

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
REGION 1 – NORTHERN REGION
619 Second Street
Eureka, CA 95501

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CDFW - EUREKA



STREAMBED ALTERATION AGREEMENT

NOTIFICATION No. 1600-2019-0085-R1

Unnamed Tributary to Van Duzen River, Tributary to the Eel River and
the Pacific Ocean

Thomas Kissick
Kissick Water Diversion and Stream Crossings Project
1 Encroachment

This Lake or Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Thomas Kissick (Permittee).

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, the Permittee initially notified CDFW on February 11, 2019 and revised on December 13, 2019 with additional information provided on August 17, 2020 that the Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW 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, the Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

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

PROJECT LOCATION

The project to be completed is located within the Van Duzen watershed, approximately 10 miles west of the town of Bridgeville, County of Humboldt, State of California. The project is located in Section 11, T01N, R05E, Humboldt Base and Meridian; in the Dinsmore U.S. Geological Survey 7.5-minute quadrangle; Assessor's Parcel Number 208-341-011 latitude 40.4855 N and longitude -123.5757 W at the first stream crossing.

PROJECT DESCRIPTION

This Agreement relies on the Notification materials and a desk review without a CDFW site inspection.

The project is limited to 1 encroachment (Table 1). The proposed encroachment is to decommission a failing and undersized stream crossing. Work for this encroachment will include excavation, removal of the failing crossing, laying slopes back 2:1, backfilling and compaction of fill, and rock armoring as necessary to minimize erosion.

Table 1. Project Encroachments with Description

ID	Latitude/Longitude	Description
Crossing-#1	40.4842 -123.5754	Failed 18" culvert. Decommission crossing according to design plans as notified. See measure 2.39 for maintenance. Notification describes stream as appearing to divert approximately 75 feet west down the PG&E easement access road until it was kicked off the road. Diverted watercourse has developed an erosion gully down the slope to the native watercourse channel. See Exhibit A for road assessment report requested from Margro Advisors.

Table 2. Encroachments with Description Not Covered Under This Agreement

ID	Latitude/Longitude	Description
Well	40.4842 -123.5754	Domestic and agricultural use.
House/Structure Drying, Pesticides, Amendments & Refuse Storage		House/structure appears on or near proximity to a blue line stream (CA_Streams_3Layer BIOS 2020). Aerial imagery depicts existing conditions of bare mineral soil in the PGE right of way upstream intersecting road and stream. Notify states house is 110 feet southeast from closest watercourse. Site compliance monitoring will verify that performance standards are met. See Exhibit A for road assessment report requested from Margro Advisors.
Crossing-#2 TRC Map Or #16 Margro Advisors Map	40.4858 -123.5753	Crossing as notified is appurtenant to cultivation site(s) on parcel and is covered within draft 1600-2020-0278-R1_HUM_MJV Cobb Road Association Stream Crossings. See Exhibit A for road assessment report requested from Margro Advisors.
Crossing-#3 TRC Map Or #15 Margro Advisors Map	40.4844 -123.5768	Crossing as notified is appurtenant to cultivation site(s) on parcel and proximity to adjacent parcel's cultivation. Crossing is covered within draft 1600-2020-0278-R1_HUM_MJV Cobb Road Association Stream Crossings. See Exhibit A for road assessment report requested from Margro Advisors.

ID	Latitude/Longitude	Description
Crossing-#4 TRC Map Or #14 Margro Advisors Map	40.4842 -123.5754	Crossing as notified is appurtenant to cultivation site(s) on parcel and proximity to adjacent parcel's cultivation. Crossing is covered within draft 1600-2020-0278-R1_HUM_MJV Cobb Road Association Stream Crossings. See Exhibit A for road assessment report requested from Margro Advisors.

The first Notification from Margro Advisors states that crossings 1,2, & 3 in Hydrological Analysis, also depicted as crossing 14, 15, and 16 on Parcel Map, are in good condition and are meeting current performance standards. There was a discrepancy between these conditions and the Stamped engineer report on file with County of Humboldt, **Roadway Evaluation for Cobb Road from Rattlesnake Bridge to APN 208-341-016 which indicates undersized culverts, erosional features, and sediment delivery from PGE roadway and poor road design (Exhibit A).** Then a revised Notification from TRC included these crossings 2,3, and 4 as to be covered under a separate notification to be submitted by the Cobb Road Association. The Cobb Road Association submitted a notification 1600-2020-0278-R1 on June 16, 2020 to cover crossings listed in Table 2. Existing stream crossings disclosed in the Notification, but not included as 1602 projects with fees, are not covered under this Agreement. If maintenance (such as armoring) and/or replacement become necessary, that work must be covered by a major amendment or a separate Notification.

The Notification also discloses the use of a well located at Lat/Long 40.4842 -123.5754. This well is presented as the sole source of water for all needs on the property. CDFW did not evaluate hydraulic connection of the well to surface water, nor was a hydrogeologic evaluation prepared by a licensed geologist provided for CDFW review. Based on the available resources, the well may be hydraulically connected to streams and/or springs and shall be evaluated for potential impacts from commercial cannabis irrigation use through the County's conditional use permit/cannabis cultivation permit (PLN-12020). Additionally, if jurisdictional projects are identified to rectify Cobb Road's issues through conditions of the Humboldt County Permit to Cultivate, then those jurisdictional projects may be amended into this Agreement or notified under a separate notification by Cobb Road association/applicant as identified within the notification materials.

No other projects that may be subject to FGC section 1602 were disclosed. This Agreement does not retroactively permit any constructed reservoirs (including "ponds"), stream crossings, water diversions, modifications to riparian buffers, or other encroachments not described in Table 1.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include **Chinook Salmon** (*Oncorhynchus tshawytscha*), **Coho Salmon** (*O. kisutch*), **Steelhead Trout** (*O. mykiss*), **Western Brook Lamprey** (*Lampetra richardsoni*), **Pacific Lamprey** (*Entosphenus tridentatus*), **Southern Torrent Salamander** (*Rhyacotriton variegatus*), **Pacific Giant Salamander** (*Dicamptodon tenebrosus*), **Foothill Yellow-legged Frog** (*Rana boylei*), **Coastal Tailed Frog** (*Ascaphus truei*), **Western Pond Turtle** (*Actinemys marmorata marmorata*), amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

The adverse effects the project could have on the fish or wildlife resources identified above include:

Impacts to water quality:

increased turbidity;
increased sedimentation (chronic or episodic);

Impacts to bed, channel, or bank and direct effects on fish, wildlife, and their habitat:

loss or decline of riparian habitat;
loss or decline of instream channel habitat;
direct impacts on benthic organisms;
direct and/or incidental take of aquatic and/or terrestrial organisms;

Impacts to natural flow and effects on habitat structure and process:

impediment of up- or down-stream movement;
water quality degradation; and
damage to aquatic habitat and function.

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 CDFW 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 CDFW 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, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees to allow CDFW employees access to the Project site for the purpose of inspecting and/or monitoring, provided CDFW: a) provides 24 hours advance notice; and b) allows Permittee or representatives to participate in the inspection and/or monitoring. This condition does not apply to CDFW law enforcement personnel.
- 1.5 Applicable Permits. Land development or alterations may be subject to additional federal, state and local laws, regulations, and permitting requirements, including but not limited to the following:
 - The Clean Water Act (CWA) as implemented through permits, enforcement orders, and self-implementing requirements. When needed per the requirements of the CWA, Permittee shall obtain a CWA section 404 (33 U.S.C. § 1344) permit from the United States Army Corps of Engineers (Army Corps) and a CWA section 401 (33 U.S.C. § 1341) water quality certification from the State Water Board or the Regional Water Board with jurisdiction.
 - The California Water Code as implemented through applicable water quality control plans (often referred to as Basin Plans), waste discharge requirements (WDRs) or waivers of WDRs, enforcement orders, and self-implementing requirements issued by the State Water Resources Control Board (State Water Board) or Regional Water Quality Control Boards (Regional Water Boards).
 - All applicable state, city, county, or local regulations, ordinances, or license requirements including, but not limited to those for grading, construction, and building.
 - All applicable requirements of the California Department of Forestry and Fire Protection (CAL FIRE), including the Board of Forestry.
- 1.6 Cannabis Cultivation Policy. If commercial cannabis cultivation occurs on the project parcel, the State Water Resources Control Board (SWRCB) requires enrollment in the Cannabis Cultivation General Order and compliance with the Cannabis Cultivation Policy - Principles and Guidelines for Cannabis Cultivation, available at:
https://www.waterboards.ca.gov/water_issues/programs/cannabis/cannabis_policy.html

- 1.6.1 Site Management Plan and Related Technical Reports. Permittee shall submit to CDFW the initial preparation and subsequent updates to the project's Site Management Plan and related technical reports prepared in conformance with the SWRCB Cannabis Cultivation Policy.
- 1.7 Water Rights. This Agreement does not constitute a valid water right. All water diversion facilities that Permittee owns, operates, or controls shall be operated and maintained in accordance with current law and applicable water rights. Water rights are administered by the State Water Resources Control Board as described here: https://www.waterboards.ca.gov/waterrights/water_issues/programs/registrations/.
- 1.8 Change of Conditions and Need to Cease Operations. If conditions arise, or change, in such a manner as to be considered deleterious by CDFW to the stream or fish and wildlife, operations shall cease until corrective measures approved by CDFW are taken. This includes new information that indicates bypass flows, diversion rates or other measures provided in this Agreement are not providing adequate protection to keep aquatic life downstream in good condition or to avoid "take" or "incidental take" of federal or State listed species.
- 1.9 Notification Materials. Permittee's Notification of Lake or Streambed Alteration, together with all maps, plans, photographs, drawings, and all other supporting documents submitted with the Notification and received on February 11, 2019 and revised on December 13, 2019, with additional information provided on August 17, 2020 is hereby incorporated by reference into this Agreement. Permittee shall conduct project activities within the work areas, and using the protective measures, described in the Notification and supporting documents, unless such project activities, work areas or protective measures are modified by the provisions of this Agreement, in which case the activities shall be conducted as described in this Agreement.

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.

Work Periods and Pre-Project Notice

- 2.1 Work Period. All work, shall be confined to the period **July 10 through October 15** of each year. Work within the active channel of a stream shall be restricted to periods of **dry weather**. Permittee shall monitor precipitation forecasts and potential increases in stream flow when planning construction activities. Construction activities shall cease, and all necessary erosion control measures shall be implemented prior to the onset of precipitation. Limited vegetation removal may occur outside of this work period as per the Avoidance of Nesting Birds Measure. A notice of completed work, including dates of activities and photographs

of each site, shall be submitted to CDFW within seven (7) days of project completion.

- 2.2 CDFW Notification of Work Initiation and Completion. Permittee shall contact CDFW in writing within the 7-day period preceding the beginning of work permitted by this Agreement. Information provided shall include Agreement number, and the anticipated start date. Subsequently, Permittee shall notify CDFW in writing no later than seven (7) days after the project is fully completed. **Notification of completion will include photographs of the completed work, erosion control measures, waste containment and disposal, and a summary of any CNDDDB submissions as required below.**
- 2.3 Work Period Extension Requests. If Permittee needs more time to complete the project, CDFW may grant a work period extension on a day-to-day basis. Extension requests shall be made in writing before **October 5** of each year and shall: 1) describe the extent of work already completed; 2) detail the uncompleted activities; 3) detail the time required to complete each remaining activity; and 4) provide photographs of the completed work site(s) and remaining work. Requests shall describe the effects of increased stream flows, rain delays, increased erosion control measures, access constraints caused by saturated soils, and anticipated effects of climatic conditions on growth of erosion control grasses. Work period extensions are issued at the discretion of CDFW. CDFW will review the written request and may require additional measures to protect fish and wildlife resources.

General Stream Protection Measures

- 2.4 Prohibition of Live Stream Work. No work is authorized in a live flowing stream. All work shall be conducted when the stream is dry. Permittee shall notify CDFW if it determines that work in a live flowing stream is required to complete a project and will submit a diversion plan.
- 2.5 Fish and Aquatic Species. If surface water is or becomes present during construction, Permittee shall: a) have the Designated Biologist survey the site and adjacent area for fish, amphibians, and turtles three (3) days or less before commencing project activities and b) if fish, amphibians, or turtles are detected, CDFW shall be contacted and work shall not commence until authorized by a CDFW representative.
- 2.6 Maintain Passing of Fish Up and Down Stream. It is unlawful to construct or maintain in any stream any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish (as defined in FGC Section 45 "fish" means a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals) up and down stream pursuant to FGC section 5901.
- 2.7 Decontamination. Permittee shall ensure all project personnel adhere to the Northern Region California Department of Fish and Wildlife Aquatic Invasive

Species Decontamination Protocol for all field gear and equipment that will be in contact with water. Heavy equipment and other motorized or mechanized equipment that contacts water shall adapt watercraft decontamination protocols found in the AIS Decontamination Protocol.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=92821&inline>

- 2.8 Staging and Storage. Staging and storage areas for equipment, materials, fuels, lubricants and solvents shall be located outside of the stream channel and banks, and away from riparian vegetation. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the ordinary high-water mark before such flows occur or at the end of the yearly work period, whichever occurs first.
- 2.9 Equipment and Vehicle Leaks. Equipment or vehicles operated in or near the stream shall be checked and maintained daily to prevent leaks. Stationary equipment (e.g. motors, pumps, generators, welders, etc.) in or near the stream shall be positioned over drip pans. Stationary heavy equipment shall have sufficient containment to manage catastrophic spills or leaks.
- 2.10 Hazardous Substances. Debris, soil, silt, bark, slash, sawdust, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any substance or material deleterious to fish, plant life, mammals, or bird life, or their habitat, shall be prevented from contaminating the soil and/or entering the waters of the State, pursuant to FGC Sections 5650 and 5652. Permittee shall ensure hazardous or toxic materials are stored in watertight containers and promptly removed from the worksite.
- 2.11 Spill Containment and Cleanup. All authorized activities performed in or near a stream shall have on-site cleanup equipment (e.g. boom, skimmers, etc.) and absorbent materials for spill containment and cleanup prior to the start of work and for the duration of the project. In the event of a spill, Permittee shall immediately notify the California Office of Emergency Services State Warning Center at 1-800-852-7550 and initiate clean-up. Permittee shall immediately notify CDFW of any spills and shall follow CDFW cleanup procedures and guidance.
- 2.12 Stockpiled Materials. Materials shall not be stockpiled where they may wash into the stream or cover aquatic or riparian vegetation. Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the project area and cover stockpiles if NWS predicts precipitation.
- 2.13 Erosion Control. Permittee shall implement erosion control measures throughout all phases of operation where sediment delivery could occur. Silt fences, straw bales, gravel or rock lined ditches, water check bars, broadcasted weed-free straw, or other approved erosion control measures shall be used wherever sediment has the potential to leave the work site and enter the stream.

- 2.14 Silt Laden Runoff. At no time shall silt laden runoff enter the stream or be directed to where it may enter the stream. Silt control structures shall be monitored for effectiveness and shall be repaired or replaced as needed.
- 2.15 Disposal and Removal of Material. Permittee shall remove from the work area, and relocate outside of the stream and riparian area, all spoils and construction debris prior to inundation. All removed material and debris shall be disposed of according to State and local laws and ordinances.
- 2.16 Waste Containment and Disposal. Permittee shall contain all refuse in enclosed, wildlife proof, storage containers, at all times, and relocate refuse to an authorized waste management facility, in compliance with State and local laws, on a regular and ongoing basis. All refuse shall be removed from the site and properly disposed of at the close of the cultivation season and/or when the parcel is no longer in use.
- 2.17 Wash Water. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.
- 2.18 Allow Wildlife to Leave Unharmd. Permittee shall allow any wildlife encountered to leave the project area unharmd. This Agreement does not allow for the trapping, capture, or relocation of any state or federally listed species.
- 2.19 Escape Ramp in Trench. At the end of each work day, Permittee shall place an escape ramp at each end of any open trench deeper than six inches with walls greater than 30 degrees to allow entrapped animals to escape. The ramp may be constructed of either dirt fill, non-treated wood, or other suitable material placed at an angle no greater than 30 degrees.
- 2.20 Prohibition Against Use of Plastic Netting in Erosion Control Measures. Permittee shall not use erosion control devices containing plastic, including photo- or bio-degradable plastic netting. Erosion control mats, blankets, and straw or fiber wattles shall consist entirely of natural fiber.
- 2.21 Remove Temporary Flagging, Fencing, and Barriers. Permittee shall remove all temporary flagging, fencing, and/or barriers from the project site and vicinity of the stream upon completion of project activities.

Designated Biologist

- 2.22 Designated Biologist. At least thirty (30) days before project activities requiring biological surveys begin, the Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information for a Designated Biologist. Permittee shall obtain CDFW's written approval of the Designated Biologist before initiating project activities. The Designated Biologist shall be

knowledgeable and experienced in the biology and natural history of local fish and wildlife resources potentially present at the project site. The Designated Biologist shall be responsible for monitoring all project activities and avoidance measures, including any ground-disturbing activities.

- 2.23 Designated Biologist Authority. The Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this Agreement, and/or to order any reasonable measure to avoid the unauthorized take of Special Status Species. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with the Measures in this Agreement, including cease-work orders issued by CDFW.

Special Status Species Avoidance and Minimization

- 2.24 Prohibition on Take of Listed Species. This agreement does not authorize the take or incidental take of any State or Federal listed threatened or endangered listed species. State Listed or Fully Protected Species include any native plant species listed as rare under the Native Plant Protection Act (FGC, § 1900 et seq.; Cal. Code Regs., tit. 14, § 670.2), any species that is listed or is a candidate for listing under the California Endangered Species Act (FGC Code, § 2080 et seq.; Cal. Code Regs., tit. 14, §§ 670.2, 670.5), or any fully protected species (FGC, §§ 3511, 4700, 5050, 5515). Permittee shall consult with the appropriate agency prior to commencing the project.
- 2.25 Northern Spotted Owl (NSO) Avoidance. To avoid take of NSO from noise disturbance, all road maintenance and improvement activities are prohibited during the breeding season until **July 10** of each year. See USFWS (2019) NSO Take Avoidance Analysis and Guidance for Private Lands in California: [https://www.fws.gov/yreka/NSO-TakeAvoidanceAnalysis Att A-B 2019-1101.pdf](https://www.fws.gov/yreka/NSO-TakeAvoidanceAnalysis_Att_A-B_2019-1101.pdf)
- 2.26 Avoidance of Nesting Birds. Permittee shall avoid nests occurring within and near the project site pursuant to the Migratory Bird Treaty Act of 1918 and FGC section 3503. Vegetation maintenance/removal shall be confined to the period **September 1 to January 31** of any year in which this Agreement is valid, provided the work area is outside the stream. Vegetation maintenance/removal may continue during precipitation events provided stream flows have not risen into work areas and sediment delivery will not result.
- 2.27 Nesting Bird Surveys. If vegetation removal or other project-related activities that could impact nesting birds are scheduled during the nesting season (typically **February 1 to August 31**), the Designated Biologist shall survey for active bird nests within seven (7) days prior to the beginning of project-related activities. Surveys shall begin prior to sunrise and continue until vegetation and nests have been sufficiently observed. A report of the surveys shall be submitted to CDFW by email within three (3) business days of completion. The report shall include a

description of the area surveyed, time and date of surveys, ambient conditions, species observed, active nests observed, evidence of breeding behaviors (e.g., courtship, carrying nesting material or food, etc.), and a description of any outstanding conditions that may have impacted survey results (e.g. weather conditions, excess noise, predators present, etc.). If an active nest is found, Permittee shall implement avoidance measures and consult with CDFW. If a lapse in project-related work of seven (7) days or longer occurs, the Designated Biologist shall repeat surveys before project work can resume.

2.28 Special-Status Plants. If Special-Status plants (State listed and taxa that meet the definition of Rare or Endangered under CEQA Guidelines 15380) may occur on the project site, the Designated Biologist shall conduct seasonally-appropriate surveys of the area to document potential effects prior to the implementation of Project-related activities. If populations of any of these species are found:

2.28.1 Exclusion fencing shall be installed a minimum of 100 feet from the location of special-status plants, and no Project activity shall occur within the area occupied by special-status plants or the 100-foot buffer area around these plants.

2.28.2 If special-status plant populations are found on the Project site and it is not feasible to avoid them during Project-related activities, the Project applicant shall consult with CDFW to determine if the project may be covered under this Agreement. Separate notification pursuant to FGC section 1602 may be required in some instances.

Vegetation Management

2.29 Riparian Buffers. Riparian buffers shall be not be modified, unless authorized by CDFW in writing.

2.30 Minimum Vegetation Removal. No native riparian vegetation shall be removed, except where authorized by CDFW. Permittee shall limit the disturbance or removal of native vegetation to the minimum necessary to achieve design guidelines and standards for the authorized activity. Permittee shall take precautions to avoid damage to vegetation outside the work area.

2.31 Vegetation Maintenance. Permittee shall limit vegetation management (e.g., trimming, pruning, or limbing) and removal for the purpose of the authorized activity to the use of hand tools. Vegetation management shall not include treatment with herbicides.

2.32 Invasive Plant Species. Permittee shall not plant, seed or otherwise introduce invasive plant species within the Project area. Invasive plant species include those identified in the California Invasive Plant Council's inventory database, which is accessible at: <https://www.cal-ipc.org/plants/inventory/>.

Stream Crossings

- 2.33 Road Approaches. Permittee shall treat road approaches to new or re-constructed crossings to minimize erosion and sediment delivery to the stream. Permittee shall ensure road approaches are hydrologically disconnected to the maximum extent feasible to prevent sediment from entering the crossing site, including during the construction or reconstruction of a stream crossing. Road approaches shall be armored from the crossing for a minimum of 50 feet in both directions, or to the nearest effective water bar or point where road drainage does not drain to the crossing, with durable, clean, screened, angular rock.
- 2.34 Excavated Fill. Excavated fill material shall be placed in upland locations where it cannot deliver to a watercourse. To minimize the potential for material to enter the stream, all excavated and relocated fill material shall be tractor contoured (to drain water) and tractor compacted to effectively incorporate and stabilize loose material into existing road and/or landing features.
- 2.35 Runoff from Steep Areas. Permittee shall make preparations so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential, or contained behind erosion control structures. Erosion control structures such as straw bales and/or siltation control fencing shall be placed and maintained until the threat of erosion ceases. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
- 2.36 No Equipment in Wetted Areas. No heavy equipment shall enter the wetted stream channel.
- 2.37 Fill Materials. No fill material, other than clean rock, shall be placed in the stream channel.
- 2.38 Material Sizing. Rock shall be sized to withstand washout from high stream flows and extend above the ordinary high-water level.
- 2.39 Crossing Maintenance. Permittee shall provide site maintenance for the life of the structures, including, but not limited to, re-applying erosion control to minimize surface erosion and ensuring drainage structures, streambeds and banks remain sufficiently armored and/or stable. Permanent culverts shall be maintained and kept open year-round. Permittee is responsible for such maintenance as long as the culvert remains in the stream.
- 2.40 Armoring. The placement of armoring shall be confined to the work period when the stream is dry or at its lowest flow.
- 2.41 Armor Placement. Rock armoring shall not constrict the natural stream channel width and shall be keyed into a footing trench with a depth sufficient to prevent instability.

- 2.42 Crossing Decommissioning. When stream crossings and fills are removed, all fill shall be excavated down to the original stream channel and outwards, horizontally, as wide as or wider than the natural channel to form a channel as close as feasible to the natural stream grade and alignment. The restored stream bank slopes shall be no steeper than a 2:1 slope (horizontal: vertical) or natural slope. Restored slopes shall be stabilized to prevent slumping and to minimize soil erosion that could lead to sediment deposition into Waters of the State.

3. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 3.1 CDFW Notification of Work Initiation. Permittee shall contact CDFW within the seven-day period **preceding the beginning of work** permitted by this Agreement. Information to be disclosed shall include Agreement number, and the anticipated start date.
- 3.2 Work Completion. The proposed work shall be completed by no later than **October 15, 2021. Notification of completion will include dates work occurred, photographs of work stages and the completed work, erosion control measures, waste containment and disposal, and a summary of any CNDDDB submissions** and shall be submitted to CDFW, LSA program at 619 Second Street, Eureka, CA 95501 **within seven (7) days** of project completion.
- 3.3 Project Inspection. The Project shall be inspected by a licensed professional to ensure that the stream crossing was decommissioned and is functioning as designed and in accordance with this Agreement. A copy of the inspection report, including photographs of each site, shall be submitted to CDFW within 90 days of completion of each separate project. Permittee shall submit the **Project Inspection Report** to CDFW, LSA Program at 619 Second Street, Eureka, CA 95501.
- 3.4 Site Management Plan and Related Technical Reports. Permittee shall submit to CDFW the project's current draft of the Site Management Plan and related technical reports if it was not included in the Notification. If the Site Management Plan and/or related technical reports are still in preparation, Permittee shall submit it and all subsequent revisions and updates within **30 days** of submittal to the SWRCB.
- 3.5 Notification to the California Natural Diversity Database. If any special status species are observed at any time during the project, the Designated Biologist shall submit California Natural Diversity Data Base (CNDDDB) forms to the CNDDDB within **five (5) working days** of the sightings. A summary of CNDDDB submissions shall be included with the completion notification. Forms and instructions for submissions to the CNDDDB may be found at:
<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

CONTACT INFORMATION

Any communication that Permittee or CDFW 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 CDFW specifies by written notice to the other.

To Permittee:

Thomas Kissick
701 Bayshore Avenue
Brigantine, NJ 08203
609-457-2608
1953tka@gmail.com

To CDFW:

Department of Fish and Wildlife
Northern Region
619 Second Street
Eureka, California 95501
Attn: Lake and Streambed Alteration Program – Christine Hahn Vertical
Notification #1600-2019-0085-R1

LIABILITY

Permittee shall be solely liable for any violation of the Agreement, whether committed by the Permittee or any person acting on behalf of the 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 CDFW's endorsement of, or require the Permittee to proceed with the project. The decision to proceed with the project is the Permittee's alone.

SUSPENSION AND REVOCATION

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

Before CDFW suspends or revokes the Agreement, it shall provide the 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 the Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to the Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

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

Nothing in the Agreement limits or otherwise affects CDFW'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 complying with, or 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. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

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 FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

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

AMENDMENT

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

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

EXTENSIONS

In accordance with FGC section 1605, subdivision (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 CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC section 1605, subdivisions (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 CDFW's signature, which shall be: 1) after the Permittee signature; 2) after CDFW complies with all applicable requirements under CEQA; and 3) after payment of the applicable FGC section 711.4 filing fee listed at

<https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall **expire five (5) years** from date of execution, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. The 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, subdivision (a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

- A. **Roadway Evaluation for Cobb Road from Rattlesnake Bridge to APN 208-341-016**, On January 20th, 2018, DTN Engineering & Consulting (Engineer) performed a roadway evaluation for Margro Advisors (Client) upon request from the property owners along Cobb Rd from Rattlesnake Bridge to APN 208-341-016.

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 CDFW in accordance with FGC section 1602.

CONCURRENCE

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

FOR THOMAS KISSICK



Thomas Kissick

8-15-20

Date

FOR DEPARTMENT OF FISH AND WILDLIFE

DocuSigned by:

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9/24/2020

Cheri Sanville

Senior Environmental Scientist Supervisor

Date