

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
BAY DELTA REGION  
2825 CORDELIA ROAD, SUITE 100  
FAIRFIELD, CA 94534  
(707) 428-2002



**STREAMBED ALTERATION AGREEMENT**  
EPIMS-MAN-23326-R3  
UNNAMED TRIBUTARY TO ARROYO CORTE MADERA DEL PRESIDIO

CITY OF MILL VALLEY  
STEPS, LANES, & PATHS #220 EVACUATION PATH STEPS CONSTRUCTION

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the City of Mill Valley (Permittee) as represented by Faryal Saidnia.

## **RECITALS**

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on September 14, 2021, and provided subsequent documents that Permittee intends to complete the Project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the Project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

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

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

## **PROJECT LOCATION**

The Project is located at an unnamed tributary to Arroyo Corte Madera del Presidio, in the City of Mill Valley, County of Marin, State of California. The Project is located approximately 375 feet northeast of the intersection of Woodbine Drive and Eldridge Avenue on Assessor's Parcel Number 029-024-62 and a City of Mill Valley right-of-way. The Project will take place at two locations (Exhibit A).

**Location 1.** Upstream location at the unnamed tributary at approximately Latitude 37.91374°N, Longitude 122.54703°W.

**Location 2.** Downstream location at the unnamed tributary at approximately Latitude 37.91346°N, Longitude 122.54712°W.

## PROJECT DESCRIPTION

The Project is limited to installation of two pedestrian bridges at the unnamed tributary to Arroyo Corte Madera del Presidio. Water in the unnamed tributary is only present immediately after storm events and the Project will take place when the tributary is dry. At Location 1, the Project will install an approximately 15-foot-long, 10-foot-wide free-span pedestrian bridge. At Location 2 the Project will install an approximately 15-foot-long, 10-foot-wide free-span pedestrian bridge with two 2-foot-wide, 3-foot-deep concrete piers outside of the top-of-bank. The Project will be implemented with hand tools and will not remove any trees.

## PROJECT IMPACTS

Existing fish or wildlife resources the Project could substantially adversely affect include:

- Northern spotted owl (*Strix occidentalis caurina*), State and Federally listed as threatened
- California giant salamander (*Dicamptodon ensatus*), California Species of Special Concern (SSC)
- Western pond turtle (*Emys marmorata*), SSC
- White-tailed kite (*Elanus leucurus*), Fully Protected species
- Nesting birds
- Water quality
- Riparian habitat
- Aquatic habitat
- Common aquatic and terrestrial species

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

- Temporary loss of riparian habitat
- Change in contour of bank
- Change in gradient of bank
- Change in channel cross-section
- Colonization by exotic plant species
- Short term release of contaminants
- Increased turbidity
- Increased sedimentation
- Restriction or increase in sediment transport
- Loss of bank stability during construction
- Soil compaction or other disturbance to soil layer
- Loss of natural bank
- Increased bank erosion during Project construction
- Loss of aquatic and terrestrial wildlife species
- Temporary impediment to migration of aquatic and terrestrial species

- Disruption of nesting birds and other wildlife
- Disturbance from Project activities

## MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

### 1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials 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 the Agreement and any extensions and amendments to the 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 provision in the Agreement might conflict with a provision imposed on the Project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site at any time to verify compliance with the Agreement.
- 1.5 Notify CDFW Prior to Work. The Permittee shall notify CDFW by email at least five working days prior to commencement of covered activities. See contact information below.
- 1.6 No Trespass. To the extent that any provisions of this Agreement provide for activities that require the Permittee to traverse another owner's property, such provisions are agreed to with the understanding that the Permittee possesses the legal right to so traverse. In the absence of such right, any such provision is void.
- 1.7 Unauthorized Take. The Permittee is required to comply with all applicable state and federal laws, including the California Endangered Species Act (CESA) and federal Endangered Species Act. This Agreement does not authorize the take<sup>1</sup> of any state or federal endangered or threatened species. Liability for any take or

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<sup>1</sup> Take, as defined in Fish and Game Code section 86, means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Take, as defined in title 16 of U.S. Code section 1532 subsection 19, means harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt any of those activities.

incidental take of such listed species remains the responsibility of the Permittee for the duration of the Project. Any unauthorized take of such listed species may result in prosecution and nullification of the Agreement.

- 1.8 Fish Passage. The Project shall comply with Fish and Game Code section 5901 and shall not install or maintain any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish<sup>2</sup> up and down stream.
- 1.9 Designated Representative. Before initiating ground-disturbing Project activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this Agreement. The Permittee shall notify CDFW in writing five days prior to commencement of Project activities of the Designated Representative's name, business address, and contact information. Permittee shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this Agreement.

## 2. Avoidance and Minimization Measures

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

- 2.1 Work Period. All work shall begin on or after **June 15** and all work shall be completed by **October 15**. Revegetation work conducted with hand tools is not limited to this work window but must be completed within the same season as Project activities.
- 2.2 Work Period Modification. If a work period modification is needed, the work may be permitted outside of the work period by a CDFW representative who reviewed the Project, or if unavailable, through contact with the Regional Office at (707) 428-2002. Permittee shall submit a written request for a work period variance on a week-by-week basis to CDFW. The work period variance request should consider the effects of noise, increased stream flows, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Work period variances are issued at the discretion of CDFW. CDFW reserves the right to require additional measures to protect fish and wildlife resources as a condition for granting the variance. At minimum, the work period variance request shall:
- 1) Describe the extent of work already completed.
  - 2) Detail the activities that remain to be completed.
  - 3) Provide a National Weather Service forecast covering the time needed, up to one week, to complete a phase or activity.
  - 4) Detail the time required to complete each of the remaining activities.

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<sup>2</sup> Fish, as defined in Fish and Game Code section 45, means a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals.

- 5) Provide photographs of both the completed and proposed work sites.
- 6) Include an assessment of additional biological impacts as a result of the work extension.

2.3 Conduct Work During Daylight Hours. Work is restricted to daylight hours (one hour after sunrise to sunset).

2.4 Work According to Documents. Except as they are contradicted by measures required by this Agreement, all work shall be conducted in conformance with the Project description above and the avoidance, minimization, and mitigation measures provided in the notification package.

2.5 Work According to Plans. Final stamped engineered design plans for bridge construction shall be submitted to CDFW a minimum of 15 days prior to the start of Project activities, for CDFW review and written acceptance prior to Project start. All work shall be completed according to the plans. If the submitted Project plans differ substantially from the Project description, CDFW may require an Amendment to this Agreement or submission of a new notification prior to starting the Project.

### **Weather Restrictions**

2.6 Work Period in Dry Weather Only. Project work shall be restricted to dry weather, as allowed during the work period specified in Measure 2.1, and when no flowing water is present. The Permittee shall monitor forecasted precipitation. When a 0.25-inch or more of precipitation is forecasted to occur, the Permittee shall stop work before precipitation commences. No Project activity may be started if its associated erosion control measures cannot be completed prior to the onset of precipitation. After any storm event, the Permittee shall inspect all sites currently under construction and all sites scheduled to begin construction within the next 72 hours for erosion and sediment problems and take corrective action as needed. Seventy-two-hour weather forecasts from the National Weather Service shall be consulted and work shall not resume until runoff ceases and there is less than a 30 percent forecast for precipitation for the following 24-hour period. Weather forecasts shall be documented upon request by CDFW.

### **Qualified Biologist(s) and Biological Monitor(s)**

2.7 CDFW-Approved Qualified Biologist(s) and Monitor(s). At least 14 days prior to the start of Project activities, Permittee shall submit to CDFW for written approval, the names and resumes of all Qualified Biologists and Biological Monitors involved in conducting surveys and/or monitoring work.

- A Qualified Biologist is an individual who holds a bachelor's degree from an accredited university and: 1) is knowledgeable in relevant species' life histories and ecology, 2) can correctly identify relevant species, 3) has conducted field surveys for relevant species, 4) is familiar with relevant survey protocols, and 5)

is knowledgeable of state and federal laws regarding the protection of sensitive species.

- A Biological Monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this Project, experience with construction-level Biological Monitoring, be able to recognize species that may be present within the Project area, and be familiar with the habitats and behavior of those species.

2.8 CDFW Approved Qualified Biologist or Biological Monitor On-site. A Qualified Biologist or Biological Monitor shall be on site daily to monitor compliance with all conditions of this Agreement unless otherwise approved in writing by CDFW. Qualified Biologist or Biological Monitor shall have the authority to halt Project activities, through communication with the Project Manager or their on-site designee, to comply with the terms of this Agreement and otherwise avoid impacts to species and or habitats. If the on-site Biologist has requested a work stop due to failure to implement any of the conditions, CDFW shall be contacted within 24 hours.

### **General Wildlife Protection and Prevention**

2.9 Special-Status Species Survey. A Qualified Biologist, approved by CDFW for this Project, shall conduct a pre-construction survey **within 48 hours prior to the start of project activities**, focusing on the presence of special-status species. If any special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted with regarding avoidance and minimization measures to avoid and minimize impacts to special-status species. Permittee shall implement the avoidance and minimization measures if required by CDFW.

2.10 Training Session for Personnel. Permittee shall ensure that a CDFW-approved Qualified Biologist conducts an education program for all persons employed on the Project prior to performing covered activities. Instruction shall consist of a presentation by the designated Qualified Biologist that includes a discussion of the biology and general behavior of any sensitive species which may be in the area, how they may be encountered within the work area, and procedures to follow when they are encountered. The status of CESA-listed species, including legal protection, penalties for violations, and Project-specific protective measures provided in this Agreement shall be discussed. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to on-site Project activity. Copies of the Agreement for this Project shall be maintained at the worksite with the Project supervisor. Permittee or Qualified Biologist shall prepare and distribute wallet-sized cards or a factsheet handout containing this information for workers to carry on-site. Upon completion of the program, employees shall sign an affidavit stating they attended the program and understand all protection measures. These forms shall be filed at the Permittee's office and be available to CDFW upon request.

- 2.11 Daily Inspections. At the beginning of each workday and prior to construction activities beginning, the work areas, equipment and material left onsite, and any access routes into the work area and nearby vicinity, shall be inspected by a Biological Monitor or qualified person approved in writing by CDFW for the presence of special-status species, roosting bats, nesting birds, or other wildlife. If any species is detected, CDFW shall be notified and construction activities shall not begin until the species has left the site of its own volition, or CDFW provides written permission to proceed.
- 2.12 Wildlife Encounters. If any wildlife is encountered during the course of construction, all work in the immediate area shall cease and the wildlife shall be allowed to leave the construction area unharmed. If any listed fish and wildlife are encountered, the Permittee shall contact CDFW immediately.
- 2.13 Trenches and Holes. At the end of each workday all trenches and holes greater than one foot deep shall be completely covered with a material flush with the ground to prevent wildlife from entering. When trenches cannot be fully covered, an escape ramp shall be placed at each end of any constructed open trench to allow any wildlife that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degrees.
- 2.14 Pipes, Hoses, and Similar Structures. All pipes, hoses, or similar structures less than 12 inches in diameter shall be closed or covered to prevent animal entry. All construction pipes or similar structures greater than 2 inches in diameter stored at the Project site overnight shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.
- 2.15 No Excavation Below Top-of-Bank. No excavation shall occur in the stream channel below top-of-bank.
- 2.16 No Equipment in Live Stream. No equipment shall be operated within the live stream or within the stream channel below the level of top-of-bank.

### **Northern Spotted Owl Protection**

- 2.17 Northern Spotted Owl Surveys. No Project activities within 0.25 miles of northern spotted owl nesting habitat shall occur from March 15 to August 31, unless northern spotted owl surveys have been completed by a Qualified Biologist following the U.S. Fish and Wildlife Service (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If breeding northern spotted owls are detected during surveys, a quarter mile no-disturbance buffer zone shall be implemented around the nest. Survey results shall be provided

to CDFW and to the Spotted Owl Observations Database (<https://wildlife.ca.gov/Data/CNDDB/Spotted-Owl-Info>) prior to commencing Project activities. No Project activities shall occur within the buffer zone until the end of the breeding season, or a Qualified Biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW.

Alternate buffer zones may be proposed by a Qualified Biologist after conducting an auditory and visual disturbance analysis following the USFWS guidance, *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Alternate buffers must be approved in writing by CDFW.

### **Nesting Bird Surveys, Prohibitions, and Buffers**

- 2.18 Breeding Bird Nest Take Prohibition. Permittee shall avoid active nests occurring at or near the Project site. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.
- 2.19 Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey for active nests shall be conducted by a Qualified Biologist within 7 days prior to the beginning of Project-related activities. The results of the survey shall be sent to CDFW via EPIMS and by email prior to the start of Project activities, for review and acceptance (see Contact Information). Refer to Notification Number EPIMS-MAN-23326-R3 when submitting the survey to CDFW. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. If a lapse in Project-related work of 7 days or longer occurs, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be reinitiated.
- 2.20 Active Nest Buffers. If an active nest is found during surveys, Permittee or the Qualified Biologist shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as “Ecologically Sensitive Areas” (ESA) and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.
- Buffer distances for bird nests shall be site specific and an appropriate distance, as determined by a Qualified Biologist. The buffer distances shall be specified to protect the bird’s normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The Qualified Biologist and Biological Monitor shall have authority to order the cessation of all nearby

Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.

- The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW.

2.21 Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone (see above measure) until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist or Biological Monitor. Any trees or shrubs that are removed shall be “downed” in such a manner as to minimize disturbance to stable soil conditions.

### **Vegetation Protection, Prevention, and Restoration**

2.22 Habitat Protection. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the Project. Vegetation outside the construction corridor shall not be removed or damaged without prior consultation and approval of a CDFW representative.

2.23 Vegetation Marked for Protection. Prior to Project activities, the Permittee shall clearly mark all vegetation within the Project area that shall be avoided during Project activities.

2.24 Tree Drip Line. Construction materials, equipment storage, and parking areas shall be located outside the drip line of any preserved tree. Construction equipment shall not cause root compaction.

2.25 Tree Removal. No trees shall be removed. If the removal of trees is required, the Permittee must receive approval from CDFW in writing before construction activities begin.

2.26 Treat Exposed Areas. All exposed/disturbed areas and access points within the riparian zone left barren of vegetation as a result of the construction activities shall be restored by seeding with a blend of native erosion control grass seed. Seeded areas shall be mulched. Landscape fabric shall not be used. Revegetation shall be completed as soon as possible after construction activities in those areas cease. Seeding placed after October 15 must be covered with broadcast straw, jute netting, coconut fiber blanket or similar erosion control blanket.

- 2.27 Riparian Revegetation and Monitoring Plan. A riparian revegetation and monitoring plan (RMP) shall be submitted to CDFW for written acceptance within 60 days of the Effective Date of the Agreement, or at least 30 days before commencing Project activities, whichever is sooner. The RMP shall be implemented the same year that impacts occur, unless otherwise approved in writing by CDFW. The RMP shall describe the on-site restoration and enhancement for temporary impacts resulting from understory vegetation removal. The RMP shall also describe off-site restoration activities, within the same watershed, for permanent impacts from the Project at a 3:1 mitigation to impact ratio for both area and linear permanent impacts. Temporary impact areas and permanent impact areas shall be quantified and mapped, including any access areas. The RMP shall include a detailed native plant species palette and map showing plant spacing, and specific performance criteria, monitoring, adaptive management, and invasive species removal in order to allow for successful habitat creation and maintenance. Success criteria and monitoring shall meet the requirements in the below measure.
- 2.28 Revegetation Monitoring. To ensure a successful revegetation effort, all plantings shall be monitored and maintained as necessary for a minimum of five years. All plantings shall have a minimum of 80% survival at the end of the minimum monitoring period and plantings shall attain 70% cover after 3 years and 75% cover after 5 years, unless otherwise approved in writing by CDFW. If the survival or cover requirements are not meeting these goals, the Permittee is responsible for replacement planting, additional watering, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.
- 2.29 Irrigation. When supplemental watering is used to establish and maintain plant growth to meet success criteria, irrigation shall be done in the most water efficient manner possible, such as using hand watering, drip/microirrigation or through the use of a time release system.
- 2.30 Phytophthora. Permittee shall ensure that all plantings come from local nurseries implementing best management practices to avoid and minimize the spread of *Phytophthora*.
- 2.31 Exotic Plants. Permittee shall not plant, seed or otherwise introduce invasive exotic plant species. Prohibited exotic plant species include those identified in the California Invasive Plant Council's database, which is accessible at: <https://www.cal-ipc.org/plants/inventory/>.
- 2.32 Control Invasive Species. Permittee is responsible for monitoring and if needed, eradication of invasive exotic species that may occur within the Project area for a minimum of two years following construction. All revegetation efforts shall include local plant materials native to the Project area.

- 2.33 Allowable Herbicide. If herbicide use is necessary, only herbicides registered with the California Department of Pesticide Regulation shall be used. All herbicides shall be applied in accordance with regulations set forth by the California Department of Pesticide Regulation and according to label instructions. Only herbicides approved for use in aquatic environments are permitted. Care shall be taken to avoid herbicide contact with native vegetation, and it shall only be applied on calm days (wind speed less than 5 miles per hour) to prevent airborne transfer of herbicide. No herbicides shall be used where threatened or endangered species occur, unless otherwise approved in writing by CDFW.
- 2.34 Disposal of Vegetation and Debris. All removed vegetation and debris shall be moved outside the ordinary high-water mark prior to inundation by water. All removed vegetation and debris shall be disposed of according to state and local laws and ordinances.

### **Bridge Design and Construction**

- 2.35 Bottom of Bridges above 100-year Mark. The bottom of bridge superstructure shall be of sufficient height to allow unrestricted passage of water and debris during 100-year storms. As long as the bridge remains, the Permittee is responsible for maintaining free-flowing conditions under the bridge and clearing of all debris. Substantial changes to the bed, channel, or bank necessary for maintenance may require an amendment to this Agreement or separate notification under Fish and Game Code section 1602 subdivision (a).
- 2.36 Abutment Location. Abutments shall be located outside the stream banks and above ordinary high water.

### **Concrete and Cement-based Products**

- 2.37 Cement Based Products. All cement-based products (concrete, mortar, etc.) poured or applied wet onsite shall be excluded from the wetted channel or areas where they may come into contact with water for a period of 30 days after application. During that time the product shall be kept moist and runoff from the product shall not be allowed to enter the stream. Commercial sealants may be applied to the product surface or mixture where difficulty in excluding flow for a long period may occur. If sealant is used, water shall be excluded from the site until the sealant is cured.
- 2.38 Concrete – Primary Containment. The Permittee shall install the necessary containment structures to control the placement of wet concrete and to prevent it from entering the channel outside of those structures. No concrete shall be poured within the high flow line if the 15-day weather forecast indicates any day with a greater than 20% chance of rain.

- 2.39 Concrete – Designated Monitor. At all times when the Permittee is pouring or working with wet concrete there shall be a designated monitor to inspect the containment structures and ensure that no concrete or other debris enters into the channel outside of those structures.

### **Erosion and Sediment Control**

- 2.40 Erosion Control. At no time shall silt laden runoff be allowed to enter a river, stream, or lake or directed to where it may enter a river, stream, or lake. Erosion control measures shall be utilized throughout all phases of operation where sediment runoff from exposed slopes threatens to enter a river, stream, or lake. Erosion control measures, such as, silt fences, straw hay bales, gravel or rock lined ditches, water check bars, and broadcasted straw shall be used wherever sediment has the potential to leave the work site and enter the river, stream, or lake.
- 2.41 Monofilament. Permittee shall not use erosion control materials containing plastic monofilament netting (erosion control matting) or similar material containing netting within the project area due to documented evidence of amphibians and reptiles becoming entangled or trapped in such material. Acceptable substitutes include coconut coir matting or similar.
- 2.42 Excavation. No spoil from the excavation shall be placed on the bed or bank of the stream. Excavated spoil shall be removed to an area where the sediment will not deliver to a watercourse.
- 2.43 Groundwater Encountered. Nuisance groundwater encountered during excavation shall be discharged at a location where it will infiltrate into the soil, resulting in no overland flow. Turbid water shall not be allowed to flow downstream.
- 2.44 Erosion Control Monitoring. Permittee shall monitor erosion control measures during and after each storm event and repair and/or replace ineffective measures immediately.
- 2.45 Disposal and Removal of Materials. All removed spoils and construction debris shall be moved outside the work area prior to inundation by water. Spoil sites shall not be located within the stream channel or areas that may be subjected to stream flows, where spoil may be washed back into a stream, or where it may impact streambed habitat, aquatic or riparian vegetation. All removed material shall be disposed of according to state and local laws and ordinances.

### **Equipment and Vehicles**

- 2.46 Operating Equipment and Vehicle Leaks. Any equipment or vehicles driven and/or operated adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian

habitat.

- 2.47 Stationary Equipment Leaks. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.
- 2.48 Equipment Storage. Staging and storage areas for equipment, materials, fuels, lubricants, and solvents, shall be located outside of the stream channel and banks.
- 2.49 Refueling of Equipment. Refueling of construction equipment and vehicles may not occur within 175 feet of any water body, or anywhere that spilled fuel could drain to a water body. Tarps or similar material shall be placed underneath the construction equipment and vehicles, when refueling, to capture incidental spillage of fuels. Equipment and vehicles operating in the project area shall be checked and maintained daily to prevent leaks of fuels, lubricants, or other liquids.

### **Material Handling, Debris, and Waste**

- 2.50 Stockpiled Materials. Building materials and/or construction equipment shall not be stockpiled or stored where they may be washed into the water or cover aquatic or riparian vegetation. Stockpiles shall be covered when measurable rain is forecasted.
- 2.51 No Dumping. Permittee and all contractors, subcontractors, and employees shall not dump any litter or construction debris within the stream, or where it may pass into the stream.
- 2.52 Pick Up Debris. Permittee shall pick up all debris and waste daily.
- 2.53 Wash Water. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

### **Toxic and Hazardous Material**

- 2.54 Toxic Materials. Any hazardous or toxic materials that could be deleterious to aquatic life that could be washed into the stream or its tributaries shall be contained in watertight containers or removed from the project site.
- 2.55 Hazardous Materials. Debris, soil, silt, bark, slash, sawdust, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, wildlife, or riparian habitat resulting from the

project related activities shall be prevented from contaminating the soil and/or entering the Waters of the State.

### **Spills and Emergencies**

- 2.56 Spill Kits. Prior to entering the work site, all field personnel shall know the location of spill kits and trained in their appropriate use.
- 2.57 Spill of Material Deleterious to Fish and Wildlife. In the event of a hazardous materials spill into a stream (e.g., concrete or bentonite), Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling 1-800-852-7550 and immediately provide written notification to CDFW by email at [AskBDR@wildlife.ca.gov](mailto:AskBDR@wildlife.ca.gov). Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas, injured fish and wildlife. If dead fish or wildlife are found in the affected area, Permittee shall collect carcasses and immediately deliver them to CDFW. Permittee shall meet with CDFW within ten days of the reported spill in order to develop a resolution including: site clean-up, site remediation and compensatory mitigation for the harm caused to fish, wildlife and the habitats on which they depend as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation and compensatory mitigation costs. Spill of materials to waters of the state that are deleterious to fish and wildlife are in violation of Fish and Game Code section 5650 et seq. and are subject to civil penalties for each person responsible. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.
- 2.58 Spill Containment. All activities performed in or near a river, stream, or lake shall have absorbent materials designated for spill containment and cleanup activities on-site for use in an accidental spill. The Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550 and immediately initiate the cleanup activities. CDFW shall be notified by the Permittee and consulted regarding clean-up procedures.

### **3. Reporting Measures**

Permittee shall meet each reporting requirement described below.

- 3.1 Notification Prior to Work. Per Measure 1.5, Notify CDFW Prior to Work, at least five days prior to the start of Project activities, Permittee shall notify CDFW that work will commence.
- 3.2 Notification of Designated Representative. Per Measure 1.9, Designated Representative, at least five days prior to the start of Project activities, Permittee shall submit to CDFW the name, business address, and contact information of the

Designated Representative.

- 3.3 Engineer Stamped Design Plans. Per Measure 2.5, Work According to Plans, at least 15 days prior to the start of Project activities, Permittee shall submit to CDFW the final stamped engineered design plans for review and written acceptance.
- 3.4 Qualified Biologist Approval. Per Measure 2.7, CDFW-Approved Qualified Biologist(s) and Monitor(s), no later than 14 days prior to Project activities Permittee shall submit to CDFW, for review and approval, the qualifications for the biologist(s) that shall oversee the implementation of the conditions in this Agreement and conduct surveys or monitoring work.
- 3.5 Survey Reports. Per Measures 2.9, 2.17, and 2.19 survey results for nesting birds and all other sensitive species shall be submitted to CDFW for review and written acceptance prior to the start of work.
- 3.6 Riparian Revegetation and Monitoring Plan. Per Measure 2.27, Riparian Revegetation and Monitoring Plan, Permittee shall submit a riparian revegetation and monitoring plan (RMP) to CDFW for written acceptance within 60 days of the Effective Date of the Agreement, or 30 days prior to Project commencement, whichever is sooner.
- 3.7 Monitoring Reports. Permittee shall submit to CDFW a status report by January 31 every year until restoration goals identified in Measure 2.28 are accomplished. This report shall include the survival and percent cover of species planted and native species that have colonized the area. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. The report shall include photos from designated photo stations and other relevant information such as: a summary of invasive species control, methods used to remove non-native plants, and a list of wildlife observed on-site. After CDFW's review of the fifth-year monitoring report, if plantings have achieved the required success criteria, CDFW shall email Permittee stating that the monitoring requirements have been satisfied. **Monitoring requirements will not be deemed complete until CDFW emails Permittee stating so.**
- 3.8 Photographic Documentation of Work and Project Completion Report. Prior to commencement of work a minimum of four (4) vantage points that offer representative views of the Project site and work areas shall be identified. The Permittee shall photograph the Project area from each of the vantage points, noting the direction and magnification of each photo. Upon completion of work, the Permittee shall photograph post-Project conditions from the vantage points using the same direction and magnification as pre-Project photos. A Project Completion Report shall be submitted to CDFW with the photos and a reference key describing the location of the photo, the direction of the view, and whether the photo is pre- or

post-construction. **The Project Completion Report shall be submitted within 30 days of Project conclusion.**

- 3.9 Notification to the California Natural Diversity Database. If any listed, rare, or special status species are detected during Project surveys or on or around the Project site during Project activities, the Permittee shall submit CNDDDB Field Survey Forms to CDFW in the manner described at the CNDDDB website (<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>) within five working days of the sightings. Copies of such submittals shall also be submitted to the CDFW regional office as specified below.

## **CONTACT INFORMATION**

Any communication that Permittee or CDFW submits to the other shall be submitted through EPIMS as instructed by CDFW.

### To Permittee:

Faryal Saiidnia  
City of Mill Valley  
EPIMS-MAN-23326-R3  
Steps, Lanes, & Path #220 Evacuation Path Steps Construction  
[fsaiidnia@cityofmillvalley.org](mailto:fsaiidnia@cityofmillvalley.org)

### To CDFW:

Department of Fish and Wildlife  
Region 3: Bay Delta Region  
EPIMS-MAN-23326-R3  
Steps, Lanes, & Path #220 Evacuation Path Steps Construction  
[EPIMS.R3@wildlife.ca.gov](mailto:EPIMS.R3@wildlife.ca.gov); [amanda.culpepper@wildlife.ca.gov](mailto:amanda.culpepper@wildlife.ca.gov)

## **LIABILITY**

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the Project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the Project. The decision to proceed with the Project is Permittee's alone.

## **SUSPENSION AND REVOCATION**

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees,

representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or 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. For example, if the Project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

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 Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

## **AMENDMENT**

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall log into EPIMS and submit to CDFW a completed CDFW "Amendment & Extension" form. Permittee shall include with the completed form, payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall log into EPIMS and submit to CDFW a completed CDFW "Amendment & Extension" form. Permittee shall include with the completed form, payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **EXTENSIONS**

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall log into EPIMS and submit to CDFW a completed CDFW "Amendment & Extension" form. Permittee shall include with the completed form, payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

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

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

## **TERM**

This Agreement shall expire on **December 31, 2025**, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

## **EXHIBITS**

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

A. Exhibit A. *Exhibit A – Location*, prepared by CDFW, dated December 9, 2021.

## **AUTHORITY**

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

## **AUTHORIZATION**

This Agreement authorizes only the Project described herein. If Permittee begins or completes a Project different from the Project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with Fish and Game Code section 1602.

## **CONCURRENCE**

Through the electronic signature by the Permittee or Permittee's representative as evidenced by the attached concurrence from CDFW's Environmental Permit Information Management System (EPIMS), the Permittee accepts and agrees to comply with all provisions contained herein.

**The EPIMS concurrence page containing electronic signatures must be attached to this agreement to be valid.**

*Version 1 uploaded December 15, 2021*