

Appendix A

Draft Streambed Alteration Agreement

CALIFORNIA DEPARTMENT OF FISH AND GAME

BAY DELTA REGION

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STREAMBED ALTERATION AGREEMENT

NOTIFICATION NO. 1600-2010-0022-R3

Frenchmans Creek

Lucky Star Investments Group LLC

WATER INTAKE REPLACEMENT 2009

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and Lucky Star Investments Group LLC (Permittee) as represented by Jack Wu.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified DFG on January 25, 2010 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, DFG has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement

PROJECT LOCATION

The project is located at 37 K Frenchmans Creek Road on Frenchmans Creek, in the City of Half Moon Bay and County of San Mateo, State of California; Latitude 37° .29' 45.71"N , 122° 26' 08.98" W; Assessors Parcel Number 048-320-020.

PROJECT DESCRIPTION

In November, 2009, the Permittee began a project at this location which was intended to replace an old water pumping system to provide water mostly for a future project involving a grove of cherry trees on the property. The Permittee had not notified the DFG that he intended to complete this project. Mr. Wu was then directed by DFG Warden McCoy to file a Streambed Alteration Agreement Notification. Activities already completed included a large trench approximately 20 feet long by 8 feet deep, dug into the bank of Frenchmans Creek and placement of three large, black polyethylene tubes in the trench. In one of the tubes (this tube was later identified as the first "settling tank") was a small pipe which ran from the tube back into the creek. Another black polyethylene tube was set into the creek. These activities caused a moderate amount of disturbed sediment around the bank of the creek and mobilized sediment into the creek where the work was taking place.

The Permittee described the three polyethylene tubes in the large trench. Two of the tubes were "settling tanks" in which the water would be funneled in order to settle the sediment out before the water ultimately would run into the third tank where it was pumped out. Mr. WU had installed another polyethylene tube approximately one and one-half feet into the creek bed. This tube protected the 4-inch diameter water intake pipe which had also been installed prior to this notification. To install the intake pipe the Permittee's contractors dug a trench into the bank and the creek bed approximately 7-10 feet long. This trench was not present when Warden McCoy inspected the site as it had already been back-filled.

On February 24, 2010, the Permittee notified the DFG of the project that was already done and work yet to be completed. Activities for this project include replacing the existing 5-foot wide by 25-foot long by 8 feet deep diversion intake structure with a 3-foot circular embedded intake structure connected by a buried six-inch polyvinyl chloride (pvc) pipe. The new intake structure would be fitted with a protective fish screen to help avoid entrainment of fish and other aquatic wildlife.

Activities include clearing riparian habitat from the creek bank by hand, using a backhoe to excavate a trench from the sediment holding tank located upon the property down the slope of the creek sufficient enough (about 5.5 cubic yards) to bury the 14-foot long, six-inch pvc intake pipe terminating within a 36-inch circular polyethylene catch basin. The catch basin will be installed by hand using shovels and embedded two feet deep into the creek bed. These activities will disturb about 0.5 cubic yards of the creek.

The Permittee has also notified the DFG of their water diversion with a purpose of irrigation and diversion rate of 0.06 cfs and season of diversion from January 1 to March 31 which is also subject to this Streambed Alteration Agreement.

PROJECT IMPACTS

Existing fish or wildlife resources the project could potentially substantially adversely

affect include: California red-legged frog (CRLF), San Francisco garter snake (SFGS) and steelhead. The CRLF is a threatened species listed under the federal Endangered Species Act (ESA), the SFGS is listed as Endangered under ESA and the California Endangered Species Act (CESA) and fully protected under FGC Section 5050, and steelhead is listed as threatened under ESA.

The adverse effects the project could have on the fish or wildlife resources identified above include: potential increase in sediment transport, increase in turbidity, temporary loss of riparian habitat by removal of vegetation and temporary loss of riverine habitat. These effects potentially include a reduction of pool and riffle habitat, reduction in habitat quality and food for CRLF, which impacts the CRLF and also the SFGS as CRLF are an important prey source for SFGS.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to DFG personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify DFG if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, DFG shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that DFG personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Work Allowed. Permittee shall work according to supporting materials, including the Mitigated Negative Declaration, unless as otherwise specified in these conditions.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

Screening

- 2.1 Before any work is initiated, a hydrological study shall be conducted to determine the correct placement of the new diversion pipe with respect to flow, maintenance and fish screen requirements.
- 2.2 The diversion intake shall be fitted with screens meeting the size and flow criteria of the Department and National Oceanic and Atmospheric Association (NOAA) as stated below. For additional information for correct screen placement and criteria go to: <http://swr.nmfs.noaa.gov/hcd/policies.htm>
 - a. Water velocity perpendicular to the screen shall not exceed 0.33 feet per second.
 - b. The screen mesh size shall be:
 - i. Round openings - maximum 3/32 inch diameter (.09 inch)
 - ii. Square openings - maximum 3/32 inch diagonal (.09 inch)
 - iii. Slotted openings - maximum 1/16 inch width (.07 inch)
 - c. The screen face shall be kept in good condition and free of debris at all times that the diversion is operating.
- 2.3 Intake screens shall not be installed until designs and plans for the construction and installation of the screens are submitted to and approved by the Department.

Protective Bypass Flows

- 2.4 The season of diversion shall be limited from January 1 to March 31 of each year. From April 1 to December 31, all water shall be allowed to pass the point of diversion.
- 2.5 The maximum instantaneous rate of withdrawal shall not exceed 0.06 cubic feet per second (cfs) or 27 gallons per minute (gpm) at any time. The maximum amount of water to be diverted in any one year shall not exceed 10.5 acre feet.
- 2.6 No water shall be diverted until the measure of flow being bypassed around the existing point of diversion is of sufficient quantity and

quality to maintain in good condition any aquatic resources that would exist in downstream reaches under unimpaired flows. The minimum bypass flow shall be the estimated long-term unimpaired February median flow (FMF) at the point of diversion. Prior to diversion of water, the estimated FMF shall be developed by the Permittee and approved by the Department. The Permittee shall submit the proposed FMF including all calculations for review and acceptance at least 60 days prior to diversion.

- 2.7 The intake shall be a passive or automated system that is designed to only divert flow when the FMF bypass will be met. Outside the diversion season and at low flows, water will automatically bypass the site.

Species Protection and Sediment Transport Measures

- 2.8 The work period for completing the intake structure shall be confined from June 15 to October 15. Revegetation is not confined to this time period.
- 2.9 The work period for completing the work within the riparian zone shall be restricted to low or no stream flow and dry weather and shall be timed with awareness of precipitation forecasts. Construction activities within the stream zone shall be restricted to dry weather and shall cease until all reasonable erosion control measures, inside and outside of the stream zone have been implemented prior to all storm events. No work shall occur during wet weather. Wet weather is defined as when there has been $\frac{1}{4}$ inch of rain in a 24-hour period. In addition, no work will occur during a dry out period of 24 hours after the above referenced wet weather.
- 2.10 Prior to construction activities, a qualified biological monitor shall clearly mark/flag or erect temporary construction fencing to designate the construction corridor and to delineate the areas that shall be avoided. The qualified biological monitor shall clearly mark/flag all trees within the designated construction corridor that shall be avoided. Flagging and or temporary construction fencing shall be removed immediately after the completion of construction work.
- 2.11 The Permittee shall not remove vegetation on the banks of the creek from March 1 to August 15 to avoid impacts to nesting birds. However, the Permittee may remove vegetation by hand during this time if a qualified biologist conducts a survey for nesting birds within three days prior to the vegetation removal, and ensures no nesting birds shall be impacted by the project. These surveys shall include

the areas within 200 feet of the edge of the proposed impact area(s). If active nests are found, a minimum 50-ft (200 feet for raptors) barrier or flagging shall be erected around the nest site. No habitat removal or any other work shall occur within this nest zone, even if the nest continues to be active beyond August 15, until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. Vegetation clearing may occur other than as described above if DFG-approved avoidance measures are in place to ensure no impacts to nesting birds may occur and the Permittee receives confirmation from the DFG that the vegetation removal at a specific site is allowed on a specified date.

- 2.12 If mechanized equipment is used to remove or disturb vegetation, a biological monitor shall be onsite to observe. Vegetation outside the work area shall not be removed or damaged without prior approval of DFG. Where feasible, only hand tools shall be used to trim vegetation to the extent necessary to gain access to the site.
- 2.13 Prior to project activities, a focused survey for CRLF and SFGS following agency approved protocol shall be conducted. If either of these species is found in the area, DFG shall be notified immediately and all work shall cease until additional measures are developed by the appropriate agencies.
- 2.14 If SFGS are found to be in the Project area, all activities shall cease and Permittee shall notify the DFG immediately to obtain avoidance measures to ensure protection of the SFGS.
- 2.15 In the event CRLF or SFGS are found in the project area, biological monitors will direct and inspect all vegetation, sediment and intake structure construction activities. All biological monitors for the project must be approved by the USFWS and the DFG prior to the commencement of work.
- 2.16 If CRLF or SFGS are found in the project area, vegetation removed will be placed directly into a disposal vehicle and removed from the site. Vegetation will not be piled on the ground unless it is later transferred, piece by piece, under the direct supervision of the biological monitor or qualified biologist.
- 2.17 If CRLF or SFGS are found in the project area, any vehicle parked on site for more than 15 minutes shall be inspected by the biological monitor before it is moved to ensure that CRLF have not moved under the vehicle. Any parking areas must be checked in advance by the biological monitor or qualified biologist.

- 2.18 If CRLF enters the work area, all work shall stop until the qualified biologist relocates the animal or it leaves on its own. Only the qualified biologist can handle and relocate CRLF. Any sightings and/or injuries of this species shall be immediately reported to the DFG per instructions below.
- 2.19 If SFGS are found in the project area, they are not to be handled. SFGS is protected under FGC Section 5050. Under this statute, take of a fully protected species may not occur except for scientific or recovery purposes. Catch, pursue, capture or attempt to catch, pursue and capture is considered take as defined in Section 86 of the Fish and Game Code. Because of this, any SFGS encountered on the work area must be left alone until it leaves the area on its own.
- 2.20 No equipment shall be operated in a flowing stream at anytime except as may be necessary to construct the dewatering system or divert water flow around the work site.
- 2.21 If work is to be conducted in Frenchmans Creek, the work area shall be isolated from the creek. To isolate the work area, water tight coffer dams shall be constructed upstream and downstream of the work area and water diverted through a suitably sized pipe, from upstream of the upstream coffer dam and discharged downstream of the downstream coffer dam. Cofferdams shall be constructed of a non-erodible material which does not contain soil or fine sediment. Cofferdams and the stream diversion system shall remain in place and functional throughout the construction period. If, the coffer dams or stream diversion fail, they shall be repaired immediately.
- 2.22 The Permittee shall deploy silt curtains around the excavation and construction site to prevent heavily silted water from impacting areas around the site and spillway. The silt curtain shall be maintained throughout all phases of the excavation and construction activities.
- 2.23 During dewatering of Frenchmans Creek, the decrease in water surface elevation (WSE) shall be controlled such that WSE does not change at a rate that increases turbidity to the creek that could be deleterious to aquatic life and the likelihood of stranding aquatic life up- and downstream of the creek.
- 2.24 The Permittee shall deploy silt curtains around the construction site to prevent heavily silted water from impacting areas downstream from the project site. The silt curtain shall be maintained throughout all phases of the excavation activities.

- 2.25 The biological monitor shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This condition does not allow for the take or disturbance of any state or federally listed species.
- 2.26 An education session shall be conducted about species that may be present at the site. The training shall consist of basic identification of CRLF, SFGS, and steelhead and, their basic habits, how they may be encountered in the work area, and procedures to follow when they are encountered. Any personnel joining the work crew later shall receive the same training before beginning work. The penalties for noncompliance of conditions in this Agreement shall be relayed to all project personnel. The education session shall be presented by the project biologist.
- 2.27 The biological monitors will have the responsibility and authority of stopping the proposed project, if any crews or personnel are not complying with the provisions outlined in this document.
- 2.28 A qualified biological monitor is an individual experienced with construction level biological monitoring and who is able to recognize species in the project area and who is familiar with the habits and behavior of those species.
- 2.29 A qualified biologist is an individual who is certified by the Department and approved and or permitted by the U.S. Fish and Wildlife Service (USFWS) to handle CRLF.
- 2.30 Erosion control measures shall be utilized throughout all phases of operation where sediment runoff from exposed slopes threatens to enter Waters of the State. This may require the construction of silt catch basins, silt fencing, certified weed free straw bale dikes, or other siltation barriers. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream. If any sediment barrier fails to retain sediment, corrective measures shall be employed. The sediment barrier(s) shall be maintained in good operating condition throughout the period of construction of the project. This includes but is not limited to, removal of accumulated silt and/or replacement of damaged bales and fabric fencing.
- 2.31 Upon DFG determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities

associated with the turbidity/siltation shall be halted until effective DFG approved control devices are installed or abatement procedures are initiated. The DFG may take enforcement action if appropriate turbidity and siltation control measures are not deployed.

- 2.32 Building materials and/or construction equipment shall not be stockpiled or stored where they could be washed into the water or where they will cover aquatic or riparian vegetation.
- 2.33 Staging and storage areas for equipment, materials, fuels, lubricants and solvents shall be located away from the wetted areas. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the creek shall be positioned over drip-pans.
- 2.34 Any equipment or vehicles driven and/or operated adjacent to the creek areas shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life, wildlife or riparian habitat. Vehicles must be moved away from the stream prior to refueling and lubrication.
- 2.35 Any hazardous or toxic materials that could be deleterious to aquatic life that could be washed into State waters or its tributaries shall be contained in water tight containers or removed from the project site.
- 2.36 The contractor shall not dump any litter or construction debris within the project area. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site.

3. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 3.1 The Permittee must submit a Revegetation and Monitoring Plan by July 31, 2010 to the Department for approval. To ensure a successful revegetation effort, all plants shall be monitored and maintained as necessary for 5 years. All planting shall have a minimum of 80% survival at the end of 5 years and shall attain 70% cover after three years and 75% coverage after 5 years. If the survival and/or cover requirements are not meeting these goals, the Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be

monitored with the same survival and growth requirements for five years after planting. An annual status report on the monitoring of planting shall be provided to the DFG by December 31 of each year. This report shall include the survival, percent cover, and height of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.

CONTACT INFORMATION

Any communication that Permittee or DFG submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or DFG specifies by written notice to the other.

To Permittee:

Jack Wu
Lucky Star Investment Group LLC
37 K Frenchmans Creek Road
Half Moon Bay, CA 94019
650.712.1311
jackwu@midasexpress.com

To DFG:

Department of Fish and Game
Bay Delta Region
Post Office Box 47
Yountville, California 94599
Attn: Lake and Streambed Alteration Program – Suzanne DeLeon
Notification #1600-2010-0022-R3
Fax (707) 944-5553
sdeleon@dfg.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute DFG's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

DFG may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before DFG suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before DFG suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused DFG to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes DFG from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects DFG's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

DFG may amend the Agreement at any time during its term if DFG determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by DFG and Permittee. To request an amendment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter DFG approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to DFG a completed DFG "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). DFG shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)). .

EFFECTIVE DATE

The Agreement becomes effective on the date of DFG's signature, which shall be: 1) after Permittee's signature; 2) after DFG complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on December 31, 2014, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify DFG in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR LUCKY STAR INVESTMENTS GROUP LLC

Jack Wu
Permittee

Date

FOR DEPARTMENT OF FISH AND GAME

Scott Wilson
Environmental Program Manager

Date

Prepared by: Suzanne DeLeon
Environmental Scientist

Date Prepared: May 25, 2010