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North Coast Regional Water Quality Control Board

June 20, 2016

**In the Matter of**

**Water Quality Certification**

**for the**

**Wood Creek Aquatic Habitat Enhancement Project, Phase II**

APPLICANT: North Coast Regional Land Trust  
RECEIVING WATER: Wood Creek  
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit, No. 110.00  
COUNTY: Humboldt  
FILES: Wood Creek Aquatic Enhancement Project, Phase II;  
ECM PIN CW-823053, WDID No. 1B16213WNHU

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FINDINGS BY THE EXECUTIVE OFFICER:

1. On March 11, 2016, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from the North Coast Regional Land Trust (Applicant), requesting Federal Clean Water Act, section 401, Water Quality Certification (certification) for activities related to the proposed Wood Creek Aquatic Enhancement Project, Phase II (Project).
2. **Public Notice:** Information describing the Project was noticed for public comment on the Regional Water Board's website on May 5, 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 Wood Creek.

4. **Project Description:** The Project purpose is to restore salmonid rearing habitat in Humboldt Bay, including Southern Oregon/Northern California Coast coho, Chinook salmon, and steelhead trout. The Project area is located within an approximately 21-acre area north of and adjacent to Wood Creek, and directly to the north of Myrtle Avenue, at the northern terminus of Felt Road. Wood Creek enters Freshwater Creek approximately 0.2 miles downgradient of the Project area.

The Regional Water Board issued Clean Water Act section 401 water quality certification for the related Wood Creek Tidal Marsh Enhancement Project, Phase I, on September 9, 2008, which expired on September 9, 2013. This Project proposes to continue restoration actions to the east of and directly upstream from the Phase I activities. This certification also authorizes adaptive management measures within the Phase I wetland areas. Proposed Project activities include:

As part of Phase II restoration, approximately 8,200 cubic yards will be excavated from the existing cattail marsh and wetland pasture to create approximately 3.54 acres of channel, pool, and wetland habitat features that would hydraulically connect to the existing Wood Creek channel;

As part of Phase II restoration, approximately 1.87 acres of topographically diverse planting hummocks and interconnected, shallow, seasonally-flooded wetlands will be created and serve as habitat for shorebirds, migratory birds, and native plant and animal species. Approximately 1,800 cubic yards of material generated during excavation would be used for this activity. The remainder of the excavated material would be transported to the Phase I project area to restore salt marsh habitat that had been incidentally converted to salt panne as a result of Phase I implementation;

Adaptive management alterations will be made to the Wood Creek Phase I area, including reed canary grass removal, salt marsh restoration as mentioned above, and creation of seven compacted earth sills and three log sills to prevent fish stranding during seasonal or tidal variations in water levels;

Six logs, eighteen logs with rootwad, thirteen base logs in jam structures, three whole trees with intact crowns, and four low-head wood structures will be placed in excavated slough channels to provide habitat complexity; and

Temporary vehicle access routes and a staging area will be constructed to accommodate construction operations. These areas will be de-compacted upon completion, as appropriate.

Vegetation will be monitored over a five year period and fisheries and water quality monitoring will occur over a two year period. Fisheries and water quality monitoring will be implemented as described in the document entitled, *Wood Creek Phase II Monitoring Plan for Inclusion under CD-021-13*. This document was submitted to the Regional Water Board via e-mail from National Marine Fisheries Service staff on May 24, 2016.

5. **Construction Timing:** The Project is expected to be completed in two construction seasons, between July 1, 2016, and October 31, 2016, and between September 15, 2017, and October 15, 2017.
6. **Project Impacts:** Approximately 15 acres of jurisdictional wetlands would be disturbed as a result of Project implementation due to: excavation of material to create slough channels, pools, and wetland habitat; use of excavated material to create planting hummocks and island habitat; equipment staging and operation; placement of earth and log sills in channels; and placement of large woody debris for aquatic habitat.
7. **Avoidance and Minimization:** Construction would occur only between July 1 and October 31. Areas identified as wet or soft soils would be covered with load-distributive mats or geotextile and gravel as appropriate to minimize wetland compaction. An existing, partially continuous berm between the active construction area and Wood Creek would temporarily be made continuous to isolate the construction area and prevent potential sediment discharges.
8. **Mitigation for Project Impacts:** Mitigation is not required for this Project because the primary Project purpose is restoration.
9. **Disturbed Soil Area:** Prior to construction, the Applicant shall submit an erosion, sediment, and pollution control plan (Plan), detailing best management practices to prevent discharges of sediment and construction-related pollutants to Wood Creek. The Plan shall be subject to the review and acceptance of Regional Water Board staff. The Applicant shall not be required to submit a Notice of Intent under the statewide construction general permit if the Plan is found acceptable by Regional Water Board staff.
10. **303(d) Impairment:** The Regional Water Board and the U.S. Environmental Protection Agency have listed the Freshwater Creek watershed under the Clean Water Act Section 303(d) as a sediment impaired water body. The Regional Water Board is in the process of establishing a Total Maximum Daily Load (TMDL) for sediment in the Freshwater Creek watershed. This certification requires measures to control sediment during Project construction, including containing disturbed areas behind a berm and implementing an erosion, sediment, and pollution control plan.
11. **Other Agency Actions:** The United States Army Corps of Engineers authorized the Project under Nationwide Permit Nos 3, *Maintenance*, and 27, *Aquatic Habitat Restoration*, pursuant to section 404 of the Clean Water Act, on April 19, 2016. The applicant has submitted an Intra-Service Section 7 Biological Evaluation to the United States (U.S.) Fish and Wildlife Service to address potential impacts to tidewater goby critical habitat. The Applicant has filed for inclusion in the U.S. National Marine Fisheries Service Restoration Center Arcata Office Programmatic Biological Opinion.

The Applicant has also applied for a Coastal Development Permit from the California Coastal Commission and a 1600 Streambed Alteration Agreement from the California Department of Fish and Wildlife.

12. **CEQA Compliance:** As lead agency, the County of Humboldt certified a Mitigated Negative Declaration (SCH No. 2008082028), pursuant to the requirements of the California Environmental Quality Act (CEQA). An addendum to the Mitigated Negative Declaration was prepared December 18, 2014, to address Project elements associated with Phase II operations.
  
13. **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.
  
14. 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](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Receiving Water:	Wood Creek	
Filled and/or Excavated Areas:	Temporary impacts to waters of the U.S.:	15 acres
Latitude/Longitude:	40.784, -124.093 <sup>1</sup>	
Certification Expiration:	June 20, 2021	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Wood Creek Aquatic Enhancement Project, Phase II (WDID No.

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<sup>1</sup> WGS84 datum

1B16213WNHU) 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 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. Fisheries and water quality monitoring shall be implemented as described in *Wood Creek Phase II Monitoring Plan for Inclusion under CD-021-13*, sent to the Regional Water Board from the National Marine Fisheries Service via e-mail on May 24, 2016. Changes to the monitoring plan are subject to the review and acceptance of Regional Water Board staff.
2. Planting and monitoring shall be implemented as described in the *Planting and Monitoring Plan—Phase I Adaptive Management Area*, dated May 2016. Changes to the planting and monitoring plan are subject to the review and acceptance of Regional Water Board staff.
3. Planting and monitoring shall be implemented as described in the *Planting and Monitoring Plan—Wood Creek Aquatic Habitat Enhancement Project—Phase II*, dated May 2016. Changes to the planting and monitoring plan are subject to the review and acceptance of Regional Water Board staff.

### **Project-Specific Conditions Requiring Reports**

4. The Regional Water Board shall be notified at least five working days (working days are Monday – Friday) prior to the commencement of construction.
5. Prior to construction, the Applicant shall submit an erosion, sediment, and pollution control plan (Plan), detailing best management practices to prevent discharges of sediment and construction-related pollutants to Wood Creek. The Plan shall be subject to the review and acceptance of Regional Water Board staff.
6. The Applicant shall submit a final fisheries and water quality report three years after completion of Project implementation. The final report shall be submitted no later than January 31, 2021. The final report shall be consistent with *Wood Creek Phase II Monitoring Plan for Inclusion under CD-021-13*.
7. The Applicant shall submit a report documenting pre-Project baseline conditions no later than December 31, 2016. The Applicant shall also submit years 1, 2, and 5,

monitoring reports not later than December 31<sup>st</sup>, 2017, 2018, and 2021, to document both Phase I and Phase II vegetation and hydrology monitoring data.

### **Standard Conditions**

8. 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.
9. 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.
10. 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 \$200. The Regional Water Board received \$1,201 from the Applicant on March 17, 2016. The Applicant is due a \$1,001 refund.
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 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](mailto:NorthCoast@waterboards.ca.gov).

The successor-in-interest shall email the Regional Water Board Executive Officer at: [NorthCoast@waterboards.ca.gov](mailto: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 June 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 4-7 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](mailto:Brendan.Thompson@waterboards.ca.gov).

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Matthias St. John  
Executive Officer

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Original to: Michael Cipra, North Coast Regional Land Trust, [MCipra@ncrlt.org](mailto:MCipra@ncrlt.org)

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