of other native habitats (e.g. coastal sage scrub) to oak riparian woodlands, and shall identify sites with appropriate soil water availability.
- An annual report shall be submitted to the Department by Jan. 1st of each year for 5 years (including years 7 and 10 for oak tree mitigation) after planting. This report shall include the survival, percentage of cover, and height of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photographs from designated stations shall be included.

Oak, Walnut, and Sycamore Woodland Success Criteria:

9. All tree plantings shall have a minimum of 80% survival the first year, 95% the second year, and 100% survival thereafter until the end of the monitoring period. All oaks, walnuts, and sycamores shall exhibit measurable annual growth in height and trunk girth, and no loss of the primary growth leader. Loss of the primary growth leader shall require the tree be replaced if this occurs in years 1-3. The maintenance and monitoring period shall be extended an additional five years where replacement plantings are required.

- The maintenance and monitoring period shall be 5 years for sycamores. Monitoring for oaks and walnuts shall be ten years.
- Trees shall be spaced in a manner that achieves the targeted planting density. Surviving trees should be well-distributed spatially across the planting area and any area greater than 400 square feet lacking surviving trees with measurable growth in years 1-3 shall receive replacement supplemental plantings, and the maintenance and monitoring period shall be extended an additional five years where replacement plantings are required.
- Nonnative species shall comprise less than 5% of the herbaceous cover after 5 years (minimum of 10 years for oak tree mitigation). Invasive species shall comprise 0% of the herbaceous cover at the end of the 5-year monitoring period (minimum of 10 years for oak tree mitigation). If the survival and cover requirements have not been met, the Operator(s) is/are responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting (minimum of 10 years for oak tree mitigation). Irrigation shall be stopped two years prior to achieving the success criteria (minimum of five years for oak tree mitigation).

Oak, Walnut, and Sycamore Tree Relocation:

10. The following Conditions shall be used whenever it is deemed appropriate to relocate any oak, walnut, and/or sycamore trees:

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- A complete inventory of plants by species and (diameter at breast height) (DBH), which will be removed shall be submitted to the Department within 30 days of signing this Agreement.
- No equipment shall be operated within the dripline of oaks. Protective fencing shall be placed around the drilling of oaks to prevent compaction of the root zone.
- The Operator(s) shall transplant oaks trees that are in good health and that are less than 30 inches DBH that will be removed as a result of project activities. The trees shall be boxed and transplanted (relocated) to an appropriate location on-site. If a tree is damaged or destroyed during the boxing or transplanting (relocating of the tree), this information shall be noted as damaged/destroyed in the field notes by a biologist and shall be mitigated for as described in this Agreement. All transplanting of trees shall be conducted by a certified arborist experienced with transplanting oaks and other native trees and shall be monitored by a biologist. All transplanted trees shall be monitored for ten years after they were transplanted.
- Any oaks and walnuts 30 inches DBH or greater or oaks which are damaged/destroyed shall be replaced on-site and/or off-site, and in-kind. The replacement ratios for trees which are damaged and/or destroyed shall be as follows: trees less than 5 inches DBH shall be replaced at 3:1; trees from 5 to 12 inches shall be replaced at 5:1; and trees from 12 up to 36 inches shall be replaced at 10:1; and all trees 36 inches or greater shall be replanted at a ratio of 20:1. The Department recommends that the Operator(s) use rooted plants in liners, acorns or walnuts, or one gallon containers for restoration to increase the likelihood of survival of plantings.
- The Operator(s) shall submit to the Department for review and approval a tree mitigation plan. The plan shall include: a tree inventory that identifies the trees (by identification number) damaged due to encroachment within the dripline, destroyed (due to size or accidental during transplanting), and transplanted; the number replacement trees planted; the number of trees transplanted; monitoring and maintenance procedures; success standards; and contingency measures. This mitigation plan shall be submitted within 30 days following completion of the tree removal.
- All trees shall be monitored for survival annually. Any replacement tree that does not survive shall be replaced in-kind. Any transplanted trees that do not survive or appear unhealthy due to transplanting during the 10-year monitoring period shall be replaced. Replacement plants shall be monitored with the same survival and growth requirements for 10 years after planting.
- Sycamores shall be replaced in kind at a 10:1 ratio.
- All replacement tree stock shall be obtained from a native plant nursery, and shall not be inoculated to prevent heart rot.

11. 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.

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12. 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.

13. 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.

14. In order to ensure the success of mitigation, the Operator(s) shall provide the Department financial security (e.g. an irrevocable letter of credit, pledge savings account or CD) in the amount of \$ _____, that specifically references this Agreement, and shall be submitted to the Department for approval prior to initiation of construction activities. The Department may not accept a bond unless the form of the bond has been approved as to conformity with applicable law by the Attorney General as required in Section 11110 of the Government Code. The financial security shall be for assuring compliance with the mitigation, monitoring, and report requirements, and shall be based on a cost estimate which shall be submitted to the Department for approval within 30 days of signing this Agreement. The security instrument shall stipulate that in the event of a default, the Department shall be entitled to relief in the form of cash only. Should any legal action be necessary to enforce or interpret the terms of the security instrument, the Department, as a prevailing party, shall be entitled to collect reasonable attorney's fees from the losing party. The security instrument may be subject to partial reduction upon completion and acceptance of certain work by the Department.

15. Wildlife conservation easements shall be recorded on all on-site and off-site mitigation areas to protect existing fish and wildlife resources in perpetuity. The easement shall be in favor of the Department or its designated agent and shall be recorded within one year of signing this Agreement, or as extended by the Department. An offer of dedication shall be made prior to initiation of construction activities. The conservation easement shall have a \$ _____ endowment. The form and content of the easement shall be approved by the Department's Office of the General Counsel prior to its execution. The Office of the General Counsel may be reached at (916) 445-9648.

Resource Protection:

16. The Operator shall not remove or otherwise disturb vegetation or conduct any other project activities on the project site from March 15th to September 1st to avoid impacts to native breeding/nesting birds. If work during the breeding/nesting season can not be avoided, the Operator shall have a qualified biologist survey all breeding/nesting habitat within the project site and adjacent to the project site for breeding/nesting birds prior to construction or site preparation activities. Surveys shall begin no later than June 1st. Surveys shall be conducted a minimum of 3 times spaced 3 to 5 days apart and ending no more than 3 days prior to the onset of construction. Documentation of findings, including negative findings, must be submitted to the Department for review and concurrence. If no breeding/nesting birds are observed and concurrence has been received from the Department, site preparation and construction activities may begin. If breeding activities and/or an active bird nest is located and concurrence has been received from the Department, the breeding habitat/nest site shall be fenced a minimum of 300 feet (500 feet for raptors) in all directions, and this area

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shall not be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the project.

17. No direct or indirect impacts shall occur to any threatened or endangered species. If any threatened or endangered species could be impacted by the work proposed, the Operator shall obtain the required state and federal threatened and endangered species permits. The Operator shall contact the Department's Environmental Scientist _____ at _____ to obtain information on applying for a "Take Permit" for state listed species.

18. If threatened or endangered avian species are observed in the area, no work shall occur during the breeding season (March 15th through September 15th) to avoid direct or indirect (e.g., noise) take of listed species except as authorized by state and/or federal threatened/endangered species permits/authorizations which may be required prior to commencing project activities. This Unauthorized take of such listed species may result in prosecution and cancellation of this Agreement. If no permit is required then the following conditions shall apply.

- If _____ is found in the proposed work area, or is in a location which could be impacted by the work proposed, the Operator(s) shall submit a plan to the Department for review and approval to ensure this species is protected. If the work requires that the species be removed, disturbed or otherwise impacted, the Operator(s) shall obtain the appropriate state and federal endangered species permits/authorizations. *(Please fill in blank with the identified species)*
- In order to protect state and/or federally listed avian species, all construction activities within the streambanks must be done with hand equipment and must not exceed ambient sound levels of 60 Db measured with hand-held meters on the water's surface.

19. If any sensitive species are observed in project surveys, the Operator shall cause a California Native Species Field Survey Form and survey map to be submitted to the California Natural Diversity Database (CNDDDB) within five working days of the sightings. The form is available on-line at <http://www.dfg.ca.gov/whdab/natspec.pdf>, and instructions for completing the form are available at <http://www.dfg.ca.gov/whdab/fsfinst.pdf>. The form and survey map shall be sent to the Department of Fish and Game, California Natural Diversity Database, 1807 13th Street, Suite 202, Sacramento, CA 95814, with copies sent to the Department at 4949 Viewridge Avenue, San Diego, CA 92123, Attn: Streambed Alteration Program - SAA # _____.

20. Be advised, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918(50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).

21. The Operator shall avoid work March 15th through September 1st on bridges when it would disturb nesting swallows. If such a condition cannot be met, then prior to March 1st of each year, the Operator shall remove all existing nests which would be destroyed by the project. The Operator shall continue to discourage new nest building in places where they would be disturbed using methods approved by (California Department of Transportation) Caltrans and the Department. Nest removal and hazing must be repeated at least weekly

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until construction begins or until a swallow exclusion device is installed. The exclusion device must provide a space of four to six inches for the passage of snakes at the bottom edge. Nests must be discouraged throughout the term of the project. At no time shall occupied nests be destroyed as a result of project construction.

22. A qualified biological monitor with all required collection permits shall be on site during operations and shall survey for species prior to maintenance activities. If any life stages of any native vertebrate species are found in the path of construction, the monitor shall relocate the species to a safe location.

23. The Operator(s) shall have a qualified biologist survey the proposed work area to verify the presence or absence of the following sensitive species *<list species to be surveyed>*. The results of these surveys shall be provided to the Department, along with copies of all field notes, prior to the initiation of work. The survey technique shall be approved by the Department in writing and the researcher shall have the required permits.

24. Prior to construction activities, the area shall be surveyed for *<list species to be surveyed>*. (e.g., southwestern pond turtle, arroyo toad) by a qualified on-site biologist to ensure that no direct or indirect impacts shall occur to *<list species to be surveyed>* (e.g., southwestern pond turtle, arroyo toad,) as a result of the proposed project. If *<list species to be surveyed>* (e.g., turtles, toads, etc.) are present, the specialist shall submit a *<list species to be surveyed>* (e.g., Pond Turtle, Arroyo Toad,) Mitigation Plan to the Department and it shall include complete avoidance measures for Department review and approval, prior to project initiation. Mitigation and monitoring guidelines for turtles and toads can be found in Appendix D, DFG master conditions list.

25. The Operator's activities shall be limited to the period of _____(hours, days, weeks, months, years) from _____ (date) to (date). *(Specific dates will be dependent upon the identified species)*

26. Prior to work commencing at a bridge site, the Operator(s) shall have a qualified bat biologist survey the bridge structure for bats a minimum of 3 times, seven-days apart; unless a positive presence is determined then surveys can be ended. If bats are found to be present, provisions for their protection/conservation shall become part of this Agreement. If loss of significant bat roosting habitat occurs due to the implementation of the project, protection measures shall include the installation of roosting structures below the deck, at Department approved locations. The Department shall be provided all supplemental protection measures for its review and written approval.

27. Prior to the construction of each phase of the project, the Operator(s) shall conduct additional field surveys between the period of February to July to verify the absence of any rare, threatened, endangered, or other special-status plant or animal species in specific areas proposed for development. In the event that special-status plants or animals are identified in the surveys, the Operator(s) shall consult with the U.S. Fish and Wildlife Service and the Department for the development of appropriate plans for those special-status species impacted by the proposed project.

28. The Operator shall install and use fully covered trash receptacles with secure lids

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(wildlife proof) to contain all food, food scraps, food wrappers, beverage and other miscellaneous trash.

29. The Operator shall not permit pets on or adjacent to the construction site.

30. The Operator shall ensure that no guns/or other weapons are on-site during construction, with the exception of the security personnel and only for security type functions. No hunting shall be authorized/permitted during construction.

31. No work shall be conducted within the flowing or ponded water within the river unless otherwise authorized by this Agreement.

32. No diversion, dams, or restriction of flows is authorized within this Agreement.

33. The Operator's activities shall be limited to the period of daylight hours.

34. The Operator's activities within the stream course shall be limited to the dry period of the year from May 1st to October 1st and/or when the stream is not actively flowing and no measurable rain is forecasted within 72 hours by the National Weather Service. 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.

33. If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed and shall be flushed, hazed, or herded in a safe direction away from the project site.

34. At the end of each work day, an escape ramp shall be placed at each end of the open trench to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of earthen fill, wood planking or other suitable material that is placed at an angle no greater than 30 degrees.

35. All sections of pipe shall be visually checked for the presence of wildlife sheltering within them prior to the pipe sections being placed in the trench and attached together, or shall have the ends capped while stored on site so as to prevent wildlife from entering. After attachment of the pipe sections to one another, whether in the trench or not, the exposed end(s) of the pipeline shall be capped at the end of each day during construction to prevent wildlife from entering and being trapped within the pipeline.

Fish and Aquatic species Passage:

36. When any dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain aquatic life below the dam pursuant to Fish and Game Code section 5937.

37. An adequate fish passage facility shall be incorporated into any barrier that obstructs fish passage.

38. Any structure/culvert placed within a stream where fish do/may 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 fish that impedes their upstream or downstream movement. This includes but is not limited to the supply of

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water at an appropriate depth, temperature, and velocity to facilitate upstream and downstream fish migration. If any aspect of the proposed project results in a long term reduction in fish movement, the operator shall be responsible for all future activities and expenditures necessary (as determined by the Department) to secure passage of fish across the structure.

39. No work shall be conducted within the flowing or ponded water within the river which has potential to support steelhead. Adult steelhead are expected to be in the area during periods of high flow (January through March) and smolt are likely to be in the area during periods of receding flows (March to July). The Operator shall not work during these times. National Marine Fisheries Service (NMFS) Biologist shall be contacted to coordinate additional fish salvage and avoidance measures.

40. Permanent structures shall be designed, constructed, and maintained such that they do not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by fish 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 fish migration. If any aspect of the proposed project results in a long term reduction in fish movement, the Operator shall be responsible for all future activities and expenditures necessary (as determined by the Department) to secure passage of fish across the structure.

41. The owner of any dam shall allow sufficient water at all time to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the Department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the Department, it is impracticable or detrimental to the owner to pass the water through the fishway (FG Code 5937).

42. If flowing or ponded water is within the proposed work limits, the Operator shall telephone the fishery biologist, [<Department contact>](#), prior to commencing activities within the bed, bank, and channel. The Operator shall leave his/her name, date and time called, telephone number, the stream name, work location, nature of planned activities and proposed schedule.

43. If flowing or ponded water is within the proposed work limits, the Operator shall have a qualified fisheries biologist survey the proposed work area to verify presence/absence of the any sensitive fish species and any other species of special concern which may occur within the area. Survey methods shall conform to the current NMFS and the Department. If any threatened or endangered species are found, the Operator shall cease all work within a mile radius of the sighting and in all water (flowing or impounded) and shall contact the Department within 24 hours of the sighting and shall request an onsite inspection by the Department representative (to be done at the discretion of the Department) to determine if work shall proceed. The results of the surveys shall be provided to the Department along with copies of all field notes prior to the completion of work or as otherwise specified. The survey techniques shall be approved by the Department in writing and the researcher shall have the required State and federal permits.

44. The Operator shall report all fish mortality immediately to the Department's Fisheries Biologist, [<Department contact>](#). The Operator shall report all rainbow trout/southern steelhead trout to [<Department contact>](#).

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45. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at or below stream channel grade and bottoms of permanent culverts shall be placed below stream channel grade.
46. All temporary culverts shall be of adequate size to handle a 10-year storm event and shall be removed prior to the winter storm period (first winter rain).
47. All permanent culverts shall be sized to accommodate a 100-year storm event.
48. Bottom of bridge superstructure shall be of sufficient height to allow maximum water flows generated during 100-year high intensity storms to pass beneath unrestricted.
49. The inlet of all permanent culverts shall be protected by the placement of head walls that shall be constructed of rock riprap, gabions, concrete or other suitable nonerrodible material. To prevent undercutting, the head walls shall be keyed in place.
50. Culverts shall be long enough to extend completely beyond the toe of the fill (unless both the up and downstream sides of the fill are adequately protected to the maximum high-water mark).
51. Permanent culverts that cannot be installed at grade must have an energy dissipater at the outlet to prevent erosion of streambed and banks.
52. Permanent culverts shall be maintained and kept open year-round. The Operator or responsible party is responsible for such maintenance as long as the culvert remains in the stream.
53. Plans for design of concrete sills and other features that could potentially impede fish/aquatic migrations shall be approved by the Department.
54. Instream structures not designed to withstand high seasonal water flows and materials that could be deleterious to aquatic life shall be removed from the project site prior to inundation by high flows. Any barrier to the movement of aquatic life must be removed.
55. All instream structures shall be designed so that no sudden change in stream velocity shall occur above, below, or in the structure. If a sudden change in stream velocities occurs upon installation of the structure, the structure shall be removed immediately.
56. Pump intakes placed in stream/lake water shall be fitted with (1/4) inch or smaller mesh screens.
57. An area not to exceed 5 feet from the existing pump intake may be dredged as required to maintain the efficient operation of said pump
58. All diversion channels shall be designed to maintain velocities at levels acceptable to all fish/aquatic species.

Work Areas and Vegetation Removal:

59. 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.

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60. Due to the presence of native riparian vegetation, all vegetation clearing shall be conducted under the supervision of a qualified biological monitor, and the perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat, and to ensure that direct and indirect impacts to fish or wildlife, in particular birds and pond turtles, are avoided.
61. The work area shall be flagged to identify its limits within the stream. Vegetation shall not be removed or intentionally damaged beyond these limits. In sensitive areas the Operator(s) shall use temporary construction fencing to identify the agreed limits of disturbance within the stream.
62. In areas of temporary disturbance where vegetation must be removed native trees and shrubs with DBHs of 3 inches or less shall be cut to ground level with hand operated power tools rather than by grading. Vegetation maybe pruned to keep it out of the way of the equipment. Pruned vegetation pieces shall be salvaged to utilize in the revegetation of the site.
63. 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.
64. No living native vegetation shall be removed from the channel, bed, or banks of the stream, except as otherwise provided for in this Agreement.
65. A small amount of selective trimming of native species (e.g. willow, oak and sycamore) may occur to prevent overspray of herbicide from reaching these branches, but only as provided within the conditions of this Agreement. Native vegetation may only be trimmed; individual plants shall not be removed. Material in excess of three (3) inches DBH shall require specific notice to and consultation with the Department.

Equipment and Access:

66. No equipment shall be operated in ponded or flowing areas. When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around the work area by a barrier, temporary culvert, new channel, or other means approved by the Department. Location of the upstream and downstream diversion points shall be approved by the Department. Construction of the barrier and/or the new channel shall normally begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Diversion berms shall be constructed of onsite alluvium of low silt content, inflatable dams, sand bags, or other approved materials. Channel banks or barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock rip-rap, or other protective material. The enclosure and the supportive material shall be removed when the work is completed and removal shall normally proceed from downstream in an upstream direction. The Operator shall obtain all written approvals from the Department prior to initiation of construction activities.
67. Staging/storage areas for equipment and materials shall be located outside of the stream/lake.
68. The equipment and vehicles shall be clean and free of any weed seeds prior to delivery to the site
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69. 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.

70. Access to the work site shall be via existing roads and access ramps. Any ramp shall be revegetated and barrier placed (boulders) upon completion of the project to ensure access is eliminated to the streambed.

71. Vehicles may be driven on the stream/lake bed to traverse the distance to the work site from the access point, and in the work area, and only as necessary to accomplish authorized work.

Fill and Spoil:

72. The Operator shall submit Final Plans to the Department prior to start of construction.

73. Fill length, width, and height dimensions shall not exceed those of the original design/installation or the original naturally occurring topography, contour, and elevation. Fill shall be limited to the minimal amount necessary to accomplish the agreed activities. Except as otherwise specified in this Agreement, fill construction materials other than on-site alluvium, shall consist of clean silt-free gravel or river rock.

74. All fill materials shall be obtained from upland sources, and must be weed free.

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

76. To facilitate restoration, the Operator shall salvage native topsoil (the top 6- to 12-inch deep soil layer containing organic material) from the worksite prior to construction. Following construction, salvaged topsoil shall be returned to the work area/placed in the restoration site.

77. The Department recommends the following methods for salvaging, stockpiling, and replacing topsoil:

- Salvaged topsoil material should be stockpiled in a location where it is unlikely to be disturbed during construction in piles which do not exceed 8 feet in height (3 feet if stored more than one year),
- The soil should be maintained in a weed-free condition during storage.
- Following completion of construction, the topsoil should be tested to determine if it is suitable for restoration, and amended if necessary to encourage growth.
- Graded slopes should be maintained in a weed free state prior to revegetation. Construction areas should be prepared in a manner so as to prevent soil compaction in the upper 1 to 2 feet.
- A minimum 4 inch deep layer of topsoil should be distributed in the area to be revegetated. and;

The area should be rolled with a sheepsfoot roller to bind the soil layers.

78. 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:

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

80. 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.

81. 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.

82. Rock rip-rap may be placed in areas where other methods of bank protection are not possible. Voids between the rip-rap shall be filled with soil to allow vegetation to grow. Revegetation shall be required within the rip-rap (see the mitigation section).

83. This Agreement does not authorize the construction of any temporary or permanent dam, structure, or flow restriction except as described in the Operator's notification.

Pollution, Sedimentation, and Litter:

84. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products or any other substances which could be hazardous to aquatic life, or other organic or earthen material from any logging, construction, or other associated project related activity shall be allowed to contaminate the soil and/or enter into or placed where it may be washed by rainfall or runoff into, 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. 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.

85. The Operator shall remove all broken pieces of asphalt and other debris that has fallen into the streambed.

86. 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.

87. 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.

88. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream/lake shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak. Clean up equipment such as extra boom, absorbent pads, skimmers, shall be on site prior to the start of dredging.

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89. 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.

90. 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.

91. Equipment shall not be operated in wetted areas (including but not limited to ponded, flowing, or wetland areas) without the prior written approval of the Department.

92. Precautions to minimize turbidity/siltation shall be taken into account during project planning and shall be installed prior to construction. This may require that the work site be isolated and that water be diverted around the work area by means of a barrier, temporary culvert, new channel, or other means approved by the Department. Precautions may also include placement of silt fencing, straw 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.

93. Operator shall take all necessary steps to contain sediment and reduce stream turbidity when the work area(s) are rewatered. Operator shall install an appropriate sediment control device downstream of the work area to filter sediment. Acceptable materials include silt fence, straw bales, or other appropriate devices to prevent sediment runoff during rewatering activities. Silt control shall remain in place only until the water running through the work area is clear of sediment.

94. Prior to commencing construction, the Operator shall submit to the Department for review and approval, the proposed storm water pollution prevention plan for this project. The plan shall be consistent with the terms and conditions of this Agreement. Any terms and conditions in the final Agency approved water diversion/water pollution plan which are more restrictive than in this Agreement shall be a part of this Agreement and shall be enforceable by the Department. Any changes 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.

95. Temporary fills shall be constructed of non-erodible materials and shall be removed immediately upon work completion, and shall be approved by the Department prior to implementation.

96. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.

97. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

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98. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.

99. 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.

100. 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.

Permitting and Safeguards:

101. The Department believes that permits/certification may be required from the U.S. Army Corps of Engineers/Regional Water Quality Control Board for this project, should such permits/certification be required, a copy shall be submitted to the Department.

Administrative:

102. 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.

103. All project resident engineers, project engineers, project inspectors, contractors, and subcontractors, participating in this project, must read and understand all terms and conditions of this Agreement and shall abide by the terms and conditions stated herein.

104. 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.

105. The Operator shall provide a copy of this Agreement, and all required permits and supporting documents provided with the notification or required by 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 site 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.

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

107. 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) 467-4299, Reference #

108. 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.

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

110. 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.

111. 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.

112. 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

(Operator's name)

Name (signature) Date

Name (printed)

Title

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California Department of Fish and Game

Date

Environmental Program Manager
South Coast Region