
North Coast Regional Water Quality Control Board

October 20, 2016

In the Matter of

Water Quality Certification

for the

Humboldt Bay Trail North Project

APPLICANT: City of Arcata
RECEIVING WATER: Humboldt Bay
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit, No. 110.00
COUNTY: Humboldt
FILES: Arcata City - Humboldt Bay Trail North; ECM PIN CW-822766;
WDID No. 1B16205WNHU

FINDINGS BY THE EXECUTIVE OFFICER:

1. On March 7, 2016, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from the City of Arcata (Applicant), requesting federal Clean Water Act, section 401 Water Quality Certification (certification) for the Humboldt Bay Trail North Project (Project).
2. **Public Notice:** Information describing the Project was noticed for public comment on the Regional Water Board's website on August 10, 2016. No comments were received.
3. **Receiving Waters:** The proposed Project will disturb tributaries of Humboldt Bay, including Butcher's Slough, Gannon Slough, Jacoby Creek, and Old Jacoby Creek. The entire Project is within the Eureka Plain Hydrologic Unit (Basin Planning Area No. 110.00).

4. **Project Description:** The City of Arcata is proposing to construct an approximately 3-mile-long, Class I, non-motorized multi-use paved trail along the Humboldt Bay coastline and Arcata waterfront. The purpose of the Project is to provide nature study opportunities, enhance non-motorized transportation/commuter corridor access, increase pedestrian connectivity, and increase public access to and along Arcata's Waterfront on Humboldt Bay.

The proposed trail route will begin just south of State Route (SR) 255 (Samoa Boulevard), run south through the Arcata Marsh and Wildlife Sanctuary (AMWS), and then along the North Coast Railroad Authority right of way, paralleling SR 101 before terminating just to the north of Brainard's Slough, north of Eureka. The trail will be 14-foot-wide, consisting of a ten-foot-wide paved width (on average) with two-foot-wide unpaved, compacted shoulders on either side.

The trail will cross an unnamed drainage, Butcher's Slough, Gannon Slough, Jacoby Creek, and Old Jacoby Creek, all of which are tidally-influenced through the Project area. The bridges over these drainages will be ten-foot-wide. The Butcher's Slough bridge will be a pre-manufactured, 80-foot-long bridge and not require any pile installation. The Gannon Slough bridge will be approximately 180-foot-long and be located between the current railroad bridge to the west and the southbound lanes of the SR 101 bridge to the east, and require installation of eighteen 18-20-inch-diameter cast-in-place steel shell (CISS) piles within the slough channel. The Jacoby Creek and Old Jacoby Creek bridges will be 80-foot-long, pre-manufactured, fiberglass bridges and each require installation of four 18-20-inch-diameter CISS piles within the adjacent mudflats and floodplains.

Construction staging areas will be located east of I Street, along the north side of G Street, and at the southern terminus of the Project.

5. **Construction Timing:** Project construction will require approximately 100-150 work days between March 2017 and October 2018.
6. **Project Impacts:** Approximately 3,510 cubic yards of cut and 10,440 cubic yards of fill will be needed to bring the trail to the design grade. Wetland areas that will be filled include the drainage basin bridge area on the north end of the AMWS and the drainage ditches along SR 101.

The proposed Project will result in permanent impacts to approximately 0.48 acres of estuarine wetlands and approximately 1.32 acres of palustrine wetlands as a result of trail construction, including bridge construction. Permanent impacts are summarized below in Table 1, Permanent Wetland Impact Summary.

The Applicant calculated Project temporary impacts by applying a five-foot construction access area to either side of the trail width. The proposed Project will

result in approximately 1.03 acres of temporary impacts to jurisdictional palustrine and estuarine wetlands.

Table 1: Permanent Wetland Impacts Summary

Wetland #, from North to South	Wetland Type	Permanent Impact (acres)	Reason for Impact
1	Palustrine emergent	0.1268	Trail construction and Drainage Basin crossing
2	Palustrine emergent	0.0006	Trail construction
3	Palustrine emergent	0.0370	Trail construction
4	Estuarine Intertidal Emergent	0.0206	Trail construction
5	Palustrine emergent	0.0026	Trail construction
7	Palustrine emergent	0.0015	Trail construction
9	Estuarine Intertidal Emergent	0.0927	Trail construction
10	Estuarine Intertidal Emergent	0.0592	Trail construction
11	Estuarine Intertidal Emergent	0.0178	Gannon slough bridge construction
12	Estuarine Intertidal Shore (Mud)	0.0094	Gannon Slough bridge construction, piles
13	Estuarine Intertidal Emergent	0.0004	Gannon Slough bridge construction
14	Estuarine Intertidal Emergent	0.0225	Gannon Slough bridge construction
15	Palustrine emergent	0.2121	Trail construction
18	Palustrine emergent	0.0073	Trail construction, Jacoby Creek bridge construction
19	Estuarine Intertidal Shore (Mud)	0.0003	Jacoby Creek bridge construction
20	Palustrine emergent	0.0146	Trail construction
21	Estuarine emergent	0.0223	Trail construction
22	Palustrine emergent	0.0592	Trail construction
23	Palustrine emergent	0.1928	Trail construction
24	Estuarine Intertidal Shore (Mud)	0.0028	Trail construction
25	Estuarine emergent	0.0688	Bridge construction
26	Palustrine emergent	0.2637	Trail construction
28	Palustrine emergent	0.0980	Trail construction
29	Estuarine emergent	0.0800	Trail construction
30	Palustrine emergent	0.3009	Trail construction
31	Estuarine emergent	0.0814	Trail construction
Total Estuarine impacts:		0.4782	
Total Palustrine impacts:		1.3171	

7. **Mitigation for Project Impacts:** To mitigate for permanent impacts to jurisdictional wetlands, the Applicant is proposing to create no less than 2.26 acres of palustrine wetland habitat and enhance no less than 9.4 acres of estuarine salt marsh habitat.

Palustrine Wetland Creation

Palustrine wetland creation will occur at the “Lanphere Parcel,” adjacent to the Mad River Slough in north Humboldt Bay. The Lanphere Parcel is roughly bounded by Lanphere Road on the north and west sides, an earthen levee and the Mad River Slough on the east side, and the parcel boundary with the “Ralph Property” on the south side. The United States Fish and Wildlife Service Lanphere Dunes Unit of Humboldt Bay National Wildlife Refuge flanks the Lanphere Parcel to the west. Wetland creation will occur within the southwestern quarter of the parcel, which has been identified by the United States Army Corps of Engineers (Corps) as an upland area.

The Applicant and the California Department of Transportation (Caltrans) have a signed Memorandum of Understanding (MOU) dated August 19, 2016, detailing roles and responsibilities for implementing and monitoring restoration activities on the Lanphere Parcel. The Lanphere Parcel is part of a larger mitigation effort (Humboldt Bay Area Mitigation – HBAM) by Caltrans to provide mitigation for the forthcoming Eureka/Arcata Corridor Improvement Project (Corridor Project). Project palustrine wetland creation mitigation may either be constructed at the time Caltrans is prepared to implement Corridor Project mitigation at the Lanphere Parcel, or, per the terms of the MOU, the City of Arcata may implement mitigation independent of Caltrans, particularly if Caltrans implementation timeline extends significantly into the future. The Regional Water Board anticipates receiving a 401 water quality certification application for the Corridor Project in 2018.

Estuarine Wetland Enhancement

The Applicant is proposing to enhance estuarine wetlands by eradicating invasive *Spartina densiflora* on 9.4 acres within the Arcata Marsh Wildlife Sanctuary at South I Street, in the city of Arcata, at latitude/longitude 40.859240, -124.098678¹. Eradication will involve a primary treatment using handheld brush cutters and/or rototillers or manual removal in locations where the mechanical removal is infeasible. Follow-up treatments will focus on removal of re-sprouts and seedlings using brush cutters and/or propane torches.

8. **Disturbed Soil Area:** Project implementation will result in greater than one acre of disturbed soil area. The Applicant shall apply for coverage under the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ) and prepare a Stormwater Pollution Prevention Plan detailing best management practices (BMPs) to control pollution from the Project area during construction. All temporarily disturbed areas within the Project area shall be appropriately stabilized and/or replanted with appropriate native vegetation.

9. **Other Agency Actions:** The Applicant has applied to the Corps for coverage under Nationwide Permit No. 14, Linear Transportation Projects, pursuant to section 404 of the Clean Water Act. The Project was issued a Biological Opinion from the National Oceanic and Atmospheric Administration on September 22, 2015, (NMFS No. WCR-2015-3179), concurring that the proposed Project may affect, but would be not likely to adversely affect federally-listed fish species or their individual designated critical habitat. The Applicant has applied to the California Coastal Commission for a Coastal Development Permit and to the California Department of Fish and Wildlife for a 1600 streambed alteration agreement.

10. **CEQA Compliance:** As lead agency, the City of Arcata prepared a Mitigated Negative Declaration for the Project (SCH 2013032008) in order to comply with the California Environmental Quality Act. A Notice of Determination adopting the Mitigated Negative Declaration was signed by the City of Arcata on May 7, 2013.

11. **Antidegradation Policy:** The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's *Water Quality Control Plan for the North Coast Region* (Basin Plan) implements, and incorporates by reference, both the state and federal antidegradation policies. This certification is consistent with applicable federal and state antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater, and does not otherwise authorize degradation of the waters affected by this Project.

12. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this water quality certification. The Order may be accessed at this web address:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Receiving Water:	Humboldt Bay	
Filled and/or Excavated Areas:	Permanent wetland impacts:	1.80 acres
	Temporary wetland impacts:	1.03 acres

Latitude/Longitude:	Various locations north and south of 40.850650, -124.083006 ¹
Certification Expiration:	October 20, 2021

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Humboldt Bay Trail North Project (WDID No. 1B16205WNHU) as described in the application will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Applicant complies with the following terms and conditions:

All conditions of this certification apply to the Applicant (and their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the Project as related to this Water Quality Certification.

Project-Specific Conditions

1. The Applicant shall implement the July 22, 2016, *Humboldt Bay Trail North Mitigation Site Restoration and Monitoring Plan* (Plan). Changes to the Plan are subject to the review and acceptance of the Regional Water Board Executive Officer. As detailed in the Plan, the Applicant shall ensure creation of no less than 2.26 acres of palustrine wetlands at the “Lanphere Parcel” in Arcata (Assessor’s Parcel Number 506-291-014), and enhance no less than 9.4 acres of estuarine salt marsh habitat through removal of invasive *Spartina densiflora* within the Arcata Marsh Wildlife Sanctuary.
2. The following performance standards shall apply to *Spartina densiflora* removal activities:
 - i) Greater than 50% cover of native salt marsh plant species within the 9.4-acre mitigation project area within five years of implementation of primary treatment; and
 - ii) Less than 5% cover by *Spartina* within the 9.4-acre mitigation project area within five years of implementation of primary treatment.
3. Mitigation construction activities at the Lanphere Parcel shall be completed by October 15, 2020. Failure to complete Lanphere Parcel mitigation by this date shall result in a requirement for additional mitigation equivalent to 0.45 acres of palustrine wetland creation, or 0.23 acres of estuarine wetland creation, for each year of delayed mitigation at the Lanphere Parcel. Additional mitigation shall be detailed in a Mitigation and monitoring Plan subject to the review and acceptance of the Executive Officer.

¹ WGS84 datum

4. The initial year of *Spartina densiflora* removal shall be completed prior to or concurrent with the first Project construction season producing impacts to waters of the state.
5. All construction vehicles shall be steam-cleaned before they conduct any operation below ordinary high water mark.
6. All in-channel work shall occur only during minus low tides occurring between July 1 and September 30.
7. Grazing is prohibited on mitigation lands unless a Grazing Management Plan is first submitted to and found acceptable by the Regional Water Board.

Project-Specific Conditions Requiring Reports

8. Prior to commencement of mitigation work at the Lanphere Parcel, the Applicant shall provide a Final Humboldt Bay Area Mitigation Concept Design Report (Final HBAM Report) that details final mitigation design plans for mitigation work at the Lanphere Parcel. The Final HBAM Report shall be found acceptable by Regional Water Board staff prior to commencement of work at the Lanphere Parcel.
9. The Applicant shall provide no less than five years of annual mitigation monitoring reports for both the estuarine salt marsh enhancement and palustrine wetland creation activities. Monitoring reports shall include:
 - Maintenance activities performed;
 - Monitoring methods;
 - Monitoring results;
 - Photographs taken from fixed positions that are repeated in subsequent monitoring years;
 - Status of achievement towards success criteria;
 - Recommendations for contingency/adaptive management measures; and
 - Implementation status of contingency/adaptive management measures.

The first annual report for estuarine wetland enhancement shall be submitted no later than January 31, 2019.

10. The Applicant shall submit annual mitigation progress reports detailing the timeline and outstanding actions required for implementation of both estuarine wetland enhancement and Lanphere Parcel mitigation. The progress reports shall be due annually before January 31. The first progress report shall be due January 31, 2017. Progress reports shall not be required for the respective mitigation activity once mitigation implementation has commenced.

Standard Conditions

11. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
12. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
13. The validity of this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the Applicant. The total application fee for the Project is \$16,046. The Regional Water Board received \$10,093 from the Applicant on March 7, 2016, and \$5,953 on October 7, 2016.
14. This certification will be subject to annual billing during the construction phase ("Annual Active Discharge Fee"), per the current fee schedule, which can be found on our website:
http://www.swrcb.ca.gov/northcoast/water_issues/programs/water_quality_certification.shtml. This fee will be automatically invoiced to the Applicant.
15. The Applicant shall notify the Regional Water Board upon Project construction completion to request termination of the Annual Active Discharge Fee and to receive a "Notice of Completion of Discharges Letter." The Applicant may be required to submit completion reports at the end of the construction phase. Regional Water Board staff may request a site visit to confirm Project status and compliance with this certification.
16. This certification does not authorize drafting of surface waters. Any drafting of surface waters shall be in compliance with state water rights law and diversion requirements overseen by the State Water Resources Control Board's Division of Water Rights.
17. Herbicides and other pesticides shall not be used within the Project limits. If the Applicant has a compelling case as to why pesticides should be used, then a request for pesticide use and a BMP plan may be submitted to the Regional Water Board staff for review and acceptance.
18. Only wildlife-friendly, 100-percent biodegradable erosion and sediment control products that will not entrap or harm wildlife shall be used. Erosion and sediment

control products shall not contain synthetic (e.g., plastic or nylon) netting. Photodegradable synthetic products are not considered biodegradable. The Applicant shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.

19. BMPs shall be implemented as proposed in the application materials. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities or any other Project activities that could result in erosion or sediment discharges to surface water. Severe and unseasonal rain events are becoming more frequent due to the effects of climate change. Therefore, BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.
20. The Applicant is prohibited from discharging waste to waters of the state, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this certification, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the state. When operations are completed, any excess material or debris shall be removed from the work area.
21. Except for temporary stockpiling of waste generated during demolition operations ("temporary" in this instance means generated and removed during the same working day), waste materials shall not be placed in a manner where the materials may be transported into waters of the State. Waste materials shall not be placed within 100 linear feet of state waters. Exceptions to the 100-foot limit may be granted on a case by-case basis provided the Applicant first submits a proposal that is found acceptable by Regional Water Board staff.
22. The Applicant is liable and responsible for the proper disposal, reuse, and/or recycling of all Project-generated waste in compliance with applicable state and federal laws and regulations.
23. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
24. If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers or streams) occurs, or any water quality problem arises, the associated Project activities shall cease immediately until adequate BMPs are implemented including stopping work. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.

25. Prior to implementing any change to the Project that may be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the Applicant shall obtain prior written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of the material change to the discharge, it will be considered a violation of this certification, and the Applicant may be subject to Regional Water Board enforcement action(s).
26. All Project activities shall be implemented as described in the submitted certification application package and the findings and conditions of this certification. Subsequent Project changes that could significantly impact water quality shall first be submitted to Regional Water Board staff for prior review, consideration, and written concurrence. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this certification, and the Applicant may be subject to Regional Water Board enforcement actions.
27. The Applicant shall provide a copy of this certification and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ to any contractor(s), subcontractor(s), and utility company(ies) conducting work on the Project, and shall require that copies remain in their possession at the work site. The Applicant shall be responsible for ensuring that all work conducted by its contractor(s), subcontractor(s), and utility companies is performed in accordance with the information provided by the Applicant to the Regional Water Board.
28. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
29. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.
30. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or threatened discharge to any waters of the state including dry portions of the shoreline. At no time shall the Applicant or its contractors allow use of any vehicle or equipment, which leaks any substance that may impact water quality.
31. The Applicant shall not use leaking vehicles or equipment within State waters. Vehicles and equipment used within State waters shall be checked for leaks at the beginning of each work day.
32. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any

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

33. The Regional Water Board may add to or modify the conditions of this certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
34. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this certification by letter and shall email a copy of the letter to the following email address: NorthCoast@waterboards.ca.gov.

The successor-in-interest shall email the Regional Water Board Executive Officer at: NorthCoast@waterboards.ca.gov to request authorization to discharge dredged or fill material under this certification. The request must contain the following:

- i) Effective date of ownership change;
 - ii) Requesting entity's full legal name;
 - iii) The state of incorporation, if a corporation;
 - iv) The address and phone number of contact person; and
 - v) A description of any changes to the Project or confirmation that the successor-in-interest intends to implement the project as described in this certification.
35. Except as may be modified by any preceding conditions, all certification actions are contingent on:
 - i) The discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description and CEQA documentation, as approved herein; and
 - ii) Compliance with all applicable water quality requirements and water quality control plans including the requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan), and amendments thereto.

36. The authorization of this certification for any dredge and fill activities expires on October 20, 2021. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Conditions 8-10 are requirements for information and reports. Any requirement for a report made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, section 13268.

If you have any questions or comments, please call Brendan Thompson of my staff, at (707) 576-2699, or via e-mail at Brendan.Thompson@waterboards.ca.gov.

Matthias St. John
Executive Officer

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