



**California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman**



Matt Rodriguez
Secretary for
Environmental Protection

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Edmund G. Brown Jr.
Governor

October 28, 2011

In the Matter of
Water Quality Certification

for the

**McCanless Property – Access Road for Single Family Residence
WDID No. 1B11160WNHU**

APPLICANT: Mr. Luke McCanless
RECEIVING WATER: Wetlands
HYDROLOGIC AREA: Ferndale Hydrologic Subarea No. 111.11
COUNTY: Humboldt
FILE NAME: McCanless Property – Access Road for Single Family Residence

BY THE EXECUTIVE OFFICER:

1. On August 18, 2011, Mr. Luke McCanless (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 private driveway at 591 Crosby Road near the City of Ferndale. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on October 4, 2011, 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 southeast of the City of Ferndale in an unincorporated area of Humboldt County. The project involves construction of an approximately 10-foot wide driveway to a new home site on the McCanless family farm. The driveway will be approximately 1,000 feet long, including approximately 650 linear feet of existing dirt road that will be improved. The driveway will cross open prairie containing wetlands that drain to the Coffee Creek Slough. The driveway has been

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aligned to avoid watercourse crossings and riparian areas, and has also been aligned to minimize impacts to the existing wetlands. The driveway will cross 2,400 square feet of palustrine emergent wetlands.

3. On July 21, 2011, the County of Humboldt approved a Mitigated Negative Declaration (SCH No. 2011062003) 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. The environmental document indicates the project will result in 2,400 square feet of permanent impacts to jurisdictional wetlands due to direct filling associated with construction of the driveway. The project includes wetland creation, enhancement, and restoration activities to mitigate the wetland impacts.
4. Compensatory mitigation is required for the permanent impacts to 2,400 square feet of existing wetlands. Compensatory wetland mitigation is composed of four elements: 1) restoration of approximately 1,550 square feet of previously graded wetland area; 2) enhancement of 120 linear feet of inboard roadside drainage ditch to create a 950 square foot wetland bioswale; 3) creation of an additional 2150 square feet of wetlands in a 5-foot wide by 430-foot long bioswale connected to the enhanced section of roadside drainage ditch; and, 4) enhancement of an approximately 7.9-acre riparian area, including installation of a cattle fence to allow only seasonal use of the riparian area by livestock. The riparian enhancement area will be planted with native coniferous trees at a 10 foot by 10 foot spacing in areas with less than 50 percent canopy cover. The edges of the riparian area will also be planted with hydrophytic vegetation.
5. The Applicant has received authorization from the U.S. Army Corps of Engineers to complete the project under Nationwide Permit Number 29 (Residential Developments) pursuant to Clean Water Act, section 404. A Lake or Streambed Alteration Agreement from the California Department of Fish and Game is not required for this project.
6. The Lower Eel River Total Maximum Daily Load (TMDL) for temperature and sediment was established in 2007 by the United States Environmental Protection Agency in accordance with section 303(d) of the Clean Water Act, because the State of California determined that the water quality standards for the Lower Eel River are exceeded due to excessive temperature and sediment. Roads and bank erosion are identified as sources contributing to the sediment impairment. In addition, activities that impact the riparian zone and reduce riparian vegetation are identified as sources contributing to increased stream temperatures. The primary adverse impacts associated with excessive temperature and sediment in the Lower Eel River pertain to cold freshwater habitat, primarily anadromous salmonid

habitat. Actions authorized by this Order require compensatory mitigation for permanent impacts to wetlands in addition to enhancement of an approximately 7.9-acre riparian area and installation of a cattle fence to allow only seasonal use of the enhanced riparian area by livestock. Constructed wetland bioswales will also trap sediment and minimize sediment transport downstream. The project is also required to implement Best Management Practices (BMPs) for sediment and erosion control. Accordingly, the project is consistent with and implements portions of the Lower Eel River TMDL

7. The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. This Order is consistent with applicable federal and state antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater, and does not otherwise authorize degradation of the waters affected by this project.
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. Order No. 2003-0017-DWQ can be found at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf.

Receiving Waters: Ferndale Hydrologic Subarea No. 111.11

Filled or Excavated Area: Area Temporarily Impacted: None
Area Permanently Impacted: 2,400 square feet of wetlands

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

Dredge Volume: None

Latitude/Longitude: 40.55644 N/124.20907 W

Compensatory Mitigation: creation of 2,150 square feet of wetlands in a 5-foot wide by 430-foot long bioswale connected to the enhanced section of roadside drainage ditch; restoration of approximately 1,550 square feet of previously graded wetland area; enhancement of 120 linear feet of inboard roadside drainage ditch to create a 950 square foot wetland bioswale; and, enhancement of an approximately 7.9-acre riparian area, including installation of a cattle fence to allow only seasonal use of the riparian area by livestock

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the McCanless Property – Access Road for Single Family Residence Project (WDID No.1B11160WNHU), as described in the application, will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Applicant complies with the following terms and conditions:

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

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. The validity this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the Applicant.
4. The Regional Water Board staff 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. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
6. The Applicant shall construct the project in accordance with the project described in the application and the findings above, and shall comply with all applicable water quality standards as detailed in the Basin Plan.
7. 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. 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 action(s).
8. The Applicant shall implement the Wetland Mitigation Plan for Luke McCanless (Plan) prepared by DRW Environmental Consultants. Annual wetland mitigation monitoring reports shall be submitted to the Regional Water Board each year until the final success criteria are attained. Annual monitoring reports shall contain photos of the wetland mitigation area taken before, during, and after implementation of the Plan. The first wetland mitigation monitoring report shall be submitted to this office within one year of beginning ground disturbing activities on the project. A final wetland mitigation monitoring report, including a post-mitigation wetland delineation, shall be submitted which clearly demonstrates adequate and successful wetland creation.
9. 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 waters. All BMPs shall be installed properly and in accordance with the manufacturer's specifications.
10. The Applicant shall prioritize the use of wildlife-friendly biodegradable (not photo-degradable) erosion control products wherever feasible. The Applicant shall not use or allow the use of erosion control products that contain synthetic materials within waters of the United States or waters of the State at any time. The Applicant shall not use or allow the use of erosion control products that contain synthetic netting for permanent erosion control (i.e. erosion control materials to be left in place for two years or after the completion date of the project). If the Applicant finds that erosion control netting or products have entrapped or harmed wildlife, personnel shall remove the netting or product and replace it with wildlife-friendly biodegradable products. The Applicant shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.

11. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the project.
12. 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.
13. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or threatened discharge to any waters of the State including dry portions of the streambank and streambed. At no time shall the Applicant or its contractors allow use of any vehicle or equipment which leaks any substance that may impact water quality.
14. The Applicant shall provide a copy of this Order and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ to any contractor(s), subcontractor(s), and utility company(ies) conducting work on the project, and shall require that copies remain in their possession at the work site. The Applicant shall be responsible for ensuring that all work conducted by its contractor(s), subcontractor(s), and utility companies is performed in accordance with the information provided by the Applicant to the Regional Water Board.
15. 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 including stopping work. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
16. 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.
17. 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 for the violation or threatened violation constitutes a limitation necessary to assure compliance with

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

18. 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.

19. 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).
20. The authorization of this certification for any dredge and fill activities expires on October 28, 2016. 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.

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

Catherine Kuhlman
Executive Officer

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Weblink: 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 can be found at: http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Original to: Mr. Luke McCanless, 591 Crosby Road, Ferndale, CA 95536

cc: Mr. Keith Hess, DRW Environmental Consulting,
165 South Fortuna Boulevard, Fortuna, CA 95503

Electronic

Copies to: U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive,
Box 14, Eureka, CA 95501
U.S. Army Corps of Engineers, Regulatory Functions, 1455 Market Street,
San Francisco, CA 94103-1398