



California Regional Water Quality Control Board
North Coast Region
William R. Massey, Chairman



Dan Skopec
Acting Secretary

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Arnold Schwarzenegger
Governor

May 3, 2006

Mr. Thomas Horn
P.O. Box 349
Orleans, CA 95556

Dear Mr. Horn:

Subject: Issuance of Clean Water Act Section 401 Certification (Water Quality Certification) for the Horn Property Landslide Debris Disposal Project

File: Horn Property – Landslide Debris Disposal Project
WDID No. 1B06016WNHU

This Order by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), is being issued pursuant to Section 401 of the Clean Water Act (33 USC 1341); in response to your request (applicant) for Water Quality Certification to fill wetlands and drainageways on a portion your property located at 39291 Highway 96, near Orleans, Humboldt County. On February 23, 2006, the Regional Water Board received your application and a \$500.00 processing fee. On March 14, 2006, we posted information describing the project on the Regional Water Board's website for a 21-day public review and comment period. On April 14, 2006, we received an additional \$1950.00 to cover the remaining balance of the processing fee. We did not receive any public comments on this project.

Project Description: The project is located on the southeast side of Highway 96 near the intersection of Perch Creek Road. The project involves disposal of up to 220,000 cubic yards of landslide debris that will be removed from Highway 96 and other roadways in the Orleans area. Removal of landslide debris from roadways is an ongoing effort that is necessary for safe travel. Proper handling and disposal of the debris helps minimize the amount of silt and other debris that is washed into streams.

The debris disposal area was significantly disturbed by hydraulic mining activities at the former Pearch Mine in the early 1900s. The disposal area contains approximately 0.9 acre of waters of the United States that will be filled and permanently impacted by the project. Most of the large rock material will be removed from the landslide debris prior to disposal. The rock will be processed offsite and used for other construction purposes. The fill material will be compacted in lifts within the disposal area.

California Environmental Protection Agency

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Compensatory mitigation for impacts to waters of the United States is required. Compensatory wetland mitigation activities will begin once the disposal area reaches its final capacity. Mitigation measures will be implemented in accordance with the March 2, 2006 *Stream and Wetland Restoration and Monitoring Plan* (Mitigation Plan) prepared by MGW Biological. The Plan includes creation of open water ponds, wetlands and connecting drainages that are similar to the existing habitats that will be filled by this project. This Water Quality Certification requires compensatory mitigation measures to result in the creation of at least 1.5 acres of waters of the United States including at least 0.9 acre of wetland.

- Receiving Waters: Wetlands and unnamed drainages tributary to the Klamath River in the Orleans Hydrologic Subarea No. 105.12.
- Latitude/Longitude: 41.309N/123.528W
- Filled or Excavated Area: Area Temporarily Impacted: 0 acre
Area Permanently Impacted: 0.9 acre of wetland
- Federal Permit: U.S. Army Corps of Engineers Individual Permit (29779N)
- Compensatory Mitigation: Compensatory mitigation for the permanent impacts to 0.9 acre of waters of the United States includes creation of 1.5 acres of new waters of the United States, including at least 0.9 acre of wetlands. The Mitigation Plan includes a grading plan that is intended to reproduce the existing drainage and wetland network and a wetland vegetation and riparian replanting plan. The Mitigation Plan contains a monitoring plan that includes performance criteria for determining whether restoration was successful and contingency measures to address potential problems such as slow plant growth or dead plantings. The applicant will have a qualified consultant conduct annual mitigation monitoring, and prepare and submit monitoring reports to the Regional Water Board.
- Noncompensatory Mitigation: Noncompensatory mitigation measures include the use of Best Management Practices for sediment and turbidity control and heavy equipment use near wetlands and stream channels. The applicant has applied for a Lake or Streambed Alteration Agreement (1600 Permit) from the California Department of Fish and Game.
- CEQA Compliance: The Humboldt County Planning Department, as the lead agency for CEQA, determined that this project will not have a significant effect on the environment and certified a Mitigated Negative

Declaration on April 17, 2006.

Standard Conditions:

Pursuant to Title 23, California Code of Regulations, Section 3860 (23 CCR 3860), the following three standard conditions shall apply to this project:

- 1) This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and 23 CCR 3867.
- 2) 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 23 CCR 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- 3) The validity of any nondenial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR 3833, unless otherwise stated in writing by the certifying agency.

Additional Conditions:

Pursuant to 23 CCR 3859(a), the applicant shall comply with the following additional conditions:

- 1) The applicant shall notify Regional Water Board staff at least five working days (working days are Monday – Friday) prior to the commencement of the project, with details regarding the schedule of operations, to allow staff the opportunity to be present onsite and to answer any public inquiries that may arise regarding the project.
- 2) A copy of this permit must be provided to all contractors and subcontractors conducting work on this project, and a copy must be in their possession at the work site. It is the applicant's responsibility to ensure that the contractor and all subcontractors are provided a copy of this permit.
- 3) Adequate Best Management Practices for sediment and turbidity control shall be implemented and in place during and after construction in order to ensure that no silt or sediment enters surface waters.

- 4) If, at any time, an unauthorized discharge to surface waters occurs, or any water quality problem arises, the project shall cease immediately and Regional Water Board staff shall be notified promptly.
- 5) All fill material shall consist of landslide debris removed from area roadways and shall be clean and free of contaminants.
- 6) No debris, 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 permit, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State.
- 7) The Applicant shall comply with the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activities and shall implement an adequate Storm Water Pollution Prevention Plan.
- 8) Implementation of the Mitigation Plan shall begin as soon as possible once the disposal site reaches capacity.
- 9) Monitoring of the compensatory mitigation measures shall be conducted annually and an annual monitoring report shall be submitted to the Regional Water Board by July 15 each calendar year for a minimum of five years or until the compensatory mitigation measures are deemed complete by Regional Water Board staff. A qualified professional biologist, with experience in wetland ecosystem creation and function, as well as wetland mitigation monitoring techniques, shall prepare all monitoring reports.

Annual mitigation monitoring reports shall include photo documentation of the mitigation areas and a written assessment of the restoration area that includes a comparison of the onsite mitigation measures to the *Growth Rates* and *Measures of Success* specified in the Mitigation Plan. After five years of mitigation monitoring have been conducted, the monitoring report shall include a detailed assessment of the mitigation measures and shall state whether or not the mitigation project has met the final success criteria. If the compensatory mitigation project has not met the final success criteria, the report shall include recommends for additional mitigation to insure there is no net loss of wetlands as a result

of the project.

- 10) Mitigation measures shall result in the creation of at least 1.5 acres of waters of the State, including at least 0.9 acre of wetland, in order for the compensatory mitigation to be considered successful.
- 11) Additional restoration, potentially offsite restoration, may be ordered in the future by the Regional Water Board if implementation of the Mitigation Plan does not result in attainment of the mitigation success criteria by 2025 or within 10 years of the debris disposal area reaching its final capacity.
- 12) Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside of waters of the United States and shall not result in a discharge or a threatened discharge to waters of the United States. At no time shall the applicant use any vehicle or equipment, which leaks any substance that may impact water quality.
- 13) Project activities shall comply with provisions in the North Coast Region Water Quality Control Plan (Basin Plan).
- 14) The project site may be visited and assessed by Regional Water Board staff to document compliance with this certification.
- 15) All activities, Best Management Practices, and associated mitigation will be conducted as described in this Permit and the application for this project.
- 16) This Order is not transferable. 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 Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, address, and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also

describe any changes to the Project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the Project as described in this Order.

Water Quality Certification: I hereby issue an order [23 CCR Subsection 3831(e)] certifying that any authorized discharge from the Horn Property Landslide Debris Disposal Project, (Facility No. 1B06016WNHU) will comply with the applicable provisions of sections 301 (“Effluent Limitations”), 302 (“Water Quality Related Effluent Limitations”), 303 (“Water Quality Standards and Implementation Plans”), 306 (“National Standards of Performance”), and 307 (“Toxic and Pretreatment Effluent Standards”) of the Clean Water Act [33 USC Subsection 1341 (a)(1)], and with other applicable requirements of State law. 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.

Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant’s project description, and b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan for the North Coast Region (Basin Plan).

Expiration: The authorization of this certification for any dredge and fill activities expires on May 3, 2011. 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.

Please notify Dean Prat of our staff at (707) 576-2801 prior to construction (pursuant to Additional Condition No. 1 above) so that we can answer any public inquiries about the work.

Sincerely,

Catherine Kuhlman
Executive Officer

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Enclosure:

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"

cc: Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 333 Market Street,
San Francisco, CA 94599
U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka, CA 95502