
North Coast Regional Water Quality Control Board

April 20, 2016

In the Matter of
Water Quality Certification
for the
Eureka Waterfront Trail Project

APPLICANT: City of Eureka
RECEIVING WATER: Humboldt Bay
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit, No. 110.00
COUNTY: Humboldt
FILES: Eureka Waterfront Trail, ECM PIN CW-820074, WDID No. 1B15156WNHU

FINDINGS BY THE EXECUTIVE OFFICER:

1. On December 8, 2015, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from the City of Eureka (Applicant) requesting Federal Clean Water Act (CWA), section 401 Water Quality Certification (certification) for the Eureka Waterfront Trail Project (Project).
2. **Public Notice:** Information describing the Project was noticed for public comment on the Regional Water Board's website on February 19, 2016. No comments were received.
3. **Receiving Waters:** The proposed Project will cause disturbances to jurisdictional wetlands and waters in the Eureka Plain. Jurisdictional waters within the Project limits include Humboldt Bay, First Slough, Eureka Slough, and Wedge Slough.
4. **Project Description:** The purpose of the Project is to increase non-motorized public access to Humboldt Bay by constructing a Class 1 multi-use trail along the Humboldt Bay waterfront (Project). The trail would be 3.75 miles long, be eight to ten-feet-wide, paved, with unpaved two-foot-wide shoulders, and extend along the waterfront

between Truesdale Street to the south and Tydd Street to the northeast. Other Project elements include construction of six bridges, trailheads, playgrounds, parking reconfiguration, interpretive signage, landscaping, drainage improvements, and fencing.

Project construction is expected to commence in 2016 and take approximately three years to be completed. Project construction would be broken into three phases, from south to north:

- Phase A—1.2 miles of trail construction between Truesdale and Del Norte Streets;
- Phase B—1.38 miles of trail construction along Waterfront Drive and Railroad Avenue between C Street and W. Del Norte Street;
- Phase C—1.17 miles of trail construction between Tydd and Front Streets, including a 559-foot-long boardwalk, and mitigation construction.

The Project also involves demolishing existing concrete structures and establishing a facility to process the concrete for use as trail sub-base.

5. **Construction Timing:** Project Phase A is expected to occur in 2016, Phase B in 2017 and 2018, and mitigation implementation in the Fall of 2016.
6. **Project Impacts:** The proposed Project would result in approximately 0.32 acres of permanent impacts to jurisdictional wetlands as a result of fill placement for trail construction and mitigation construction. The proposed Project would also result in approximately 0.039 acres of temporary impacts to jurisdictional wetlands as a result of boardwalk construction access.
7. **Avoidance and Minimization:** Permanent impacts to jurisdictional wetlands have been avoided by: lengthening bridges to bring abutments outside of jurisdictional areas; raising bridges and the boardwalk to avoid shade impacts; and using 2" helical piers in-lieu of larger and impact-driven piers.
8. **Mitigation for Project Impacts:** The Applicant proposes to restore 1.3 acres of previously filled estuarine salt marsh that is currently upland near the outlet of Eureka Slough to compensate for permanent impacts to jurisdictional wetlands.
9. **Disturbed Soil Area:** Project implementation would result in greater than one acre of disturbed soil area. The Applicant shall apply for coverage under the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ) and prepare a Stormwater Pollution Prevention Plan detailing best management practices (BMPs) to control pollution from the Project area during construction. All temporarily disturbed areas within the Project area shall be appropriately stabilized and/or replanted with appropriate native vegetation.
10. **Other Agency Actions:** The Applicant has applied to the United States Army Corps of Engineers for coverage under Nationwide Permit No. 14, Linear Transportation Projects, pursuant to section 404 of the Clean Water Act. The Applicant filed for a

Coastal Development Permit from the California Coastal Commission on November 18, 2015.

11. **CEQA Compliance:** As lead agency, the City of Eureka prepared Mitigated Negative Declarations for the three Project phases (SCH nos. 2012052053, 2014022050, 2014092033). The Applicant signed Notices of Determination adopting the Mitigated Negative Declarations on June 20, 2012, March 28, 2014, and October 22, 2014, in order to comply with the California Environmental Quality Act.

12. **Antidegradation Policy:** 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 certification 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.

13. 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. The Order may be accessed at this web address:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Receiving Water:	Humboldt Bay	
Filled and/or Excavated Areas:	Permanent impacts to waters of the U.S.:	0.32 acres
	Temporary impacts to waters of the U.S.:	0.039 acres
Latitude/Longitude:	Various locations, ~40.802, -124.1781 ¹	
Certification Expiration:	April 20, 2021	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Eureka Waterfront Trail Project (WDID No. 1B15156WNHU) 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 WGS84 datum

All conditions of this certification apply to the Applicant (and 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.

Project-Specific Conditions

1. The Applicant shall implement the *Eureka Waterfront Trail Project Mitigation and Monitoring Plan*, revised February 2016 (MMP), and restore no less than 1.3 acres of estuarine salt marsh adjacent Eureka Slough to mitigate for impacts to jurisdictional waters. The Applicant shall also establish no less than 0.08 acres of shrubland alliance plantings, consisting of silk tassel (*Garrya elliptica*), salal (*Gaultheria shallon*), California blackberry (*Rubus ursinus*), and Hooker's willow (*Salix hookeriana*), to mitigate for permanent impacts to 0.04 acres of shrubland alliance.

The mitigation plantings shall be installed in the two locations designated in Figure 4 of the MMP. Other mitigation requirements include:

- i) Mitigation construction shall be completed no later than December 31, 2016;
- ii) Shrubland alliance plantings shall be monitored for a period of no less than five years and individual plantings shall not be deemed successfully established before temporary irrigation has been terminated for two consecutive years;
- iii) The salt marsh restoration site and plantings shall be monitored for a period of no less than five years; and
- iv) Year five estuarine salt marsh mitigation site vegetation shall be 70 percent or greater relative cover of native wetland species, including 25 percent or greater relative cover of pickleweed (*Sarcocornia pacifica*), and 25 percent or greater relative cover of saltgrass (*Distichlis spicata*), with no more than 10 percent absolute cover of target invasive plants, as identified in the MMP.

Project-Specific Conditions Requiring Reports

2. To avoid compaction and damage to the estuarine saltmarsh by heavy equipment during boardwalk helical pile installation, the Applicant shall utilize wetland mats, planks, timbers, or a comparable method to distribute the load of equipment while operating within the saltmarsh. The Applicant shall submit a description of its plan for Regional Water Board staff review and approval prior to use of equipment within the saltmarsh.
3. Annual performance reports that detail mitigation site performance shall be submitted to the Regional Water Board. Reports shall be submitted no later than January 31st after monitoring years 1, 3, and 5.
4. The estuarine saltmarsh mitigation area shall be provided long-term protection through real estate instruments or other available mechanisms, as appropriate considering relevant legal constraints (33 C.F.R. § 332.7(a)(1)). The City of Eureka

shall submit for Regional Water Board staff review and approval, a description of the legal arrangements to provide long-term mitigation site protection, including site ownership, and a description of the maintenance necessary to ensure long-term protection of the compensatory mitigation site. The site protection strategy shall be approved prior to Regional Water Board acceptance of the final mitigation site success criteria.

Standard Conditions

5. 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.
6. 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.
7. The validity of 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. The total application fee is \$2,041. The Regional Water Board received \$1,814 from the Applicant on December 14, 2015, and \$227 on March 31, 2016.
8. This certification will be subject to annual billing during the construction phase ("Annual Active Discharge Fee") and during the monitoring phase of the Project ("Annual Post Discharge Monitoring Fee"), per the current fee schedule, which can be found on our website:
http://www.swrcb.ca.gov/northcoast/water_issues/programs/water_quality_certification.shtml. These fees will be automatically invoiced to the Applicant.
9. The Applicant shall notify the Regional Water Board upon Project construction completion to request termination of the Annual Active Discharge Fee and to receive a "Notice of Completion of Discharges Letter." If the Project is subject to the Annual Post Discharge Monitoring Fee, then the Applicant shall also notify the Regional Water Board at the end of the monitoring period to request termination of the fee and receive a "Notice of Project Complete Letter." The Applicant may be required to submit completion reports at the end of each of these phases. Regional Water Board staff may request site visits at the end of each Project phase to confirm Project status and compliance with this certification.
10. The Regional Water Board shall be notified at least five working days (working days are Monday – Friday) prior to the commencement of construction.
11. Only wildlife-friendly, 100 percent biodegradable erosion and sediment control products that will not entrap or harm wildlife shall be used. Erosion and sediment control products shall not contain synthetic (e.g., plastic or nylon) netting.

Photodegradable synthetic products are not considered biodegradable. The Applicant shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.

12. BMPs shall be implemented as proposed in the application materials. 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. Severe and unseasonal rain events are becoming more frequent due to the effects of climate change. Therefore, BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.
13. 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 certification, 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.
14. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
15. If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, 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. Prior to implementing any change to the Project that may be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the Applicant shall obtain prior written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of the material change to the discharge, it will be considered a violation of this certification, and the Applicant may be subject to Regional Water Board enforcement action(s).
17. All Project work shall be conducted as described in this certification and in the application submitted by the Applicant, and shall comply with all applicable water quality standards as detailed in the Basin Plan. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this certification, and the Applicant may be subject to Regional Water Board enforcement actions.
18. The Applicant shall provide a copy of this certification 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.

19. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
20. 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 shoreline. 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.
21. 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 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 certification. 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 certification 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 certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
22. The Regional Water Board may add to or modify the conditions of this certification, 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.
23. 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 certification by letter and shall email a copy of the letter to the following email address: NorthCoast@waterboards.ca.gov.

The successor-in-interest shall email the Regional Water Board Executive Officer at: NorthCoast@waterboards.ca.gov to request authorization to discharge dredged or fill material under this certification. The request must contain the following:

- i) Effective date of ownership change;
- ii) Requesting entity's full legal name;
- iii) The state of incorporation, if a corporation;
- iv) The address and phone number of contact person; and

- v) A description of any changes to the Project or confirmation that the successor-in-interest intends to implement the project as described in this certification.
24. Except as may be modified by any preceding conditions, all certification actions are contingent on:
- i) The discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description and CEQA documentation, as approved herein; and
 - ii) Compliance with all applicable water quality requirements and water quality control plans including the requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan), and amendments thereto.
25. The authorization of this certification for any dredge and fill activities expires on April 20, 2021. 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.

Conditions 2-4 are requirements for information and reports. Any requirement for a report made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, section 13268.

If you have any questions or comments, please call Brendan Thompson of my staff, at (707) 576-2699, or via e-mail at Brendan.Thompson@waterboards.ca.gov

Matthias St. John
Executive Officer

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