



**California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman**



Linda S. Adams
Secretary for
Environmental Protection

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**Arnold
Schwarzenegger**
Governor

October 22, 2008

In the Matter of

Water Quality Certification

for the

**DUNN SUBDIVISION AND WETLAND MITIGATION PROJECT
WDID NO. 1B08127WNHU**

APPLICANT: Mr. Scott Dunn
RECEIVING WATER: Wetlands
HYDROLOGIC UNIT: Ferndale Hydrologic Subarea No. 111.11
COUNTY: Humboldt County
FILE NAME: Dunn Subdivision and Wetland Mitigation

BY THE EXECUTIVE OFFICER:

1. On August 4, 2008, Mr. Scott Dunn (Applicant) filed an application for water quality certification (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 construction of a residential and commercial subdivision in Fortuna. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on September 15, 2008, and posted information describing the project on the Regional Water Board's website. We did not receive any public comments on this project.
2. The project is located at 400 Main Street in downtown Fortuna. The project is part of a 16 parcel subdivision that will include 14 residential lots and 2 commercial lots on 3.5 acres. The property has historically been used for agricultural pasture and is currently developed with one single-family residence.
3. The project involves installation of a new road into the subdivision that will permanently impact 2,070 square feet (0.048 acre) of emergent wetlands that are located in the southern portion of the property that is adjacent to Main Street. Storm water runoff from the subdivision will enter drain inlets placed along the new road and runoff will be collected in an underground storm drain system that includes an underground detention basin to maintain peak discharge flows at pre-project levels.

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Collected runoff is eventually discharged into the City of Fortuna's existing storm water collection system which drains to Strongs Creek.

4. Compensatory mitigation is required for the proposed impacts to existing wetlands. Proposed compensatory mitigation involves offsite creation of 0.14 acre of new wetland area adjacent to an existing palustrine forested wetland that is located on an undeveloped forested parcel owned by the Applicant. The proposed offsite wetland mitigation area is located approximately 0.5 miles west of the community of Swains Flat along Highway 36 and the Van Duzen River. Expansion of an existing wetland area at the proposed mitigation site is expected to result in a larger and more diverse wetland area that will provide greater functions and values than the wetland area that will be permanently impacted by the project.
5. Noncompensatory mitigation includes the use of Best Management Practices (BMPs) for sediment and turbidity control.
6. The Applicant has obtained authorization from the United States Army Corps of Engineers to perform the project under Nationwide Permit Numbers 29 and 39 (File No.2008-00301N), pursuant to Clean Water Act, section 404. A Lake or Streambed Alteration Agreement from the California Department of Fish and Game is not required.
7. On March 3, 2008, the City of Fortuna approved a mitigated negative declaration (SCH No. 2008012073) 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.
8. 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.

Receiving Water: wetlands in the Ferndale Hydrologic Subarea No. 111.11

Filled or Excavated Area: Area Temporarily Impacted: None
Area Permanently Impacted: 2,070 square feet of emergent wetlands

Total Linear Impacts: Length Temporarily Impacted: None
Length Permanently Impacted: None

Dredge Volume: None

Latitude/Longitude: 40.60171 N/124.16536 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Dunn Subdivision and Wetland Mitigation Project (WDID No. 1B08127WNHU), 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:

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 certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 2200, and owed by the Applicant.
4. The Regional Water Board shall be notified in writing at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during construction, and to answer any public inquiries that may arise regarding the project.
5. 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 Order, 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. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
6. 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.
7. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
8. The Applicant shall implement the mitigation measures for hydrology and water quality (Mitigation Measures #5 and #6) as described in the mitigated negative declaration.

9. The Applicant shall implement the Wetland Mitigation Plan (Plan) submitted to the Regional Water Board on August 4, 2008. Annual progress and monitoring reports shall be submitted to the Regional Water Board each year until the final success criteria have been achieved and all compensatory wetland mitigation requirements have been deemed complete.
10. A copy of this Order and the application documents submitted by the Applicant for this certification shall be provided to all contractors and subcontractors conducting the work, and shall be in their possession at the work site.
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. Prior to implementing any change to the project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer.
13. All project work shall be conducted as described in this Order and in the application submitted by the Applicant. If the Regional Water Board is not notified of a significant alteration to the project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement actions.
14. 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 and approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.
15. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
16. 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 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 Regional 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 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 certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

17. 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, and the 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.

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

19. The authorization of this certification for any dredge and fill activities expires on October 22, 2013. 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.

If you have any questions or comments please call Dean Prat at (707) 576-2801.

Catherine E. Kuhlman
Executive Officer

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Original to: Mr. Scott Dunn, P.O. Box 151, Fortuna, CA 95540

Copies to: U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive,
Box 14, Eureka, CA 95501
Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions,
1455 Market Street, San Francisco, CA 94103-1398
Mr. Keith Hess, DRW, 165 South Fortuna Boulevard, Fortuna, CA 95540

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