



**California Regional Water Quality Control Board
North Coast Region**

John W. Corbett, Chairman



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*Secretary for
Environmental Protection*

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**Arnold
Schwarzenegger**
Governor

September 17, 2007

In the Matter of
Water Quality Certification

for the

**GHILOTTI CONSTRUCTION COMPANY,
304 TODD ROAD PROPERTY
WDID NO. 1B06007WNSO**

APPLICANT:	Ghilotti Construction Company
RECEIVING WATER:	Laguna de Santa Rosa
HYDROLOGIC AREA:	Russian River Hydrologic Area No. 114.00, Laguna Hydrologic Sub Area No. 114.21
COUNTY:	Sonoma County
FILE NAME:	304 Todd Road Property

BY THE EXECUTIVE OFFICER:

1. On March 7, 2006, Ghilotti Construction Company(Applicant), filed an application for water quality certification under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) for activities associated with the 304 Todd Road Property Project. A fee in the amount of \$8686.00 was received on March 7, 2006. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on August 14, 2007, and posted information describing the project on the Regional Water Board's website. No comments were received.
2. The "after the fact" project is located in Santa Rosa, south of Todd Road and west of Ghilotti Avenue, approximately ¼ mile west of Highway 101, Sonoma County, California, (APN. No. 134-171-028). The purpose of the project was to create an area suitable for the storage of various construction materials and equipment in close proximity to existing Ghilotti facilities near Highway 101 in Sonoma County. To accommodate the project, 90,000 cubic yards of fill material was imported to fill all wetlands on site.
3. The project resulted in the permanent loss of approximately 4.04 acres of seasonal wetlands. An area of 0.94 acres of seasonal wetlands were filled in the summer of

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1984 and 3.1 acres of seasonal wetlands were filled in the summer of 1998. Compensatory Mitigation will be required for only the 3.1 acres of seasonal wetlands that were filled in the summer of 1998. It is highly unlikely that mitigation would have been required for the 0.94 acres that were filled in 1984 due to the regulations of that time period.

A study of the adjacent parcels and aerial photos were used to determine the approximate acreage of wetlands on the site prior to the unauthorized fill activities. The study determined that the site contained 4.04 acres of seasonal wetlands. Based on this study, vegetation in the wetlands on the project site would match that of wetlands on surrounding sites. Vegetation in the wetlands on the adjacent parcels consisted of California coyote-thistle (*Eryngium aristulatum*), Mediterranean barley (*Hordeum hystrix*), Italian rye grass (*Lolium perenne*), semaphore grass (*Pleuropogon californicus*), curly dock (*Rumex crispus*), hyssop loosestrife (*Lythrum hyssopifolia*), and penny royal.

4. Compensatory mitigation for this project will be achieved through the construction of the Terra Bagnata Wetlands Mitigation Project. The Terra Bagnata Wetland Mitigation Project will be constructed "as a package" mitigation for two projects: 1) the Shamrock Materials, Inc. operational facility, and 2) "after the fact" mitigation for the previously constructed Ghilotti Construction, 304 Todd Road Property project. A total of 8.71 acres of jurisdictional wetlands exists on site, of which, 2.6 acres qualified as high quality habitat due to the presence of California Tiger Salamander (CTS), and Sebastopol meadowfoam (*Limnanthes vincularis*). Based on discussions with the United States Army Corps of Engineers, the United States Fish and Wildlife Service (USFWS), the Environmental Protection Agency, the Regional Water Board, and the California Department of Fish and Game, the Applicant proposes to create 10.36 acres of seasonal wetlands and swales, enhance 6.2 acres of seasonal wetlands disturbed by farming, and preserve 2.6 acres of seasonal wetlands on the 50.18 acre site. A ratio of 38 percent wetland to upland will be constructed. Mitigation at the Terra Bagnata site would compensate for impacts to wetlands, including impacts to CTS habitat. The Terra Bagnata site is located within the Llano Conservation Area for the CTS as specified in the USFWS's *Santa Rosa Plain Conservation Strategy* released in December 2005. Both CTS adults and larvae have been identified on the Terra Bagnata site, thus indicating that the site is suitable as estivation habitat as well as providing aquatic breeding and larval development habitat for this species. The Applicant will include a CTS monitoring program for the project site to determine if created and enhanced wetland habitats support CTS larvae. Monitoring shall be conducted every other spring and results shall be documented and provided to the appropriate agencies.

Target vegetation for the seasonal wetlands includes hydrophytes that currently exist on the site as well as those wetland plants endemic to the Santa Rosa Plain. These plants include but are not limited to goldfields (*Lasthenia glabrata*), common mint (*Mentha pulegium*), water-starwort (*Callitriche marginata*), coyote thistle (*Eryngium*

arisulatum), California semaphore grass (*Pleuropogon californica*), toad rush (*Juncus bufonius*), hyssop loosestrife (*Lythrum hyssopifolia*), American pillwort (*Pilularia Americana*), and meadow barley (*Hordeum brachyantherum*). To encourage active plant establishment, seeds and/or cuttings (collected in an approved manner) of the above referenced species and/or other native wetland plants will be broadcast in the constructed wetland areas in the fall following construction and prior to the onset of winter rains. In upland areas adjacent to the wetland mitigation areas, native coast live oak (*Quercus agrifolia*) and valley oak (*Quercus lobata*) will be planted. A five year monitoring plan shall be implemented with an 85 percent survival rate of all proposed plant species in upland areas.

The success criteria for the wetlands and swales to be created and enhanced on the site are the following: 1) evidence of ponding and/or saturated soils in the wetland feature for approximately 21 consecutive days during the growing season (assuming a normal rainfall year); 2) A minimum of 80 percent total cover by seasonal wetland plant species in each wetland after a five year period. Hydrologic observations will be conducted at least once a month during the months of December through June. Vegetation analyses will occur at least three times each spring, the months will vary depending on plant phenology. "Species composition" and "species richness" indices shall be developed for all plant species found in the mitigation wetlands. For the vegetation composition analysis, an annual plant list shall be created for each wetland each year.

5. On May 9, 2007, the applicant adopted a mitigated negative declaration (State Clearinghouse number 2007042059) for the project in order to comply with CEQA. The Regional Water Board has considered the environmental document and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment.
6. Construction Best Management Practices (BMPs) shall be incorporated into the final project plans in order to reduce and control soil erosion. Work in and around waterways will be conducted during the dry season, and will include installation of construction barrier fencing to prevent equipment entry into sensitive areas, installation of silt fencing or fiber rolls to prevent sediment loss from the work area, topsoil salvage and reapplication, and seeding and mulching.
7. The Applicant was issued a United States Army Corps of Engineers Nationwide permit No. 26, for the filling of 0.94 acres of jurisdictional wetlands in 1984. The Applicant has applied for a United States Army Corps of Engineers individual permit, file number 2693N for the filling of 3.1 acres of jurisdictional wetlands on the property in 1998.

Receiving Water: Laguna de Santa Rosa, Russian River Hydrologic Area No. 114.00, Laguna Hydrologic Sub Area No. 114.21

Filled or Excavated Area: 4.04 acres of permanent impacts to waters of the State and United States

Latitude/Longitude: 38. 38889° north, -122. 72633° west

Expiration: October 15, 2009

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE REGIONAL WATER BOARD CERTIFIES THAT THE 304 TODD ROAD PROPERTY PROJECT (FACILITY NO. 1B06007WNSO), 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 Applicant complies with the following terms and conditions:

1. 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.
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 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.
3. This Order is conditioned upon total payment of any fee required under chapter 28, title 23, California Code of Regulations, and owed by the Applicant.
4. 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 (Enclosed).
5. The Russian River watershed and the Laguna de Santa Rosa (tributary to the Russian River) are identified as impaired on the Clean Water Act Section 303(d) list. The Russian River is listed as impaired for sediment and temperature. The Laguna de Santa Rosa is listed as impaired for sediment, temperature, nitrogen, phosphorus, dissolved oxygen, and mercury. At present, total maximum daily loads (TMDL)s have not been established for these waterbodies. If TMDLs are established and implementation plans are adopted for these watersheds prior to

the expiration date of this Order, the Regional Water Board may revise the provisions of this Order to address actions identified in such action plans.

6. 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 Basin Plan.
7. The Applicant shall construct the project in accordance with the conditions described in the application and the findings above, and shall comply with all applicable water quality standards.
8. Any change to the operation of the project that would have a significant or material effect on the findings, conclusions, or conditions of this Order shall be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.
9. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this Order.
10. The Applicant shall provide a copy of this Order and attachments to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. The Applicant shall be responsible for work conducted by its contractor or subcontractors.
11. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. 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.
12. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete 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 Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State.
13. If construction dewatering is found to be necessary, the Applicant shall use a method of water disposal other than disposal to surface waters (such as land disposal) or the Applicant shall apply for permit coverage from the Regional Water Board and receive notification of coverage prior to discharge to surface waters.
14. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside of waters of the United States and the State. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall not result in a

discharge or a threatened discharge to any waters of the State or the United States. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality.

15. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities, construction activities, or any other project activities that could result in erosion or sediment discharges to surface water.
16. All conditions required by this Order shall be included in the Plans and Specifications prepared by the Applicant for the Contractor. In addition, the Applicant shall require compliance with all conditions included in this Order in the bid contract for this project.
17. All mitigation activities shall be completed as proposed in the application.
18. In the event of any violation or threatened violation of the conditions of this Order, 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 constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this Order, the Regional Water Board may require the holder of any federal permit or license subject to this Order to furnish, under penalty of perjury, any technical or monitoring reports the Regional 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 Order, the Regional Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.
19. The Regional Water Board may add to or modify the conditions of this Order, 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.
20. 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. The successor-in-interest must send to the Regional Water Board Executive Office a written request for transfer of this Order to discharge dredged or fill material under this Order. The request must contain the following:

- a. requesting entity's full legal name
- b. the state of incorporation, if a corporation
- c. address and phone number of contact person
- d. description of any changes to the project or confirmation that the successor-in-interest intends to implement the project as described in this Order.

21. The authorization of this Order for any dredge and fill activities expires on October 15, 2009. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Please contact Stephen Bargsten of our staff at (707) 576-2653 if you have any questions or need to report any violation of this Order.

Robert R. Klamt
Interim Executive Officer

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Original sent to: Ghilotti Construction Company, 246 Ghilotti Avenue, Santa Rosa, CA 95407

Copies sent to: Mr. Bill Orme, SWRCB, Acting 401 Program Manager, Clean Water Act Section 401 Certification and Wetlands Unit Program

Ms. Kim Niemeyer and Ms. Samantha Olson, SWRCB, Office of the Chief Counsel

Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 1455 Market Street, San Francisco, CA 94103-1398

Mr. Bill Cox, California Department of Fish and Game, P.O. Box 47, Yountville, CA 94599