
North Coast Regional Water Quality Control Board

October 10, 2016

In the Matter of
Water Quality Certification
for the
Fulton Road Mitigation Site Wetland Construction Project

APPLICANT: Harvey O. Rich
RECEIVING WATER: Jurisdictional wetlands in the Laguna de Santa Rosa
HYDROLOGIC UNIT: Middle Russian River 114.22
COUNTY: Sonoma
FILE NAME: Fulton Road Mitigation Site; ECM PIN CW-803393; WDID
1B14007WNSO

FINDINGS BY THE EXECUTIVE OFFICER:

1. On January 13, 2016, Harvey O. Rich (applicant) filed an application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the North Coast Regional Water Quality Control Board (Regional Water Board) for activities associated with the Fulton Road Mitigation Site Wetland Construction Project (project). The application was deemed complete on September 14, 2016. The project is located on the west side of Fulton Road between Alton Lane and Wood Road in Santa Rosa at latitude 38.479478°N and longitude 122.771997°W.
2. **Public Notice:** The Regional Water Board provided public notice of the application pursuant to Title 23, California Code of Regulations, Section 3858 on September 14, 2016, and posted information describing the project on the Regional Water Board's website. No comments were received.
3. **Receiving Waters:** The proposed project would cause disturbances to 1.36 acres of jurisdictional wetlands in the Laguna de Santa Rosa, within the Middle Russian River

hydrologic area (114.22). The project area contains vernal pools and swales totaling approximately 1.37 acres of seasonal wetland habitat.

4. **Project Description:** The purpose of the project is to satisfy the Burke's goldfields mitigation requirements of the Sonoma County Airport Runway Safety Enhancement Project (WDID 1B12182WNSO). The project will create approximately 2.08 acres of vernal pool and swale habitat for Burke's goldfields and enhance approximately 1.36 acres of existing seasonal wetland habitat for Burke's goldfields.

The total area of wetland habitat on the site is 1.37 acres, and 1.36 acres of it will be enhanced to improve habitat for Burke's goldfields. Fill will be added to one vernal pool to raise the grade. Filling will reduce the risk of breaching the hardpan substrate. Excavation is proposed for the rest of the enhancement area. Excavation will reduce soil depth and create a pool outlet elevation favorable for Burke's goldfields and unfavorable for exotic wetland species such as Mediterranean barley and ryegrass.

Construction will take place after seed dispersal. Dry surface soils containing seed will be stockpiled and reused after construction in the improved pool bottoms. A designated biologist will be responsible for monitoring the work and minimizing impacts to California tiger salamander and its habitat. The construction process will be supervised by Dr. Larry Stromberg or Dr. Ted Winfield.

5. **Construction Timing:** The project will take approximately 6-10 weeks to complete and will not occur during the wet season months of October 15 – May 15.
6. **Project Impacts:** The project will temporarily impact approximately 1.36 acres of seasonal wetlands located on the Santa Rosa Plain in the Laguna de Santa Rosa.
7. **Mitigation for Project Impacts:** Compensatory mitigation is not required because the project will enhance and create wetlands.
8. **Sediment TMDL Implementation Policy:** Pursuant to Regional Water Board Resolution R1-2004-0087, *Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters within the North Coast Region* (Sediment TMDL Implementation Policy), the Executive Officer is directed to "rely on the use of all available authorities, including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste."
9. **Other Agency Actions:** The applicant has applied to the United States Army Corps of Engineers for Nationwide Permit 27, *Aquatic Habitat Restoration, Establishment, and Enhancement Activities*, pursuant to section 404 of the Clean Water Act.

10. **CEQA Compliance:** The North Coast Regional Water Board, as lead California Environmental Quality Act (CEQA) agency, has determined that the project qualifies for a Categorical Exemption, 15333: Small Habitat Restoration, and files a Notice of Exemption with the State Clearinghouse concurrent with issuance of the 401 Water Quality Certification, pursuant to CEQA guidelines.
11. **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 68-16, which incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution 68-16 requires that existing high quality waters be maintained unless degradation is justified under specific provisions. 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.
12. This discharge is also regulated under State Water Resources Control Board Order 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.
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Receiving Water:	Jurisdictional wetlands in the Laguna de Santa Rosa, within the Middle Russian River hydrologic area (114.22)	
Filled and/or Excavated Areas:	Temporary impacts to jurisdictional wetlands:	1.36 acres
Latitude/Longitude:	38.479478°N/122.771997°W	
Certification Expiration:	October 10, 2021	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Fulton Road Mitigation Site Wetland Construction Project (WDID 1B14007WNSO), 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 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.

Project-Specific Conditions

1. The Applicant shall implement the *Long-Term Monitoring and Management Plan*, dated July 13, 2016.

Project Specific Conditions Requiring Reports

2. Monitoring reports shall be submitted annually beginning the year of issuance of the certification and continuing no fewer than five years following implementation. Reports shall be submitted to the Regional Water Board by January 31 and detail the monitoring results from the prior calendar year. The year 1 report shall be due January 31, 2017.

Reports shall include:

- The status, progress, and anticipated schedule for completion of project construction activities;
 - The status, progress, and anticipated schedule of project implementation;
 - Maintenance activities performed;
 - Monitoring methods;
 - Monitoring results;
 - Photographs taken from the same vantage point throughout the monitoring period;
 - Status of achievement towards success criteria;
 - Recommendations for contingency measures; and
 - Implementation status of contingency measures
3. Regional Water Board staff shall be notified in writing at least five working days 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.

Standard Conditions

4. 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.
5. 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.

6. 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. A complete fee of \$7,711 was received for this project from checks dated January 31, 2014, January 13, 2016, August 18, 2016, and October 6, 2016.
7. 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.
8. The applicant must notify the Regional Water Board of the end of the construction phase of the project in order to request the Regional Water Board to terminate annual construction period billing and to receive a “Notice of Completion of Discharges Letter”. If the project is subject to annual monitoring fees, the applicant must also notify the Regional Water Board at the end of the monitoring period in order to request to terminate annual monitoring period billing and receive a “Notice of Project Complete Letter”. Completion reports may be necessary to be submitted by applicant at the end of each of these phases. Regional Water Board staff may request site visits at the end of each phase of the project to confirm status of project and compliance with this Certification.
9. This certification does not authorize drafting of surface waters. Any drafting of surface waters shall be in compliance with state water rights law and diversion requirements overseen by the State Water Resources Control Board’s Division of Water Rights.
10. Herbicides and other pesticides shall not be used within the project limits. If the applicant has a compelling case as to why pesticides should be used, then a request for pesticide use and a BMP plan may be submitted to the Regional Water Board staff for review and acceptance.
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. Best management practices (BMPs) shall be implemented according to the submitted application and the conditions in this certification. 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. BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.

13. The applicant is prohibited from discharging waste to waters of the state, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bar, slash, sawdust, 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 is liable and responsible for the proper disposal, reuse, and/or recycling of all Project-generated waste in compliance with applicable state and federal laws and regulations.
15. The applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
16. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.
17. 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.
18. All project activities shall be implemented as described in the submitted certification application package and the findings and conditions of this certification. Subsequent project changes that could significantly impact water quality shall first be submitted to Regional Water Board staff for prior review, consideration, and written concurrence. 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.
19. 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).

20. The applicant shall provide a copy of this Certification and State Water Board Order 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.
21. Disturbance or removal of existing vegetation as detailed within the application shall not exceed the minimum necessary to complete the project.
22. 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 wetlands. At no time shall the applicant or its contractors allow use of any vehicle or equipment that leaks any substance that may impact water quality.
23. The Applicant shall not use leaking vehicles or equipment within state waters or riparian areas. Vehicles and equipment used within state waters shall be checked for leaks at the beginning of each work day.
24. 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 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 pursuant to Section 13267 of the Porter-Cologne Water Quality Control Act.
25. 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 and approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
26. 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 Regional Water Board at 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.

27. 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
- ii) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

28. 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).

29. The authorization of this certification for any dredge and fill activities expires on October 10, 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.

If you have any questions or comments, please contact Kaete King of my staff, at (707) 576-2848, or via e-mail at Kaete.King@waterboards.ca.gov.

Matthias St. John
Executive Officer

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Original to: Mr. Harvey O. Rich, Fulton Road Preserve, LLC., 336 Bon Air Center, Box 232,
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cc: State Water Resources Control Board, Stateboard401@waterboards.ca.gov
Bryan Matsumoto, ACOE, Bryan.T.Matsumoto@usace.army.mil
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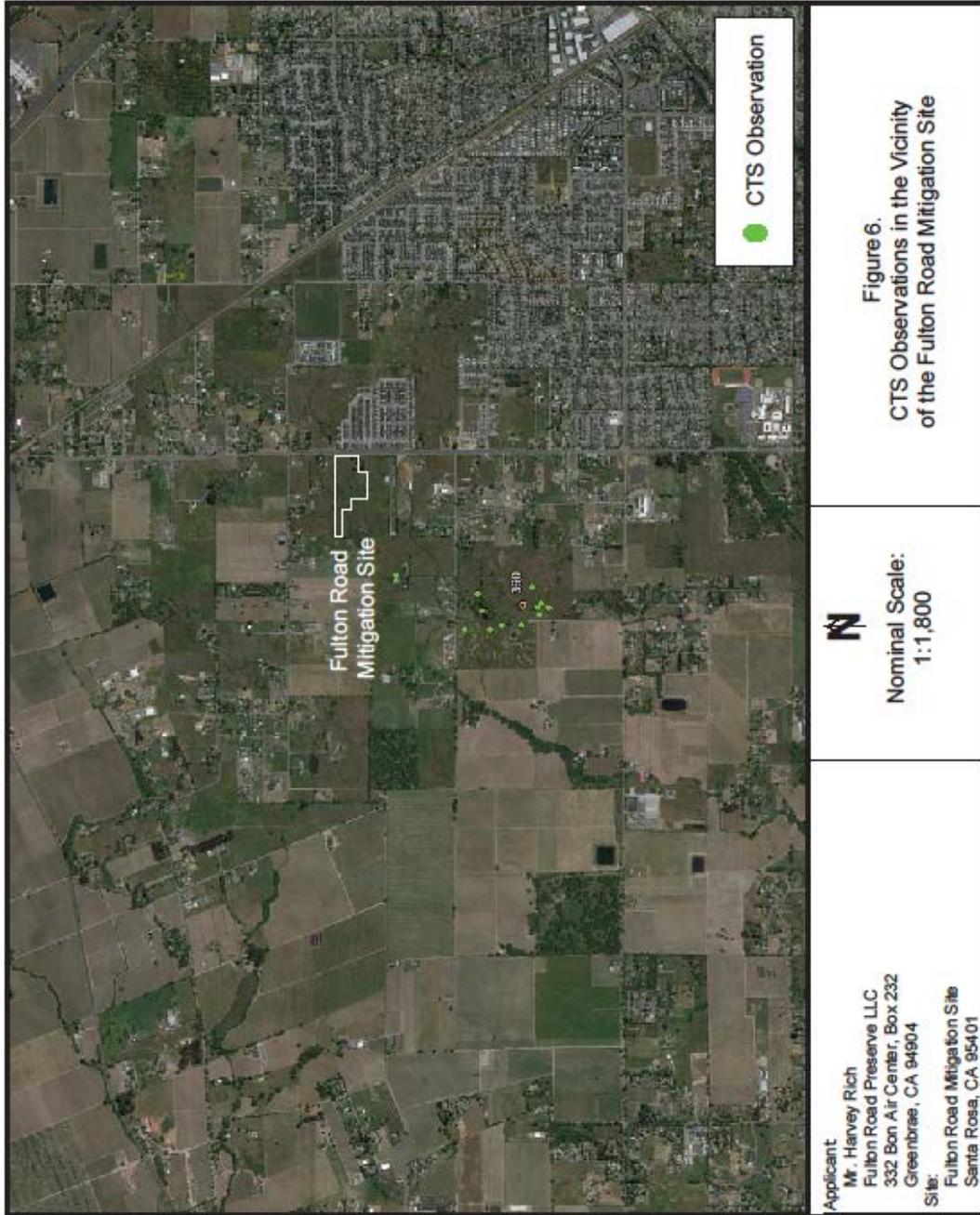


Figure 6.
CTS Observations in the Vicinity
of the Fulton Road Mitigation Site

Applicant:
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Greenbrae, CA 94904
Site:
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