

**DEPARTMENT OF TRANSPORTATION**

CALTRANS DISTRICT 5  
50 HIGUERA STREET  
SAN LUIS OBISPO, CA 93401-5415  
PHONE (805) 549-3101  
FAX (805) 549-3329  
TTY 711  
[www.dot.ca.gov/dist05/](http://www.dot.ca.gov/dist05/)



*Making Conservation  
a California Way of Life.*

RECEIVED

MAR 14 2019

MPWMD

March 6, 2019

MON/1/72.35  
SCH#2019029145

Mr. Larry Hampson  
Monterey Peninsula Water Management District  
P.O. Box 85  
Monterey, CA 93942

Dear Mr. Hampson,

The California Department of Transportation (Caltrans), District 5, Development Review, has reviewed the Notice of Preparation (NOP) for the Modification of the Extent of the Carmel River Riparian Corridor. Caltrans offers the following comment in response to the NOP:

1. Please be aware that if any work is completed in the State's right-of-way it will require an encroachment permit from Caltrans, and must be done to our engineering and environmental standards, and at no cost to the State. The conditions of approval and the requirements for the encroachment permit are issued at the sole discretion of the Permits Office, and nothing in this letter shall be implied as limiting those future conditioned and requirements. For more information regarding the encroachment permit process, please visit our Encroachment Permit Website at: <http://www.dot.ca.gov/trafficops/ep/index.html>.

Thank you for the opportunity to review and comment on the proposed project. If you have any questions, or need further clarification on items discussed above, please contact me at (805) 549-3157 or email [christopher.bjornstad@dot.ca.gov](mailto:christopher.bjornstad@dot.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Chris Bjornstad".

Chris Bjornstad  
Transportation Planner

**EXHIBIT 21-C**

**From:** Larry Hampson  
**Sent:** Thursday, March 07, 2019 8:26 AM  
**To:** 'Bjornstad, Christopher@DOT'  
**Subject:** RE: Caltrans Comment Letter (Carmel River Riparian Corridor)

Thank you. Any permits issued along the Carmel River by MPWMD require the project proponent to obtain all necessary local, State, and Federal permits/authorizations prior to initiating work. I believe the only CALTRANS easement or ROW across the Carmel River is at Highway 1.

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
5 Harris Ct., Bldg G, Monterey CA 93940  
P.O. Box 85, Monterey CA 93942  
OFFICE: (831) 658-5620  
FAX: (831) 644-9560 or MOBILE: (831) 238-2543  
<http://www.mpwmd.net/>



**From:** Bjornstad, Christopher@DOT <[Christopher.Bjornstad@dot.ca.gov](mailto:Christopher.Bjornstad@dot.ca.gov)>  
**Sent:** Wednesday, March 06, 2019 4:34 PM  
**To:** Larry Hampson <[Larry@mpwmd.net](mailto:Larry@mpwmd.net)>  
**Subject:** Caltrans Comment Letter (Carmel River Riparian Corridor)

Good Afternoon,

Please see the attached Caltrans District 5 comment letter for the Modification of the Extent of the Carmel River Riparian Corridor. An original copy has been sent via mail. If you have any questions please let me know.

Thanks,  
Chris Bjornstad  
Caltrans, District 5  
Transportation Planner  
(805) 549-3157



**EXHIBIT 21-C**



April 26, 2019

Renée Robison, Environmental Scientist  
State of California – Natural Resources Agency  
Department of Fish and Wildlife  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710

**SUBJECT: Comments on Carmel River Riparian Corridor Update (Project)  
Draft Mitigated Negative Declaration  
Schedule #2019029145**

Dear Ms. Robison:

This is a response to the comment letter dated April 2, 2019 (received April 3, 2019) from the California Department of Fish and Wildlife (CDFW) concerning the above Project. A copy of that letter with comments numbered is attached. The Monterey Peninsula Water Management District (MPWMD or District) intends to hold a public hearing concerning approval of this Project and the Draft Mitigated Negative Declaration (MND) at its May 20, 2019. A Final MND will be prepared to reflect comments received and the District's responses.

**Overview and General Response to CDFW comment letter**

MPWMD understands and has many of the same concerns as CDFW about preventing or reducing potential impacts to the Riparian Corridor from activities within the Carmel River. However, there appears to be a significant difference in the understanding of this Project between CDFW and MPWMD.

Extending the District's jurisdiction further upstream from its present limit is fundamentally a programmatic decision that does not involve a physical change to the environment. What this Project would do is enable the District to take further specific actions prior to authorizing a physical change to the river. This latter action occurs through the District's River Work Permit process, which includes an application to MPWMD for a permit, identification of site-specific potential impacts, and mitigation measures to reduce potential impacts.

MPWMD believes that most of CDFW's concerns and recommended mitigation measures would be better addressed by amending the existing Routine Maintenance Agreement (RMA) that MPWMD has with CDFW (RMA 1600-2013-0053-R4 – attached). An amendment would include extending the geographical limit that the RMA covers to be coincident with MPWMD's jurisdictional limit and could include additional mitigation measures under RMA section

## **EXHIBIT 21-C**

California Department of Fish and Wildlife  
April 26, 2019  
Page 2 of 7

“Protective Measures to Protect Fish and Wildlife Resources” that CDFW would recommend. The District has entered into a similar administrative arrangement with the Corps of Engineers for activities along the Carmel River that are covered by Regional General Permit 244600S. For a project proposed by a property owner along the river, MPWMD acts as an administrator to determine if a project is consistent with the RGP, notifies the Corps (and other agencies involved with the RGP), and follows through with a MPWMD River Work Permit that includes a condition requiring the project sponsor to comply with the requirements in the Corp permit. MPWMD believes that adding a standard condition into the MPWMD River Work Permit that a project sponsor must comply with the requirements described in the CDFW RMA (or an amended RMA) should satisfy concerns about MPWMD extending its jurisdiction in the Riparian Corridor along the Carmel River.

In addition to the above response, MPWMD has these specific responses to CDFW comments.

### **CDFW-1: P. 3 Comments and Recommendations**

Comment: “As currently drafted, the MND does not contain any mitigation measures specific to minimize impacts to biological resources.”

Response: District Rule 127 RIVER WORK PERMITS, Section 5. b, as proposed to be amended, states that in order to grant a permit the District must make a finding that the project work “...does not degrade habitat value and appears to be visually compatible with the natural appearance of the river channel, banks and Riparian Corridor.”

District staff are broadly qualified in botany and biological fields and in some cases, such as fisheries biology, are certified as experts by the American Fisheries Society. These staff review applications to determine if there would be impacts. The District can impose mitigation measures for potential impacts that fall within the District’s regulatory powers, such as vegetation removal, grading, or that actions could directly impact sensitive species.

### **CDFW-2: P. 3 Comments and Recommendations**

Comment: “...these [mitigation] measures [for proposed Projects] do not include Notification to CDFW, may not be enforceable, and may themselves result in violation of Fish and Game Code if CDFW is not Notified.”

Response: When the District receives a River Work Permit application, staff ordinarily advises Project sponsors that other local, State, and Federal laws and ordinances may apply to proposed work. In all cases, the District includes a condition in a River Work Permit that states it is the responsibility of the permit holder to obtain all other applicable authorizations for work. The permit holder must acknowledge in writing the conditions under which river work is permitted in order have a valid permit. In some cases, the District provides a copy of a River Work Permit to other agencies. As described above, when a project sponsor proposes a project or applies for a

## **EXHIBIT 21-C**

California Department of Fish and Wildlife  
April 26, 2019  
Page 3 of 7

River Work Permit, the District can include a requirement to comply with the CDFW RMA. Concerning the enforceability of measures that the District would require to mitigate for potential impacts, the District has broad powers to enforce its Rules and Regulations.<sup>1</sup> Enforcement measures include fines, recording a notice of non-compliance on a property title, filing a lawsuit, and imposition of a lien.

The District agrees that if a property owner does go forward with work described in a River Work Permit without notifying CDFW and that work is within the jurisdiction of CDFW, the property owner may be in violation of Fish and Game Code. However, the District has no authority to enforce Fish and Game Code. Should CDFW become aware of such a situation concerning an otherwise valid MPWMD River Work Permit, MPWMD can cooperate with CDFW to address this situation with measures such as halting work and/or issuing a Notice of Non-Compliance.

### **CDFW-3: P. 3 Comments and Recommendations**

Comment: “CDFW advises inclusion of enforceable measures in the CEQA document prepared for this Project, as well as to any future tiered projects falling under the District's jurisdiction, to inform any potential permitting needs.”

Response: Please see **Overview** response. Also, concerning enforceable measures for this Project, please see Response to **CDFW-1 and CDFW-2**.

Concerning future tiered projects sponsored by the District, the District Board approves such projects. District-sponsored projects normally involve multiple properties involving potentially significant effects to the environment that require detailed plans and measures to reduce impacts to less than significant. For CEQA compliance, the District Board approves a project and certifies either an Addendum or a Negative Declaration. The choice of what CEQA process is appropriate and whether additional mitigation measures are required depends on the particular circumstances of a proposed project.

Privately-sponsored projects are normally ministerial in nature and usually involve minor alterations of the bed or banks of the river or vegetation modification that is consistent with the District's permit requirements adopted under Ordinance 10 and as described in the CRMP EIR. These types of projects are approved at a staff level without additional CEQA review.

### **CDFW-4: P. 4 Comments and Recommendations**

Comment: CDFW asserts that “... when an MND is prepared, mitigation measures must be

---

<sup>1</sup> District Rule 124 – “It shall be a violation of these Rules and Regulations, and an infraction/misdemeanor pursuant to the Monterey Peninsula Water Management District Law, (Sections 256 and 369, adopted by the California Legislature by Chapter 986, Statutes of 1981, and Chapter 767, Statutes of 1983, respectively) for any individual to do one or more of the following acts within the Riparian Corridor ...”

## **EXHIBIT 21-C**

California Department of Fish and Wildlife  
April 26, 2019  
Page 4 of 7

specific, clearly defined, and cannot be deferred to a future time.”

Response: MPWMD generally agrees with this statement for potential impacts *that are clearly defined*. For example, potential impacts and mitigation measures at a specific project site can be clearly identified through biological and topographic surveys and analysis. However, MPWMD is relying on the programmatic descriptions in the Carmel River Management Program EIR and subsequent CEQA actions to extend the District’s jurisdiction. Under CEQA Section 15153, preparation of a MND is appropriate to extend jurisdiction<sup>2</sup>; however, impacts can only be broadly defined as potentially occurring anywhere along the Riparian Corridor. The District’s River Work Permit application and review process, which is part of the Project, has been established to review specific project proposals, make findings concerning the project, and to condition those projects to reduce potential impacts.

### **CDFW-5 P. 5 (top) COMMENT 1: Lake and Streambed Alteration**

Comment: CDFW states that mitigation measures for potential impacts including a lowered water table and altered flow patterns may not be enforceable.

Response: Please see response in **Overview** and **CDFW-1** and **CDFW-2**.

### **CDFW-6: P. 6 Recommended Mitigation Measure 1: Notification of Lake or Streambed Alteration**

Comment: CDFW recommends being notified of actions within its jurisdiction.

Response: Please see response in **Overview** and **CDFW-2**.

### **CDFW-7: P. 6 Recommended Mitigation Measure 2: Water Diversion**

Comment: CDFW recommends several actions concerning stream dewatering.

Response: Please see response in **Overview** and **CDFW-2**.

### **CDFW-8: P. 7, 8, 9 Recommended Mitigation Measures 3, 4, 5, and 6 for FYLF**

Comment: CDFW recommends adding Foothill Yellow-Legged Frog (FYLF) habitat assessments, surveys, reporting, and obtaining take authorization as mitigation measures.

Response: MPWMD notes that there are no confirmed FYLF sightings in the Carmel River watershed since 11 frogs were found in San Clemente Creek in one day in 1939.<sup>3</sup> However,

---

<sup>2</sup> 15153. Use of an EIR from an Earlier Project, Section (c), “An EIR prepared for an earlier project may also be used as part of an Initial Study to document a finding that a later project will not have a significant effect. In this situation a Negative Declaration will be prepared.”

<sup>3</sup> Center for Biological Diversity, status review of the foothill yellow-legged frog (*Rana boylei*) (Docket #FWS-R8-



## **EXHIBIT 21-C**

California Department of Fish and Wildlife  
April 26, 2019  
Page 5 of 7

concerns about this species could be addressed as described in the **Overview**.

CDFW recommends adding a mitigation measure to the MND that a take authorization from CDFW would be obtained. This is not an appropriate mitigation measure in the MND, since MPWMD has no authority to require CDFW to issue such authorization.

**CDFW-9:** P. 9, 10 & 11 California red-legged frog (CRLF)

Comment: CDFW requests several actions concerning CRLF.

Response: The District adopted an Addendum to the Carmel River Management Program EIR in 1997 recognizing potential impacts to CRLF and appended U.S. Fish and Wildlife Service (USFWS) Biological Opinion 1-8-96-F-42 concerning avoidance and minimization measures for CRLF to the EIR. Since 2004, the District has acted as agent and administrator for the Corps of Engineers Regional General Permit (RGP) 244600S that includes avoidance and minimization measures to reduce potential impacts to CRLF and authorizes incidental take of CRLF. The biological opinion from USFWS for CRLF has subsequently been updated with each renewal of the RGP. MPWMD includes as a condition of each River Work Permit that project sponsors must comply with all measures in the RGP, including those to protect CRLF.

The geographical limitation of the RGP is from the ocean to River Mile 18.5 (at the former San Clemente Dam site). When the RGP comes up for renewal in 2022, the District will request an extension of the RGP geographical limits to be coincident with the District's jurisdictional limit of the Riparian Corridor. Until then, projects outside of the current geographical limit would be conditioned to obtain a Nationwide or Individual permit from the Corps, which would likely include review and a biological opinion by USFWS for protection of CRLF.

**CDFW-10:** P. 11 & 12 Special Status Plants

Comment: CDFW requests several actions concerning Special Status Plants.

Response: Please see **Overview** response.

**CDFW-11:** P. 12 & 13 Western Pond Turtle

Comment: CDFW requests several actions concerning Western Pond Turtle.

Response: Please see **Overview** response.

**CDFW-12:** P 13 and 14 South-Central California Coast Distinct Population Segment (DPS) of

---

ES-2015-0050), 2015. [https://www.biologicaldiversity.org/species/amphibians/foothill\\_yellow-legged\\_frog/pdfs/CBD\\_comments\\_on\\_FYLF\\_8-28-15.pdf](https://www.biologicaldiversity.org/species/amphibians/foothill_yellow-legged_frog/pdfs/CBD_comments_on_FYLF_8-28-15.pdf)

## **EXHIBIT 21-C**

California Department of Fish and Wildlife  
April 26, 2019  
Page 6 of 7

Steel head (*Oncorhynchus mykiss irideus* pop. 9)

Comment: CDFW requests a comprehensive evaluation of potential impacts to this species and its habitat as a consequence of temporal differences in flow volumes.

Response: Activities along the Riparian Corridor that would be permitted under the District's River Work Permit do not permanently affect flow volumes in the river or the volume of sediment moving through the river. Any temporary affects due to implementation of projects would be mitigated by actions required under a MPWMD River Work Permit. Concerning potential effects to groundwater elevations, the District is proposing to add a requirement that a project must demonstrate that project work must not contribute to adverse levels of downcutting. (Draft Rule 127 A. 5. d.)

### **CDFW-13: Federally Listed Species**

Comment: CDFW recommends consulting with USFWS on potential impacts to CRLF and SCCC DPS steelhead.

Response: Please see response to **CDFW-9**. MPWMD is not aware that USFWS consults on potential impacts to SCCC DPS steelhead. The National Marine Fisheries Service consults on this species. Current activities within the Riparian Corridor are covered under NMFS Biological Opinion WCR-2018-10492.

### **CDFW-14: P14 Environmental Data**

Comment: CDFW requires information developed for the MND be submitted to the California Natural Diversity Database

Response: Please see **Overview**.

### **CDFW-15: Filing Fees**

Comment: CDFW comments that payment of fees is required for the Project approval to be operative, vested, and final.

Response: The District intends to pay required fees.



**EXHIBIT 21-C**

California Department of Fish and Wildlife  
April 26, 2019  
Page 7 of 7

Should you have any questions about this letter, please contact me at [larry@mpwmd.net](mailto:larry@mpwmd.net) or 831/658-5620.

Sincerely,

A handwritten signature in blue ink that reads "Larry Hampson". The signature is written in a cursive style.

Larry Hampson  
District Engineer

Attachments: 1 – CDFW comment letter with numbered comments  
2 – RMA 1600-2013-0053-R4

U:\Larry\Carmel River\Ordinances\CEQA\IS-MND\Comment Letters\Response to CDFW comments.2019.04.19.docx



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
www.wildlife.ca.gov

EXHIBIT 21-C

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



RECEIVED

APR 05 2019

MPWMD

April 2, 2019

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
Post Office Box 85  
Monterey, California 93942  
[larry@mpwmd.net](mailto:larry@mpwmd.net)

**Subject: Carmel River Riparian Corridor Ordinance Update (Project),  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH # 2019029145**

Dear Mr. Hampson:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Monterey Peninsula Water Management District for the above-referenced Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through exercise of its own regulatory authority under the Fish and Game Code. Although the comment period for your request has passed, the content of the MND does not preclude the need for the District to comply with other State and federal laws pertaining to the “take” of species listed under the California Endangered Species Act (CESA), the federal Endangered Species Act (ESA), or Fish and Game Code, specifically as related to take of fully protected species and Fish and Game Code section 1600 et seq.

#### CDFW ROLE

CDFW is California’s **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

## EXHIBIT 21-C

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 2

expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, construction activities resulting from the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Monterey Peninsula Water Management District (District)

**Objective:** The Carmel River Management Program (CRMP) includes rules to require a valid permit from the District to alter the beds or banks of the Carmel River and to remove vegetation. In addition, the CRMP provides technical assistance to property owners, funds to mitigate impacts to the environment, stream monitoring, and research to understand system dynamics and to maintain appropriate standards.

The District currently implements a program for water resources along the lower 15.4 miles of the main stem of the Carmel River (hereafter, the River). Through the Project, the District seeks to extend the program 13.4 miles upstream. The definition of the Carmel River Riparian Corridor includes an area within 25 lineal feet of the 10% chance flood line. If adopted, the District rules pursuant this ordinance would apply to all properties along this reach of the River. If the MND is approved and the District adopts an ordinance to implement a change to the District program, the District would regulate activities along the Carmel River main stem between the Pacific Ocean and the Ventana Wilderness.

The District's rules instruct staff what services the District can provide to property owners adjacent to the River and also describes regulations concerning activities within the riparian corridor. Rule concerning activities within the riparian corridor are not proposed to be changed; however, if approved by the District, property owners affected by the new ordinance will be required to secure a permit from the District for certain activities within the riparian corridor that could alter the bed or banks of the River.

To analyze environmental impacts of the Project, the District intends to rely on the previously certified 1984 Final Environmental Impact Report (EIR) for the Carmel River

EXHIBIT 21-C

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 3

Management Program to comply with CEQA, citing that circumstances are essentially the same. The existing program for the lower 15.4 miles of the River was approved by the District on October 29, 1984 (SCH No. 84032705). The primary management goal of the CRMP is “a progressive and predictable transition of the River to an equilibrium ‘stable’ channel for those sites below the Robles del Rio,” and the MND states that this goal is still valid. The MND defines an equilibrium channel as being a single channel, as opposed to what the MND refers to as an “unstable, braided channel.”

**Location:** The Project would extend the District’s rules from River Mile (RM) 15.4 at the confluence of the main stem with Klondike Creek to the Ventana Wilderness boundary at approximately RM 28.8, which would result in an additional 13.5 miles included in the District’s program. The approximate middle of the reach lies at 36.416 N, -121.709 E. The Project will impact 39 unique parcels.

**Timeframe:** Not specified.

**COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

CDFW-1

The Project will impose “rules” on future development projects within the District’s jurisdiction. As currently drafted, the MND does not contain any mitigation measures specific to minimize impacts to biological resources. The MND does contain mitigation measures that relate to activities that fall under the lake and streambed alteration regulatory authority of CDFW pursuant Fish and Game Code section 1600 et seq. in both the Geology and Soils and Hydrology sections of the MND; however, as currently drafted, these measures do not include Notification to CDFW, may not be enforceable, and may themselves result in violation of Fish and Game Code if CDFW is not Notified. In addition, development of future projects has the potential to result in take of CESA-listed species and species meeting the definition of rare or endangered under CEQA (CEQA Guidelines, § 15380 et seq.). Specifically, CDFW is concerned regarding the Project’s impacts to the State candidate threatened foothill yellow-legged frog (*Rana boylei*); State species of special concern California red-legged frog (*Rana draytonii*) and western pond turtle (*Emys marmorata*); and special-status plant species including, but not limited to, California Rare Plant Ranked (CRPR) 1B.2 species Carmel Valley malacothrix (*Malacothrix saxatilis* var. *arachnoidea*) and Toro manzanita (*Arctostaphylos montereyensis*). CDFW advises inclusion of enforceable measures in the CEQA document prepared for this Project, as well as to any future tiered projects falling under the District’s jurisdiction, to inform any potential permitting needs.

CDFW-2

CDFW-3

## EXHIBIT 21-C

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 4

If significant environmental impacts will occur as a result of Project implementation and cannot be mitigated to less than significant levels, an MND would not be appropriate.

CDFW-4 Further, when an MND is prepared, mitigation measures must be specific, clearly defined, and cannot be deferred to a future time. When an EIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation. Regardless of whether an MND or EIR is prepared, CDFW recommends that the CEQA document provide quantifiable and enforceable measures, as needed, that will reduce impacts to less than significant levels.

### **I. Environmental Setting and Related Impact**

**Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?**

#### **COMMENT 1: Lake and Streambed Alteration**

**Issue:** The purpose of the Project is to update an ordinance related to riparian habitat along the River. If approved, property owners will be required to secure permits from the District for certain activities within the riparian corridor that alter the bed or bank of the River or that remove vegetation. As currently drafted, the MND includes several mitigation measures in both the Geology and Soils and Hydrology sections that will result in activities that fall under the lake and streambed alteration regulatory authority of CDFW pursuant Fish and Game Code section 1600 et seq. For example, the Geology and Soils section of the MND identifies accelerated downcutting of portions of the River as a result of Project implementation. To minimize this impact the following mitigation measures are identified in the 1984 EIR and cited in the MND: (1) installation of gradient control structures within the bed of the River channel, (2) construction of a flood control dam to reduce major flood peaks, and (3) installation of gabions deep enough (4 to 6 feet) not to be undercut before the bed elevation reaches a new equilibrium. The Hydrology section of the MND states that the Project has the potential to reduce sediment supply in the lower 18.3 miles of the River, resulting in a lowered water table due to downcutting in the riverbed. This has the potential to adversely affect riparian vegetation and the habitat upon which other special-status species addressed subsequently in this letter depend on. To mitigate this impact, the MND requires that subsequent project proponents demonstrate that “no adverse downcutting of the riverbed” would result from their projects. In addition, the MND’s Hydrology section states that placement of materials to protect streambanks could result in altered river flow patterns. To mitigate this impact the MND requires that subsequent projects under the District’s jurisdiction use “best management practices such as revegetation with native

## EXHIBIT 21-C

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 5

CDFW-5

plantings, installation of erosion protection, and monitoring to reduce the potential of erosion or siltation." These mitigation measures may not be enforceable.

**Specific impact:** As acknowledged in the MND, work within stream channels has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); deposition of debris, waste, sediment, toxic runoff or other materials into water causing water pollution and degradation of water quality. In addition, the MND states that there is evidence of adverse downcutting and scour holes exposing infrastructure in portions of the stream that the ordinance already applies to, therefore these impacts are possible further upstream following an extension of the ordinance to upstream reaches of the River.

### **Evidence impact is potentially significant:**

#### Lake and Streambed Alteration

The Project will extend the existing ordinance 13.5 miles upstream and will result in the District permitting activities within the bed and bank of the River along this 13.5 miles stretch. Activities within the River are subject to CDFW's lake and streambed alteration regulatory authority. Construction activities within this feature have the potential to impact downstream waters. Streams function in the collection of water from rainfall, storage of various amounts of water and sediment, discharge of water as runoff and the transport of sediment, and they provide diverse sites and pathways in which chemical reactions take place and provide habitat for fish and wildlife species. Disruption of stream systems can have significant physical, biological, and chemical impacts that can extend into the adjacent uplands adversely effecting not only the fish and wildlife species dependent on the stream itself, but also the flora and fauna dependent on the adjacent upland habitat for feeding, reproduction, and shelter.

#### Water Diversion and Alteration of Flow Regimes

The MND currently includes installation of a flood control dam and flow control structures as mitigation measures. These measures have the potential to result in water diversion or the alteration of flow regimes. Prolonged low flows can cause streams to become degraded and cause channels to become disconnected from floodplains (Poff et al. 1997). This process decreases available habitat for aquatic species including fish that utilize floodplains for nursery grounds. Prolonged low flows can also increase mortality for species that rely on specific flow regimes, such as salmonids (Moyle 2002). Amphibians can also be sensitive to decreased flows. Kupferberg et al. (2012) reported that low flows were strongly correlated with early life stage mortality and decreased adult densities of California red-legged frogs, a species of special concern in California, and one with potential to occur in the Project area.



Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 6

**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting)**

CDFW recommends editing the MND to include the following measures as conditions of Project approval and conducting the following evaluation of individual project areas prior to implementation of Project activities.

**Recommended Mitigation Measure 1: Notification of Lake or Streambed Alteration**

CDFW-6

Project-related activities that have the potential to change the bed, bank, and channel of streams and other waterways or alter riparian habitat, are subject to CDFW's lake and streambed alteration regulatory authority pursuant Fish and Game Code section 1600 et seq., therefore Notification is recommended. Fish and Game Code section 1600 et seq. requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration Agreement. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593.

**Recommended Mitigation Measure 2: Water Diversion**

CDFW-7

In the event that stream diversion is necessary, CDFW advises that diversions (1) be conducted in a manner that prevents pollution and/or siltation; (2) provides flows to downstream reaches during all times that the natural flow would support aquatic life; (3) that said flows are of sufficient quality and quantity, and of appropriate temperature to support aquatic life, both above and below the diversion, and (4) that normal flows be restored to the affected stream immediately upon completion of work. With regard to cofferdams, CDFW recommends that they not be made of silt, sand and gravel, or other substances subject to erosion unless first enclosed by protective material and that the enclosure and supportive material be removed as soon as the work is completed. With regard to dewatering, CDFW recommends (1) that turbid water pumped from project sites be discharged to a location outside the wetted channel to allow sediment to drop out, (2) water be allowed to return to the stream below the project site to maintain water flow, (3) temporary diversion structures used to isolate project sites be constructed in a manner that prevents seepage into the project site, and (4) the structure, including all fill, enclosure material, and trapped sediments, be removed when the project is completed.

## EXHIBIT 21-C

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 7

CDFW-7

If it is necessary to dewater a project site, either by pump or gravity flow, CDFW recommends that the suction end of the intake pipe be fitted with fish screens meeting CDFW and National Marine Fisheries Service (NMFS) criteria, as outlined in the NMFS (1997) *Fish Screening Criteria for Anadromous Salmonids*, to prevent entrainment or impingement of small fish and other wildlife. CDFW recommends development of a wildlife removal and rescue plan and that this plan be submitted to CDFW for approval prior to the start of project activities. As part of the wildlife removal and rescue plan, CDFW recommends that a record be maintained of all wildlife rescued and moved. CDFW further advises that the record include information on the date of capture and relocation, the method of capture, location of relocation in relation to the project site, and the number and type of wildlife captured and relocated.

Please note that implementation of the above recommendations does not eliminate the need to obtain the appropriate permits prior to the start of stream diversion or dewatering activities.

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?**

### COMMENT 2: Foothill Yellow-Legged Frog (FYLF)

CDFW-8

**Issue:** The FYLF is known to have historically occupied the River (CDFW 2019). On July 7, 2017, the Fish and Game Commission published its acceptance of a petition for consideration and designation of the FYLF as a candidate species. Pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Commission's decision on whether listing of FYLF, pursuant CESA, is warranted. During the candidacy period, consistent with CEQA Guidelines, section 15380, the status of the FYLF as a threatened candidate species under the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. It is unlawful to import into California, export out of California or take, possess, purchase, or sell within California, FYLF and any part or product thereof, or attempt any of those acts, except as authorized pursuant to CESA. Under Fish and Game Code section 86, take means to hunt, pursue, catch, capture, or kill, or to attempt to hunt pursue, catch, capture, or kill. Consequently, take of FYLF during the status review period is prohibited unless authorization pursuant to CESA is obtained. As stated above, the MND does not identify any mitigation measures for biological resources and therefore, impacts of the Project or subsequent projects under the District's jurisdiction may result in significant impacts to the species.

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 8

**CDFW-8**

**Specific impact:** FYLF are found in the vicinity of streams in a variety of habitats. While FYLF are considered primarily stream dwelling, the species has been documented as far as 40 meters from a stream (Borque 2008, Thomson et al. 2016). Potentially significant impacts associated with Project activities include inadvertent entrapment, destruction of eggs and oviposition sites, degradation of water quality, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

**Evidence impact would be significant:** Land use changes that result in degradation or destruction of riparian habitat, road development and use, urbanization, and water diversion are among proximate factors contributing to local declines of FYLF (Thomson et al. 2016, USDA 2016). FYLF have been estimated to be extirpated from 45% of historically occupied locations in California (Jennings and Hayes 1994 in Thomson et al. 2016). Land use changes that result in degradation or destruction of riparian habitat, road development and use, urbanization, and water diversion are among proximate factors contributing to local declines of FYLF (Thomson et al. 2016, USDA 2016). In the context of the Project and declining population trend within this portion of the FYLF range, the effect of Project development on local and regional populations of FYLF may be significant.

**Recommended Potentially Feasible Mitigation Measure(s)**

CDFW recommends editing the MND to include the following measures as conditions of Project approval and conducting the following evaluation of individual project areas prior to implementation of Project activities.

**Recommended Mitigation Measure 3: FYLF Habitat Assessment**

**CDFW-8**

CDFW recommends that a qualified biologist conduct a habitat assessment of individual Project areas in advance of Project implementation, to determine if the Project area or its vicinity contains suitable habitat for FYLF.

**Recommended Mitigation Measure 4: FYLF Surveys**

Because take of FYLF during its candidacy period is prohibited unless authorization pursuant to CESA is obtained, if it is determined through site assessment that habitat suitable to support FYLF is present within or near project sites, CDFW recommends that focused visual encounter surveys be conducted by a qualified biologist during appropriate survey period(s) (April – October) in areas where potential habitat exists. CDFW advises that these surveys generally follow the methodology described in pages 5–7 of *Considerations for Conserving the Foothill Yellow-Legged Frog* (CDFW 2018a). In addition, CDFW advises surveyors adhere to *The Declining Amphibian Task Force Fieldwork Code of Practice* (DAPTF 1998). If any life stage of the FYLF (adult, metamorph, larvae, egg mass) is found, CDFW

## EXHIBIT 21-C

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 9

recommends consulting with CDFW to develop avoidance measures and evaluate permitting needs.

CDFW-8

### **Recommended Mitigation Measure 5: Reporting Survey Results**

Submission of survey results to CDFW is recommended. In the event of negative findings, CDFW recommends that consultation with CDFW include documentation demonstrating FYLF are unlikely to be present in the vicinity of the project site. Information submitted may include, but is not limited to, a full habitat assessment and survey results. If any life stage of FYLF is detected, consultation with CDFW is advised to determine if an Incidental Take Permit (ITP) is necessary to comply with CESA.

### **Recommended Mitigation Measure 6: Take Authorization**

CDFW recognizes there may be circumstances where take of FYLF during candidacy may be unavoidable. If surveys find that FYLF are occupying the project area and cannot be avoided, CDFW may issue an ITP authorizing take of FYLF, pursuant to Fish and Game Code section 2081(b). Take authorization is issued only when take is incidental to an otherwise lawful activity, the impacts of the take are minimized and fully mitigated, the applicant ensures there is adequate funding to implement any required measures, and take is not likely to jeopardize the continued existence of the species.

### **COMMENT 3: California red legged frog (CRLF)**

CDFW-9

**Issue:** CRLF are known to occur within the vicinity of the Project area (CDFW 2019). CRLF require a variety of habitats including aquatic breeding habitats and upland dispersal habitats. Breeding sites of the CRLF are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, springs, sag ponds, dune ponds and lagoons. Additionally, CRLF frequently breed in artificial impoundments such as stock ponds (USFWS 2002). Breeding sites are generally found in deep, still or slow-moving water (greater than 2.5 feet) and can have a wide range of edge and emergent cover amounts. CRLF can breed at sites with dense shrubby riparian or emergent vegetation, such as cattails or overhanging willows or can proliferate in ponds devoid of emergent vegetation and any apparent vegetative cover (i.e., stock ponds). CRLF habitat includes nearly any area within 1 to 2 miles of a breeding site that stays moist and cool through the summer; this includes non-breeding aquatic habitat in pools of slow-moving streams, perennial or ephemeral ponds, and upland sheltering habitat such as rocks, small mammal burrows, logs, densely vegetated areas, and even man-made structures (i.e., culverts, livestock troughs, spring-boxes, abandoned sheds) (USFWS 2017).

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 10

The MND currently does not identify any mitigation measures to reduce impacts to biological resources.

**Specific impact:** Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the project activities could include alteration to the natural flow regime of the adjacent streams, direct mortality effects, and indirect negative effects by altering habitat availability and quality.

**Evidence impact is potentially significant:** CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, mining, overgrazing by cattle, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017). As stated above, the MND does not identify any mitigation measures for biological resources and therefore, impacts of the Project or subsequent projects under the District's jurisdiction may result in significant impacts to the species.

CDFW-9

**Recommended Potentially Feasible Mitigation Measure(s)**

CDFW recommends editing the MND to include the following measures as conditions of Project approval and conducting the following evaluation of individual project areas prior to implementation of Project activities.

**Recommended Mitigation Measure 7: CRLF Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if project sites or their immediate vicinity contain suitable habitat for CRLF.

**Recommended Mitigation Measure 8: CRLF Surveys**

If suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct surveys for CRLF within 48 hours prior to commencing work (two night surveys immediately prior to construction or as otherwise required by the USFWS) in accordance with the USFWS *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* (USFWS 2005) to determine if CRLF are within or adjacent to individual project sites.



Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 11

**Recommended Mitigation Measure 9: CRLF Avoidance**

If any CRLF are found during preconstruction surveys or at any time during construction, CDFW recommends that construction cease and that CDFW be contacted to discuss a relocation plan for CRLF.

CDFW-9

CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31). If ground-disturbing activities must take place between November 1 and March 31, CDFW recommends that a qualified biologist monitor construction activity daily.

**COMMENT 4: Special-Status plants**

**Issue:** Several special-status plant species have been documented to occur in the vicinity of the Project area (CDFW 2019). These species meet the definition of rare or endangered under CEQA § 15380. The MND currently contains no mitigation measures to minimize impacts to special-status plant species to a level that is less than significant.

CDFW-10

**Specific impact:** Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project construction include inability to reproduce and direct mortality.

**Evidence impact would be significant:** Carmel Valley malacothrix and Toro manzanita are narrowly distributed, endemic species which require chaparral, coastal scrub, or woodland habitats (CNPS 2019). These species are threatened by road maintenance activities (CNPS 2019) which presumably have the potential to occur through development of subsequent projects subject to the District's jurisdiction.

**Recommended Potentially Feasible Mitigation Measure(s)**

CDFW recommends editing the MND to include the following measures as conditions of Project approval and conducting the following evaluation of individual project areas prior to implementation of Project activities.

**Recommended Mitigation Measure 10: Special-Status Plant Habitat Assessment**

CDFW recommends that a qualified botanist conduct a habitat assessment in advance of project implementation, to determine if individual Project sites or their immediate vicinity contain suitable habitat for special-status plant species.



Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 12

**Recommended Mitigation Measure 11: Special-Status Plant Surveys**

If suitable habitat is present, CDFW recommends that the project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities" (CDFW 2018b). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

**Recommended Mitigation Measure 12: Special-Status Plant Avoidance**

CDFW-10

CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

**Recommended Mitigation Measure 13: State-listed Plant Take Authorization**

If a plant species listed pursuant to CESA or the Native Plant Protection Act is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code § 2081(b).

**COMMENT 5: Western Pond Turtle (WPT)**

CDFW-11

**Issue:** The Project area likely supports suitable aquatic habitat for WPT. The Project area also potentially supports upland habitat for WPT, which require loose soils and/or leaf litter for nesting and occasionally overwintering. In addition, WPT are known to occur in the vicinity of the Project area (CDFW 2019). WPT are capable of nesting up to 1600 feet away from waterbodies. Nesting occurs in spring or early summer and hatching occurs in fall. Hatchlings can remain in the nest throughout the first winter, emerging the following spring. In addition, WPT are slow to reach sexual maturity, which naturally reduces the number of WPT that are recruited into a population each year (Thomson et al. 2016).

**Specific impact:** Without appropriate avoidance and minimization measures for WPT, potential significant impacts associated with development of subsequent

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 13

projects include nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

**Evidence impact would be significant:** Threats to WPT include land use changes and habitat fragmentation associated with development, road mortality, as well as a decrease in suitable upland nesting/overwintering habitat (Thomson et al. 2016), all of which are potential impacts of the Project or subsequent projects under the District's jurisdiction. As a result, Project development has the potential to significantly impact the local population of WPT.

**Recommended Potentially Feasible Mitigation Measure(s)**

CDFW recommends editing the MND to include the following measures as conditions of Project approval and conducting the following evaluation of individual project areas prior to implementation of Project activities.

**Recommended Mitigation Measure 14: Preconstruction Surveys**

CDFW recommends that a qualified wildlife biologist conduct focused surveys for WPT during the nesting season (March through August). If any nests are discovered, CDFW recommends that they remain undisturbed until the eggs have hatched and the nestlings are capable of independent survival. In addition, CDFW recommends conducting pre-construction surveys for WPT immediately prior to initiation of construction activities.

**Recommended Mitigation Measure 15: Avoidance**

WPT detection during surveys warrants consultation with CDFW to discuss how to implement project activities and avoid take. However, CDFW recommends that if any WPT are discovered at a site immediately prior to or during project activities they be allowed to move out of the area on their own volition. If this is not feasible, CDFW recommends that a qualified biologist who holds a Scientific Collecting Permit for the species, capture and relocate the turtle(s) out of harm's way to the nearest suitable habitat immediately upstream or downstream from the project site.

**II. Editorial Comments and/or Suggestions**

**South-Central California Coast Distinct Population Segment (DPS) of Steelhead (*Oncorhynchus mykiss irideus* pop. 9)**

Steelhead trout inhabiting the Carmel River are part of the South-Central California Coast Distinct Population Segment (SCCC DPS) as defined by NMFS. The SCCC DPS includes steelhead populations in streams from the Pajaro River (inclusive) to (but not including) the Santa Maria River. The NMFS listed steelhead trout in the SCCC DPS as

CDFW-11

CDFW-12

## EXHIBIT 21-C

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 14

CDFW-12

a federally threatened species effective October 17, 1997 (Federal Register Vol. 62, No. 159) and the Carmel River is designated by ESA as critical habitat for the SCCC DPS. The SCCC DPS is considered by NMFS to be distinct from the Southern California DPS to its south and the Central California Coast Evolutionarily Significant Unit (ESU) to its north. Of the runs that this DPS occupies, NMFS has identified the Carmel River run as having undergone a long-term decline, with an average decline of 50% per generation (NMFS 2016). This decline has been exacerbated by extended drought (NMFS 2016). Critical recovery actions for this ESU include alleviating threats to instream flows and impediments to fish passage. Any changes to the Carmel River's flow volumes, changes the channel sediment regime, and reductions of the groundwater (aquifer) table associated with the proposed Project or subsequent projects under the District's authority could worsen conditions for steelhead. Therefore, CDFW advises that the MND comprehensively evaluate the potential for impacts to this species, including its habitat, as a consequence of temporal differences in flow volumes as a result of the Project or subsequent projects under the District's authority.

CDFW-13

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CRLF and SCCC DPS of steelhead. Take under the ESA is more broadly defined than CESA; take under ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with ESA is advised well in advance of any Project activities.

### ENVIRONMENTAL DATA

CDFW-14

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

### FILING FEES

The Project, as proposed, has the potential to impact fish and/or wildlife, and assessment of filing fees may be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project

**EXHIBIT 21-C**

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 15

approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

**CONCLUSION**

CDFW appreciates the opportunity to comment on the MND to assist the District in identifying and mitigating subsequent project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Questions regarding this letter or further coordination should be directed to Renée Robison, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 274, or by electronic email at [Renee.Robison@wildlife.ca.gov](mailto:Renee.Robison@wildlife.ca.gov).

Sincerely,



Julie A. Vance  
Regional Manager

## EXHIBIT 21-C

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 16

### REFERENCES

- Borque, R. 2008. Spatial ecology of an inland population of the foothill yellow-legged frog (*Rana boylei*) in Tehama County, California. Arcata, CA: Humboldt State University. 93 p. M. S. thesis.
- California Department of Fish and Wildlife (CDFW). 2018a. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife, March 2018.
- CDFW. 2018b. Considerations for Conserving the Foothill Yellow-Legged Frog. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>. Accessed March 22, 2019.
- CDFW. 2019. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed March 20, 2019.
- California Native Plant Society (CNPS), Rare Plant Program. 2019. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org>. Accessed 22 March 2019.
- Declining Amphibian Task Force (DAPTF). 1998. The Declining Amphibian Task Force Fieldwork Code of Practice. [www.fws.gov/ventura/docs/species/protocols/DAFTA.pdf](http://www.fws.gov/ventura/docs/species/protocols/DAFTA.pdf).
- Jennings, M. R., and M. P. Hayes. 1994. Amphibian and Reptile Species of Special Concern in California. California Department of Fish and Wildlife, Inland Fisheries Division, Rancho Cordova.
- Kupferberg, S. J., W. J. Palen, A. J. Lind, S. Bobzien, A. Catenazzi, J. Drennan, and M. E. Power. 2012. Effects of flow regimes altered by dams on survival, population declines, and range-wide losses of California river-breeding frogs.
- Moyle, P. B. 2002. Inland fishes of California. University of California Press, Berkeley, CA, USA.
- National Marine Fisheries Service (NMFS). 1997. Fish Screening Criteria for Anadromous Salmonids. [http://www.westcoast.fisheries.noaa.gov/publications/hydropower/southwest\\_region\\_1997\\_fish\\_screen\\_design\\_criteria.pdf](http://www.westcoast.fisheries.noaa.gov/publications/hydropower/southwest_region_1997_fish_screen_design_criteria.pdf)

EXHIBIT 21-C

Larry Hampson, District Engineer  
Monterey Peninsula Water Management District  
April 2, 2019  
Page 17

NMFS. 2016. 5-Year Review: Summary and Evaluation of South-Central California Coast Steelhead Distinct Population Segment. National Marine Fisheries Service. West Coast Region. California Coastal Office. Santa Rosa, California.

Poff, N. L., J. D. Allan, M. B. Bain, J. R. Karr, K. L. Prestegarrd, B. D. Richter, R. E. Sparks, and J. C. Stromberg. 1997. The natural flow regime: a paradigm for river conservation and restoration. *BioScience* 47:769–784.

Thomson, R. C., A. N. Wright, and H. Bradley Shaffer. 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press: 84–92.

U.S. Department of Agriculture (USDA). 2016. Foothill Yellow-Legged Frog Conservation Assessment in California. U.S. Forest Service, Pacific Southwest Research Station, General Technical Report PSW-GTR-248. August 2016.

U. S. Fish and Wildlife Service (USFWS). 2002. Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*). U.S. Fish and Wildlife Service, Portland, Oregon. viii + 173 pp.

USFWS. 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog March 2005. 26 pp.

USFWS. 2017. Species Account for California Red-legged frog. March 2017. 1 pp.



## DEPARTMENT OF FISH AND WILDLIFE

CHARLTON H. BONHAM, Director



Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4593  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)



May 30, 2014

RECEIVED

JUN - 5 2014

Thomas Christensen  
Monterey Peninsula Water Management District  
5 Harris Court, Building G  
Monterey, California 93942

MPWMD

Subject: Final Lake or Streambed Alteration Agreement  
Notification No. 1600-2013-0053-R4  
Carmel River – Monterey County

Dear Mr. Christensen:

Enclosed is the final Streambed Alteration Agreement (Agreement) for the MPWMD Routine Maintenance Agreement (Project). Before the California Department of Fish and Wildlife (Department) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a responsible agency, filed a notice of determination (NOD) on the same date it signed the Agreement. The NOD was based on information contained in the Environmental Impact Report the lead agency prepared for the Project.

Pursuant to CEQA Guidelines sections 15075(g) and 15094(g), filing of a NOD starts a 30-day statute of limitations during which a party may challenge the filing agency's approval of the Project. You may begin your Project before the 30-day period expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Robb Tibstra, Environmental Scientist, at (805) 594-6116 or [Robert.Tibstra@wildlife.ca.gov](mailto:Robert.Tibstra@wildlife.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Single".

Jeffrey R. Single, Ph.D.  
Regional Manager

cc: Robb Tibstra

**EXHIBIT 21-C**

**NOTICE OF DETERMINATION**

**TO:** Office of Planning and Research  
Post Office Box 3044  
Sacramento, California 95814

**FROM:** California Department of Fish and Wildlife  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710

**SUBJECT:** Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

**PROJECT TITLE:** Stream Alteration Agreement No. 1600-2013-0053-R4 for the Routine Maintenance Agreement—Monterey Peninsula Water Management District.

**STATE CLEARINGHOUSE NUMBER:** 84032705

**LEAD AGENCY:** Monterey Peninsula Water Management District  
**CONTACT:** Thomas Christensen, (831) 238-2547

**RESPONSIBLE AGENCY:** California Department of Fish and Wildlife  
**CONTACT:** Robb Tibstra, (805) 594-6116

**PROJECT LOCATION:** The Project will occur at various locations on the Carmel River from the currently existing San Clemente Dam at River Mile 18.6 (Latitude 36° 26' 9.728" N; Longitude 121° 42' 31.986" W) to the lagoon at River Mile 0 (Latitude 36° 32' 10.159" N; Longitude 121° 55' 42.353" W), entirely within Monterey County.

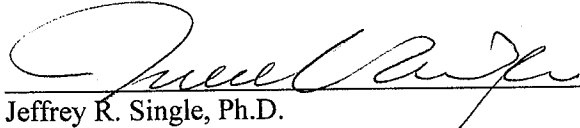
**PROJECT DESCRIPTION:** The California Department of Fish and Wildlife is executing a Lake or Streambed Alteration Agreement pursuant to Section 1602 of the Fish and Game Code for routine maintenance activities, including removal of woody and herbaceous plants, downed trees, debris, and litter that pose potential flow restrictions near structures and facilities; installation of new and repair of existing bank stabilization structures to minimize erosion. All work will occur in isolation of stream flow.

This is to advise that CDFW as a Responsible Agency approved the Project described above on 10/2/14 and has made the following determinations regarding the above described Project.

1. The Project will not have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this Project pursuant to the provisions of CEQA.
3. Mitigation measures were made a condition of the approval of the Project.
4. A Statement of Overriding Considerations was not adopted for this Project
5. Findings were made pursuant to the provisions of CEQA.

This is to certify that a copy of the Environmental Impact Report prepared for this Project is available to the general public and may be reviewed at: Monterey Peninsula Water Management District, 5 Harris Court, Building G, Monterey, California 93942. Please contact the person specified above.

Date: 10/2/14

  
Jeffrey R. Single, Ph.D.  
Regional Manager, Central Region  
California Department of Fish and Wildlife

Date received for filing at OPR: \_\_\_\_\_

**EXHIBIT 21-C**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
REGION 4-CENTRAL REGION  
1234 EAST SHAW AVENUE  
FRESNO, CALIFORNIA 93710



**ROUTINE MAINTENANCE AGREEMENT**  
**STREAMBED ALTERATION AGREEMENT**  
**NOTIFICATION No. 1600-2013-0053-R4**  
**CARMEL RIVER—MONTEREY COUNTY**

**THOMAS CHRISTENSEN**  
**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**  
5 HARRIS COURT, BUILDING G  
MONTEREY, CALIFORNIA 93942

**ROUTINE MAINTENANCE AGREEMENT--MPWMD (PROJECT)**

This Routine Maintenance Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the Monterey Peninsula Water Management District (referred to as Permittee), represented by Thomas Christensen.

**RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on March 19, 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 Protective Measures in this Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed this Agreement and accepts its terms and conditions, including the Protective Measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the Project in accordance with this Agreement.

**PROJECT LOCATION**

The Project will occur at various locations on the Carmel River from the currently existing San Clemente Dam at River Mile 18.6 (Latitude 36<sup>0</sup> 26' 9.728" N; Longitude 121<sup>0</sup> 42' 31.986" W) to the lagoon at River Mile 0 (Latitude 36<sup>0</sup> 32' 10.159" N; Longitude 121<sup>0</sup> 55' 42.353" W), entirely within Monterey County.

## **PROJECT DESCRIPTION**

The Project includes the following routine maintenance activities:

- Removal of parts of woody and herbaceous plants that potentially cause flow restrictions in areas adjacent to man-made structures and facilities. Debris lodged in the bed or bank of the River shall be cut off at the bed or bank level with hand tools. Total linear distance treated will not exceed 2,640 feet or 30 feet in width.
- Removal of downed trees or branches, associated debris, rubbish, and litter that poses potential to impede flows or create a fire hazard. Tree root structure will not be disturbed.
- Removal of soil, silt, debris, algae, or other materials from the channel that potentially impede flow. Such activities will be conducted in isolation of standing water.
- Removal of non-native, invasive plant species and planting of native riparian vegetation by hand, using cuttings from adjacent species.
- Repair of existing bank stabilization structures that are damaged or have failed sections of rock rip-rap. Repairs shall be within the existing footprint of the original structure.
- Installation of bio-engineered bank stabilization and erosion control in areas up to 400 linear feet. Materials will include porous materials such as hydro and broadcast seeding, vegetative and riparian planting, use of geotextile fabric, installation of root wads, log crib walls, and other bio-engineered techniques. Locations and specific methods and design plans will be approved by the CDFW prior to implementation as specified below.
- All work is anticipated to occur outside the wetted portion of the channel. If necessary to operate equipment or otherwise cause disturbance to the active channel, a dewatering plan will be developed and approved by CDFW prior to work proposed in wetted portions of the channel.
- No heavy equipment will enter the wetted portion of the channel.
- In most years loppers, chain saws, and other hand tools will be used. Heavy equipment may be used for stream bank repairs and new bank stabilization.

## **PROJECT IMPACTS**

This Agreement is intended to avoid, minimize, and mitigate adverse impacts to the fish and wildlife resources that occupy the area of the Carmel River within the Project area, and the immediate adjacent habitat. Absent implementation of the Protective Measures required by this Agreement, the following species and habitat types could potentially be impacted within the area covered by this Agreement: the Federally threatened and

State species of special concern (SSC) California red-legged frog (*Rana draytonii*), the Federally threatened south-central California coast steelhead (*Oncorhynchus mykiss*), the Federally endangered tidewater goby (*Eucyclogobius newberryi*), and the SSC Pacific pond turtle (*Actinemys marmorata*), as well as other birds, mammals, fish, reptiles, amphibians, invertebrates, and plants that comprise the local ecosystem. The California Natural Diversity Data Base (CNDDDB) and other CDFW files and references contain information on species that could be subject to potential impacts generated from this Project.

## **PROTECTIVE MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES**

### **1. Administrative Measures**

Permittee shall meet each administrative Protective Measure described below.

- 1.1 Documentation at Project Site. Permittee shall make this Agreement, any extensions and amendments to this Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the Project site at all times and shall be presented to CDFW personnel or personnel from another State, Federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of this Agreement and any extensions and amendments to this Agreement to all persons who will be working on the Project at the Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a Protective Measure in this 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 this Agreement.
- 1.5 Legal Obligations. This Agreement does not exempt Permittee from complying with all other applicable local, State, and Federal law, or other legal obligations.
- 1.6 Unauthorized Take. This Agreement does not authorize the "take" (defined in Fish and Game Code Section 86 as to hunt, pursue, catch, capture, or kill; or attempt to hunt, pursue, catch, capture, or kill) of State- or Federally-listed threatened or endangered species. Any such "take" shall require separate permitting as may be required.
- 1.7 Property Not Owned by Permittee. To the extent that the Protective Measures of this Agreement provide for activities that require Permittee to enter on another owner's property, they are agreed to with the understanding that Permittee possesses the legal right to so enter.

- 1.8 Water Diversion. To the extent that the Protective Measures of this Agreement provide for the diversion of water, they are agreed to with the understanding that Permittee possesses the legal right to so divert such water.
- 1.9 Work Plan. Permittee shall submit an Annual Work Plan to CDFW (mail, email, or fax to (805) 542-4609, with reference to Agreement 2013-0053-R4) for approval by June 1 (and at least two (2) weeks prior to initiation of work) of each calendar year that this Agreement is valid, prior to beginning any activities covered by this Agreement. The Work Plan shall include activities, activity locations, seasonal timing (i.e., a date range), area covered by each activity, and specific treatment methods for each site (including anticipated equipment used). Notification for maintenance activities covered by this Agreement but not indicated in the annual work plan shall be submitted to CDFW for approval at least two (2) weeks prior to initiation of work. No activities shall commence until CDFW has provided written (e.g., email) approval that the activities proposed in the Work Plan and any subsequent notices are consistent with the Project description of this Agreement.
- 1.10 Training. Prior to starting any activity covered by this Agreement, all employees, contractors, landowners at Project areas, and visitors who will be present during Project activities shall receive training from a qualified individual on the contents of this Agreement, the resources at stake, and the legal consequences of non-compliance. Documentation of this training shall be provided to CDFW within the Annual Report specified in Section 4 below.

## **2. Avoidance and Minimization Measures**

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each Protective Measure listed below.

- 2.1 Construction/Work Hours. All non-emergency work activities shall be confined to daylight hours. For purposes of this Agreement, "daylight hours" are defined as that daytime period between sunrise and sunset.
- 2.2 Flagging/Fencing. Prior to any activity covered by this Agreement, Permittee shall identify the limits of the required access routes and encroachment into the stream. These "work area" limits shall be identified with brightly-colored flagging/fencing. Work completed under this Agreement shall be limited to this defined area only. Flagging/fencing shall be maintained in good repair for the duration of the Project. All areas beyond the identified work area limits shall be considered Environmentally Sensitive Areas (ESA) and shall not be disturbed. Alternate flagging and fencing protocols protecting ESAs may be developed in consultation with CDFW and utilized for specific Projects as proposed in the Annual Work Plan (Administrative Measure 1.9).
- 2.3 Listed and Other Special Status Species.
- (a) This Agreement does not authorize "take" of any State- or Federally-listed threatened or endangered, or fully-protected species. Liability for any "take,"



or "incidental take," of such listed species remains the responsibility of Permittee for the duration of the Project. Any unauthorized "take" of such listed species may result in prosecution and nullify this Agreement.

- (b) Permittee affirms that no "take" of listed species will occur as a result of this Project and will take prudent measures to ensure that all "take" is avoided. Permittee acknowledges and fully understands that it does not have State "incidental take" authority. If any State- or Federally-listed threatened or endangered species occur within the proposed work area or could be impacted by the work proposed, and thus "taken" as a result of Project activities, Permittee is responsible for obtaining and complying with required State and Federally threatened and endangered species permits or other written authorization before proceeding with this Project.
- (c) Permittee shall immediately notify CDFW of the discovery of any rare, threatened, or endangered species prior to and during Project activities.
- (d) Pre-activity surveys for potential rare, listed, or other sensitive species (with emphasis on the species listed above) shall be conducted by a qualified biologist within 30 days prior to commencement of Project activities unless specified in species-specific measures below. Surveys must be conducted on the work area and all access routes to avoid and minimize "incidental take," confirm previous observations, identify any areas occupied by listed or sensitive species, and clearly mark all resources to be avoided by Project activities. If any State- or Federally-listed threatened or endangered animal species are found or could be impacted by the work proposed, Permittee shall notify CDFW of the discovery prior to commencement of construction. A new Agreement and/or a 2081(b) State Incidental Take Permit may be necessary and a new CEQA analysis may need to be conducted, before work can begin. All survey results will be documented and submitted as part of the Annual Report (Reporting Measure 4.2).
- (e) Prior to Project activities, a qualified biologist shall conduct training sessions to familiarize all workers with identification of the listed species listed above, their habitat, the native and non-native plant species in the Project area, general provisions and protections afforded by the California and Federal Endangered Species Acts, measures implemented to protect these species, and a review of the Project boundaries.
- (f) South-Central California Coast Steelhead and Tidewater Goby: Active treatment activities with potential to disturb the bed, bank, or channel in areas located within 25 feet of surface water shall occur between June 15 and October 31.
- (g) California Red-Legged Frog: Within 48 hours prior to commencing Project activities in any area that provides habitat for the species, the Project site shall be surveyed for California red-legged frog by a qualified biologist. If any individuals are found before or during Project activities, CDFW shall be

contacted immediately and work cease or shall not start, whichever applies, until CDFW has provided written approval for work to continue. All survey results, including those resulting in no detections, will be provided to CDFW as part of the Annual Report (Reporting Measure 4.2).

- (h) Western Pond Turtle: Any turtles discovered at the site immediately prior to or during Project activities shall be allowed to leave the Project area of their own accord, or shall be captured by a qualified biologist who holds a Scientific Collecting Permit for the species and relocated out of harm's way to the nearest suitable habitat immediately upstream or downstream from the Project site but out of the influence of Project.

#### 2.4 Fish and Wildlife.

- (a) If any fish or wildlife is encountered during the course of Project activity, said fish or wildlife shall be allowed to leave the Project area unharmed.
- (b) Pursuant to FGC Sections 3503 and 3503.5, it is unlawful to "take," possess, or destroy the nest or eggs of any bird or bird-of-prey. To protect nesting birds, no Project activities shall be completed from March 1 through August 31 unless the following surveys are completed by a qualified biologist within 30 days prior to commencing Project activities in each location of work each year.

Non-Listed Raptors: Survey for nesting activity of raptors within a 500-foot radius of the Project site. Surveys shall be conducted at appropriate nesting times and concentrate on trees with the potential to support raptor nests. If any active nests are observed, these nests and nest trees shall be designated an ESA and protected with a minimum 500-foot buffer until young have fledged and are no longer reliant on the nest site or parental care.

Other Avian Species: Survey riparian areas for nesting activity within a 250-foot radius of the Project area. If any nesting activity is found, these nests shall be designated an ESA and protected with a minimum 250-foot buffer until young have fledged and are no longer reliant on the nest site or parental care.

CDFW may consider variances from these buffers when there is a compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography.

#### 2.5 Vegetation.

- (a) The disturbance or removal of vegetation within the Project Boundaries shall not exceed the minimum necessary to complete Project goals as defined in the above Project description. Precautions shall be taken to avoid other damage to non-target vegetation by people or equipment.

- (b) Woody shrubs and trees, including oak trees, shall only be removed from the Project sites to the minimum extent necessary to complete maintenance activities. Trimming of such vegetation shall consist of no more than cutting to 1-foot above ground level. All damaged or removed woody-stemmed trees and shrubs with a diameter at breast height (DBH) of four (4) inches or greater shall be mitigated at a 3:1 ratio (replaced to lost). Mitigation for heritage trees 24-inches DBH or greater shall be replaced at a 10:1 ratio. Permittee shall document the number and species of all woody-stemmed plants/trees with a DBH of four (4) inches or greater that will be removed or damaged. This documentation shall be used as the basis for replacement mitigation and shall be submitted to CDFW with the Revegetation Plan (see Revegetation and Restoration).
- (c) Trimmed vegetation and cleared woody debris shall be removed from the vicinity of the stream channel and disposed of in a legal manner.
- (d) Heavy equipment and other machinery shall be inspected for the presence of undesirable species and cleaned prior to on-site use to reduce the risk of introducing exotic plant species into the Project site.

## 2.6 Vehicles.

- (a) Vehicles shall not be operated in areas where surface water is present.
- (b) Vehicle access to the stream's banks and bed shall be limited to predetermined ingress and egress corridors on or adjacent to existing roads. All other areas adjacent to the work site shall be considered an ESA and shall remain off-limits to construction equipment.
- (c) Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic and terrestrial life.
- (d) Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream, shall be positioned over drip-pans. Vehicles shall be moved away from the stream prior to refueling and lubrication.

## 2.7 Structures.

- (a) Permittee confirms that any and all structures and constructed features shall be properly aligned and otherwise engineered, installed, and maintained, to assure resistance to washout, and to erosion of the stream bed, stream banks and/or fill and that they will not cause long-term changes in water flows that adversely modify the existing upstream or downstream stream bed/bank contours or increase sediment deposition.

- (b) For any new bank stabilization structures or instream features: Permittee shall submit Engineered Design Plans to CDFW for approval at least 60 days prior to beginning work. Acceptance may be dependent upon Permittee providing additional information to CDFW that includes engineering calculations (such as design flow, 100 year flow, rock size calculations, etc.) used in determining design parameters. CDFW may provide written approval of Engineered Design Plans, based upon the anticipated performance of the structures and their influence on the future geomorphology of the Carmel River relating to fish passage for all life stages of Steelhead and other species that may be present at the site.
- 2.8 Fish Rescue. If fish are present in the work site and dewatering is necessary, a qualified biologist, with all necessary State and Federal permits, shall rescue any fish within the work site prior to diverting water. Rescued fish shall be moved to the nearest appropriate site outside of the work area. A record shall be maintained of all fish rescued and moved. The record shall include, at a minimum, the date of capture and relocation, the method of capture, location of relocation in relation to the Project site, and the number and type of fish captured and relocated. The record shall be provided to CDFW within two (2) weeks of the completion of the work season or Project, whichever comes first. Any fish rescue activity shall not conflict with any Biological Opinions from USFWS and NOAA Fisheries obtained as part of the Project.
- 2.9 Water Diversion/Dewatering Plan. If any Project locations require dewatering to create dry conditions, a Dewatering Plan shall be submitted to CDFW for approval at least 30 days prior to implementation. The Plan shall detail the specific locations and methods of implementing dewatering activity and incorporate the following:
- (a) Instream work shall be done in isolation from surface water flow. Water drafting, pumping, or other water diversion shall be done in a manner that is not harmful to fish or other aquatic or semi-aquatic species of wildlife. Pump inflow tubes or hoses shall be screened according to criteria for small diversions as specified by the Department and NOAA Fisheries ([http://www.dfg.ca.gov/fish/Resources/Projects/Engin/Engin\\_ScreenCriteria.asp](http://www.dfg.ca.gov/fish/Resources/Projects/Engin/Engin_ScreenCriteria.asp)).
- (b) Any equipment or structures placed in the active channel for water drafting, pumping or diversion shall be done in a manner that a) prevents pollution and/or siltation; b) provides flows to downstream reaches at all times to support aquatic life; c) provides flows of sufficient quality and quantity, and of appropriate temperature to support aquatic life, both above and below the diversion; and d) restores normal flows to the affected stream immediately upon completion of work at each location.
- (c) Temporary diversion structures used to isolate the work area shall be constructed in a manner that prevents seepage from the work area. Said structures shall be constructed of non-erodible materials unless enclosed by sheet piling, rock riprap, or other protective material. The structure, including

all fill, enclosure material, and trapped sediments, shall be removed when the Project is completed.

- (d) Any Project-related water drafting, pumping, or other water diversion including ground disturbing activities not specifically addressed in this Agreement, is subject to further Protective Measures through an amendment to this Agreement.

2.10 Fill/Spoil. Spoil storage sites shall not be located within the stream or where spoil will be washed into the stream. Rock, gravel, and/or other materials shall not be imported into or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement.

2.11 Erosion.

- (a) No work within the banks of the stream shall be conducted during or within 24 hours following large rainfall events. For purposes of this Agreement, a "large rainfall event" is defined as rainfall totaling one half of 1-inch (1/2-inch) of rain in any 24-hour period.
- (b) All disturbed soils within the Project site shall be stabilized to reduce erosion potential, both during and following Project activity. Temporary erosion control devices, such as straw bales, silt fencing, and sand bags, may be used, as appropriate, to prevent siltation of the stream. Any installation of non-erodible materials not described in the original Project description shall be coordinated with CDFW.
- (c) Precautions to minimize siltation may require that the work site be isolated so that silt or other deleterious materials are not allowed to pass to downstream reaches. The placement of any structure or materials in the stream for this purpose, not included in the original Project description, shall be coordinated with CDFW. If it is determined that silt levels resulting from Project-related activities constitute a threat to aquatic life, activities associated with the siltation shall be halted until effective CDFW-approved control devices are installed, or abatement procedures are initiated.

2.12 Pollution.

- (a) Raw cement, concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to fish or wildlife resulting from Project-related activities, shall be prevented from contaminating the soil and/or entering the "Waters of the State".
- (b) Permittee and all contractors shall be subject to the water pollution regulations found in FGC Sections 5650 and 12015.

- (c) The cleanup of all spilled materials shall begin immediately. CDFW shall be notified immediately by Permittee of any spills and shall be consulted regarding cleanup procedures.
- (d) All Project-generated debris and rubbish shall be removed from the stream and from areas where such materials could be washed into the stream.

### **3. Compensatory Measures**

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

#### **3.1 Revegetation and Restoration.**

- (a) For trees and shrubs four (4) inches DBH and larger that are trimmed or otherwise damaged, Permittee shall develop a Revegetation Plan for the site and submit it to CDFW for approval prior to commencement of the proposed Project activity. The Revegetation Plan shall specifically address plantings of native trees as indicated in Avoidance and Minimization Measure 2.5(b) above, and include monitoring and maintenance to ensure a minimum of 70 percent survival for the plantings after five (5) years, including a period of three (3) consecutive years when supplemental watering may be utilized followed by an additional two (2) years without such assistance. The Plan shall propose the planting location(s) and include requirements for annual monitoring, performance criteria, and remedial actions in the event that plantings are not successful. Tree and shrub removal shall not commence until the Revegetation Plan is approved by CDFW.
- (b) If the Project causes any exposed slopes or exposed areas on stream banks, these areas shall be seeded (with weed-free straw or mulch) with a blend of a minimum of three (3) locally native grass species. One (1) or two (2) sterile non-native perennial grass species may be added to the seed mix provided that amount does not exceed 25 percent of the total seed mix by count. Locally native wildflower and/or shrub seeds may also be included in the seed mix. The seeding shall be completed as soon as possible, but no later than November 15 of the year construction ends or as otherwise approved in advance and in writing by CDFW. A seed mixture shall be submitted to CDFW for approval prior to application. At the discretion of CDFW, all exposed areas where seeding is considered unsuccessful after 90 days shall receive appropriate soil preparation and a second application of seeding, straw, or mulch as soon as is practical on a date mutually agreed upon.
- (c) Where suitable vegetation cannot be reasonably expected to become established, non-erodible materials shall be used for such stabilization. Any installation of non-erodible materials not described in the original Project description shall be coordinated with CDFW. Coordination may include the negotiation of additional Protective Measures for this activity.



#### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

##### **4.1 Obligations of Permittee.**

- (a) Permittee shall have primary responsibility for monitoring compliance with all Protective Measures in this Agreement. Protective Measures must be implemented within the time periods indicated in this Agreement and the program described below.
- (b) Permittee (or Permittee's designee) shall ensure the implementation of the Protective Measures of this Agreement, and shall monitor the effectiveness of the Protective Measures.

**4.2 Reports.** Permittee shall submit the following Reports to CDFW. All reports shall be sent as hard copy to CDFW, and Permittee may additionally send reports in electronic format to the CDFW contact (see Contact Information, below).

- An Annual Work Plan submitted for CDFW approval by June 1 of each calendar year and at least two weeks before commencing Project activity (Administrative Measure 1.8). If necessary, additional work sites not included in the Annual Work Plan shall be submitted for CDFW approval at least two (2) weeks prior to initiation of work (Administrative Measure 1.9).
- Annual Status Report: An Annual Status Report and associated fees (see Fees, below) shall be submitted to CDFW by February 1 of each calendar year that this Agreement is valid, for the previous calendar year. The Annual Status Report shall include the following information:
  - A summary of all work for each maintenance activity that was completed the previous calendar year.
  - Documentation of employee training (Administrative Measure 1.10 and Avoidance and Minimization Measure 2.3(e)).
  - A summary of Protective Measures implemented at each Project site where maintenance activities occurred.
  - Results of biological surveys, conducted as warranted (Avoidance and Minimization Measures 2.3(d and g), and 2.4(b)).
  - Reports shall include photo documentation consisting of "before and after" photos of the Project areas where each maintenance activity was completed.
  - If no work was conducted during the calendar year, an Annual Status Report will be submitted to CDFW indicating that status.

- Design plans for new bank stabilization or instream structures, submitted for approval at least 30 days prior to implementation (Avoidance and Minimization Measure 2.7(b)).
- Results of any Fish Rescue operations within two (2) weeks of implementation (Avoidance and Minimization Measure 2.8).
- Dewatering Plan, submitted to CDFW for approval at least 30 days prior to implementation for each activity requiring dewatering (Avoidance and Minimization Measure 2.9).
- Documentation of trees and shrubs four (4) inches DBH or larger that are trimmed or damaged (Avoidance and Minimization Measure 2.5(b)); and a Revegetation Plan if any trees four (4) inches DBH and larger will be removed or damaged, submitted to CDFW for approval at least 30 days prior to commencing the Project activity (Compensatory Measure 3.1(a)).
- A seed mixture to be used to control erosion, submitted to CDFW for approval prior to application (Compensatory Measure 3.1(b)).
- A Four-Year Status Report no later than 90 days prior to the end of each four (4) year period for the duration of this Agreement, including the following:
  - 1) A copy of the original Agreement.
  - 2) The status of the activity covered by this Agreement.
    - a. An evaluation of the success or failure of the Protective Measures in this Agreement to protect the fish and wildlife resources that the activity may substantially adversely affect.
    - b. A discussion of any factors that could increase the predicted adverse impacts on fish and wildlife resources, and a description of the resources that may be adversely affected.

## **CONTACT INFORMATION**

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

### **To Permittee:**

Thomas Christensen  
Monterey Peninsula Water Management District  
5 Harris Court, Building G  
Monterey, California 93942  
Thomas@mpwmd.net

**To CDFW:**

California Department of Fish and Wildlife  
Region 4 – Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
Attn: Lake and Streambed Alteration Program – Robb Tibstra  
Notification #1600-2013-0053-R4  
Phone: (805) 594-6116  
Robert.Tibstra@wildlife.ca.gov

**FEES**

California Code of Regulations, Title 14 (CCR 14, Section 699.5) establishes fees for Projects subject to Fish and Game Code 1602. Fees for activities authorized by this Agreement shall be assessed pursuant to FGC§ 1609.

A lump sum fee shall be paid to CDFW, submitted with the Annual Report, based on the total number of routine maintenance Projects undertaken for that year (which shall be equal to the number of Projects indicated in the Annual Report. Fees shall be assessed based upon the fee schedule that is prevailing at the time of payment.

A one-time extension fee shall be based upon the fee schedule (CCR14, Section 699.5(f)) that is prevailing at the time of payment.

Amendment fees shall be based upon the fee schedule (CCR 14, Section 699.5(g)) that is prevailing at the time of payment and according to the scope of change.

**LIABILITY**

Permittee shall be solely liable for any violations of this 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 this 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 this 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 this Agreement.

Before CDFW suspends or revokes this 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 this 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 this Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking this Agreement.'

Nothing in this 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 this 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 this 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 this 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 fee schedule at the time of the request (see Cal. Code Regs., Title 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of this 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 this 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 fee schedule at the time of the request (see Cal. Code Regs., Title 14, § 699.5).

## **EXTENSIONS**

In accordance with FGC section 1605(b), Permittee may request one (1) extension of this Agreement, provided the request is made prior to the expiration of this 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 fee schedule at the time of the request (see Cal. Code Regs., Title 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend this Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project this Agreement covers (FGC § 1605, subd. (f)).

## **EFFECTIVE DATE**

This Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at [http://www.wildlife.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html).

## **TERM**

This Agreement shall remain in effect for 12 years beginning on the date signed by CDFW, unless it is terminated or extended before then. All Protective Measures in this Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any Protective Measures specified herein to protect fish and wildlife resources after this Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE**

In approving this Agreement, CDFW is independently required to assess the applicability of CEQA. The features of this Agreement shall be considered as part of the overall Project description.

Permittee's concurrence signature on this Agreement serves as confirmation to CDFW that the activities conducted under the terms of this Agreement are consistent with the Project as described in the CEQA Environmental Impact Report (EIR) prepared by Monterey Peninsula Water Management District as the Lead Agency for the Carmel River Management Plan, and approved on November 2, 1984 (State Clearinghouse No. 84032705). A copy of the EIR was provided to CDFW by Permittee.

CDFW, as a CEQA Responsible Agency, shall submit a Notice of Determination and Findings to the State Clearinghouse upon signing this Agreement.

## **EXHIBITS**

The document listed below is included as an exhibit to this Agreement and is incorporated herein by reference.

Figure 1. Project Location USGS Quad Map.

## **AUTHORITY**

If the person signing this 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 terms herein.



**AUTHORIZATION**

This Agreement authorizes only the Project described herein. If Permittee begins or completes a Project different from the Project this 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 the terms of this Agreement.

**FOR MONTEREY PENINSULA WATER  
MANAGEMENT DISTRICT**



Thomas Christensen



Date

**FOR CALIFORNIA DEPARTMENT OF FISH AND  
WILDLIFE**



Jeffrey R. Single, Ph.D.  
Regional Manager – Central Region

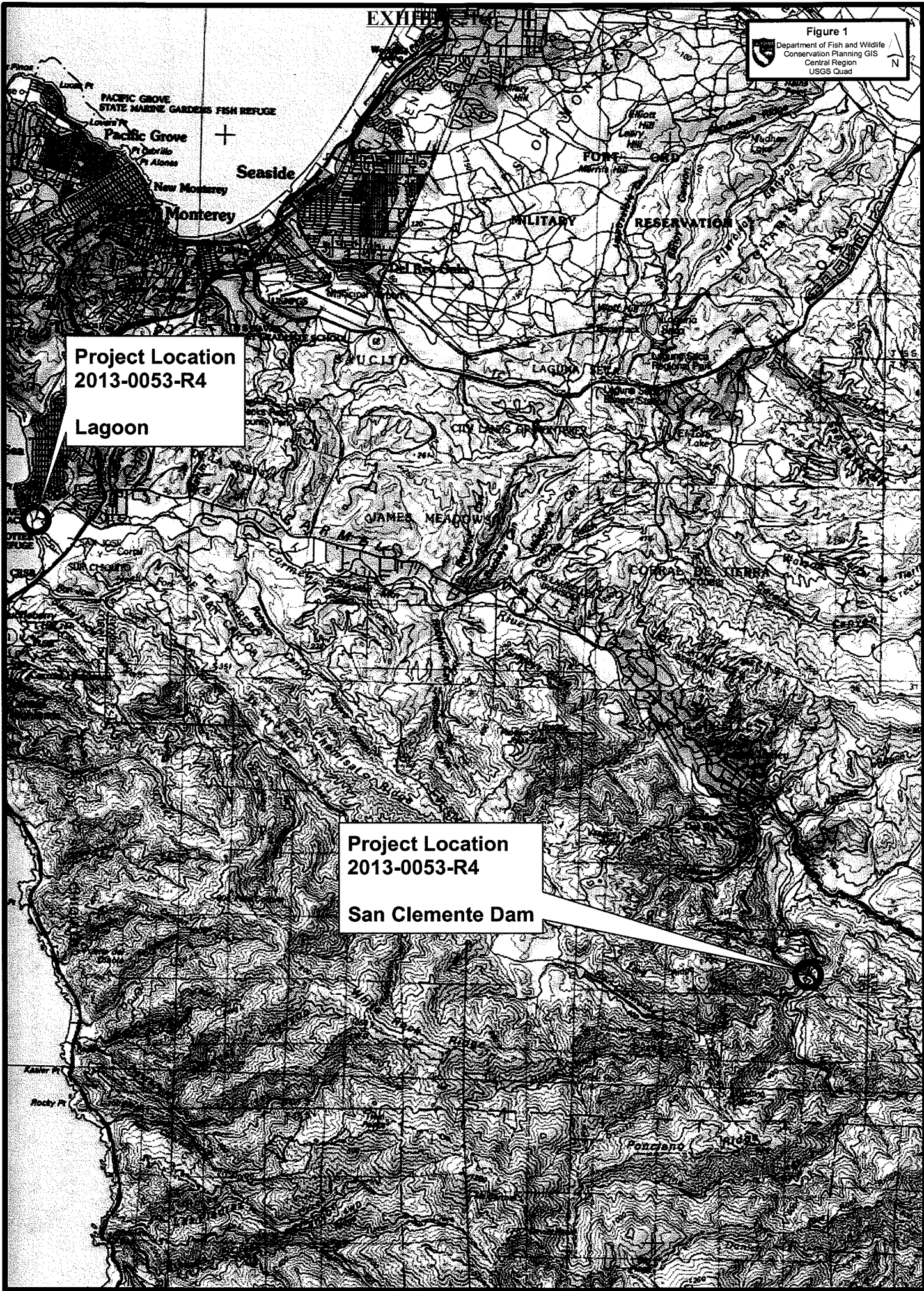


Date

Prepared by: Robb Tibstra  
Environmental Scientist

**Figure 1**

**Exhibit A**



**Project Location  
2013-0053-R4  
Lagoon**

**Project Location  
2013-0053-R4  
San Clemente Dam**

**EXHIBIT 21-C**

**NATIVE AMERICAN HERITAGE COMMISSION**  
Cultural and Environmental Department  
1550 Harbor Blvd., Suite 100  
West Sacramento, CA 95691 Phone (916) 373-3710  
Email: [nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
Website: <http://www.nahc.ca.gov>  
Twitter: @CA\_NAHC



RECEIVED

APR 02 2019

MPWMD

March 28, 2019

Larry Hampson  
Monterey Peninsula Water Management District  
P.O. Box 85  
Monterey, CA 93942-0085

RE: SCH# 2019029145 Modification of the Extent of the Carmel River Riparian Corridor, Monterey County

Dear Mr. Hampson:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

## EXHIBIT 21-C

### AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
  
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
  
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
  
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
  
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
  
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

## EXHIBIT 21-C

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
  - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
  - a. Avoidance and preservation of the resources in place, including, but not limited to:
    - i. Planning and construction to avoid the resources and protect the cultural and natural context.
    - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i. Protecting the cultural character and integrity of the resource.
    - ii. Protecting the traditional use of the resource.
    - iii. Protecting the confidentiality of the resource.
  - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
  - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
  - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
  - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
  - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)



## EXHIBIT 21-C

### SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf)

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

### NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

**EXHIBIT 21-C**

3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
  
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email

address: [Gayle.Totton@nahc.ca.gov](mailto:Gayle.Totton@nahc.ca.gov).

Sincerely,



for

Gayle Totton

Associate Governmental Program Analyst

cc: State Clearinghouse

**EXHIBIT 21-C**



March 7, 2019

Via certified U.S. mail

Louise J. Miranda Ramirez  
OCEN Tribal Chairwoman  
P.O. Box 1301  
Monterey, CA 93942

**SUBJECT: Draft Mitigated Negative Declaration for an Ordinance to  
Modify the Extent of the Carmel River Riparian Corridor**

Dear Chairwoman Ramirez:

As requested in your letter to the Monterey Peninsula Water Management District (MPWMD or District) dated June 28, 2015, this is a formal notice of intent (NOI) to adopt a Mitigated Negative Declaration (MND) to extend the District's defined Carmel River Riparian Corridor. Attached is the NOI and draft MND.

Should you have any questions about this, please contact me at [larry@mpwmd.net](mailto:larry@mpwmd.net) or 831/658-5620.

Sincerely,


A handwritten signature in blue ink that reads "Larry Hampson".

Larry Hampson  
District Engineer


Attachments: 1 – Notice of Intent  
2 – Draft Mitigated Negative Declaration

U:\Larry\Carmel River\Ordinances\CEQA\OCEN-notification-2019.03.07.docx

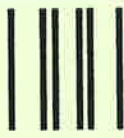
EXHIBIT 21-C

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>Miranda</i> <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p>Louise J. Miranda Ramirez            OCEN Tribal Chairwoman            P.O. Box 1301            Monterey, CA 93942</p>  <p>9590 9402 2998 7094 1176 50</p>	<p>B. Received By (Printed Name) <i>Miranda Casares</i>   C. Date of Delivery <i>3-15-19</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes            If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number (Transfer from service label)            7015 1520 0001 3315 8378</p>	<p>3. Service Type</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adult Signature</li> <li><input type="checkbox"/> Adult Signature Restricted Delivery</li> <li><input checked="" type="checkbox"/> Certified Mail®</li> <li><input type="checkbox"/> Certified Mail Restricted Delivery</li> <li><input type="checkbox"/> Collect on Delivery</li> <li><input type="checkbox"/> Collect on Delivery Restricted Delivery</li> <li><input type="checkbox"/> Insured Mail</li> <li><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</li> <li><input type="checkbox"/> Priority Mail Express®</li> <li><input type="checkbox"/> Registered Mail™</li> <li><input type="checkbox"/> Registered Mail Restricted Delivery</li> <li><input checked="" type="checkbox"/> Return Receipt for Merchandise</li> <li><input type="checkbox"/> Signature Confirmation™</li> <li><input type="checkbox"/> Signature Confirmation Restricted Delivery</li> </ul>
<p>PS Form 3811 July 2015 PSN 7530-02-000-9053</p>	

USPS TRACKING#



9590 9402 2998 7094 1176 50



First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

United States  
 Postal Service

MPWMD

MAR 18 2019

RECEIVED

• Sender: Please print your name, address, and ZIP+4® in this box•

MPWMD  
 PO Box 85  
 Monterey, CA 93940

LN

MPWMD

0061565

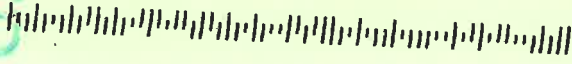


EXHIBIT 21-C

Ohlone/Costanoan-Esselen Nation



Previously acknowledged as  
The San Carlos Band of  
Mission Indians  
The Monterey Band  
And also known as  
O.C.E.N. or Esselen Nation  
P.O. Box 1301  
Monterey, CA 93942

www.ohlonecostanoanesselenation.org.

June 28, 2015

Monterey Peninsula Water  
Management District  
P.O. Box 85  
Monterey, CA 93942-0085

RECEIVED  
JUL 7 2015  
MPWMD

Re: California Environmental Quality Act Public Resources Code section 21080.3, subd. (b) Request for Formal Notification of Proposed Projects within the Ohlone/Costanoan-Esselen Nation's Geographic Area of Traditional and Cultural Affiliation.

Saleki Atsa,

As of the date of this letter, in accordance with Public Resources Code Section 21080.3.1, subd. (b), Ohlone/Costanoan-Esselen Nation, which is traditionally and culturally affiliated with a geographic area within your agency's geographic area of jurisdiction, requests formal notice of and information on proposed projects for which your agency will serve as a lead agency under the California Environmental Quality Act (CEQA), Public Resources Code section 210000 et seq.

Pursuant to Public Resources Code section 21080.3.1, subd. (b), and until further notice, we hereby designate the following person as the tribe's lead contact person for purposes of receiving notices of proposed projects from your agency:

Name: Louise J. Miranda Ramirez  
Title: OCEN Tribal Chairwoman  
Address: P.O. Box 1301  
Monterey, CA 93942  
Phone/Fax Number: (408) 629-5189  
Cell Phone: (408) 661-2486  
Email: ramirez.louise@yahoo.com

We request that all notices be sent via certified U.S. Mail with return receipt. Following receipt and review of the information your agency provides, within the 30-day period proscribed by Public Resources Code section 21080.3.1, subd. (d), the Ohlone/Costanoan-Esselen Nation may request consultation, as defined by Public Resources Code section 21080.3.1, subd. (b), pursuant to Public Resources Code section 21080.3.2 to mitigate any project impacts a specific project may cause to tribal cultural resources.

If you have any questions or need additional information, please contact our lead contact person listed above.

Nimasianxelpasaleki, Sincerely

Louise J. Miranda Ramirez  
OCEN Tribal Chairwoman  
2653 McLaughlin Ave.  
San Jose, CA 95121

Cc: Native American Heritage Commission  
OCEN Tribal Council