

**MEMORANDUM OF UNDERSTANDING
(PROJECT MITIGATION AND MONITORING)**

This is a Memorandum of Understanding (MOU) between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and the County of Humboldt, a body politic and municipal corporation of the State of California, referred to as COUNTY. This MOU is effective _____, 2021.

RECITALS

- A. CALTRANS has developed the Humboldt Bay Area Mitigation Project (MITIGATION PROJECT) to address compensatory wetland mitigation needs of the Eureka-Arcata Route 101 Corridor Improvement Project (CORRIDOR PROJECT) as well as other public transportation projects located within the same watershed.
- B. CALTRANS has acquired real property including without limitation property identified by APN 506-021-005 and 506-021-006 located west of the City of Arcata, between State Route (SR) 255 and Old Samoa Road in unincorporated Humboldt County, California (PROPERTY) to be used for MITIGATION PROJECT.
- C. COUNTY intends to construct a project consisting of a separated Class 1 bicycle and pedestrian trail between Bracut and the northern end of downtown Eureka parallel to and partially within the state highway system and adjacent to the CORRIDOR PROJECT, commonly called the Humboldt Bay Trail South (TRAIL PROJECT). A Cooperative Agreement between CALTRANS and COUNTY is being developed to outline CALTRANS' funding contribution (SHOPP & ATP) funds towards TRAIL PROJECT's construction phase.
- D. COUNTY has completed environmental analyses for TRAIL PROJECT and determined that the TRAIL PROJECT will cause environmental impacts requiring mitigation, including impacts to wetlands. The TRAIL PROJECT is projected to impact 5.72 acres of three-parameter wetlands and 0.44 acres of one-parameter wetlands. The total impacts to Coastal Wetlands are projected to be 6.16 acres (5.72 acres plus 0.44 acres).
- E. TRAIL PROJECT requires the issuance of a Coastal Development Permit (CDP) from the California Coastal Commission, a Clean Water Act Section 401 Certification (401 PERMIT) from the Northcoast Regional Water Quality Control Board (NRWQCB), and a Clean Water Act Section 404 Nationwide Permit (404 PERMIT) from the United States Army Corps of Engineers (USACOE). COUNTY will be responsible for obtaining TRAIL PROJECT CDP, 401 PERMIT, and 404 PERMIT.
- F. CORRIDOR PROJECT requires the issuance of a CDP from the California Coastal Commission, a 401 PERMIT from the NRWQCB, and a 404 PERMIT from the USACOE. CALTRANS will be responsible for obtaining CORRIDOR PROJECT CDP, 401 PERMIT, and 404 PERMIT.

- G. CALTRANS will incorporate necessary wetland mitigation measures resulting from TRAIL PROJECT into MITIGATION PROJECT. The TRAIL PROJECT CDP, 401 PERMIT and 404 PERMIT will require the completion, among other things, of compensatory wetland mitigation to address the TRAIL PROJECT's environmental impacts.
- H. If CALTRANS is not successful in obtaining the CORRIDOR PROJECT CDP, 401 PERMIT or 404 PERMIT, then CALTRANS will not be responsible for the mitigation associated with the TRAIL PROJECT.
- I. CALTRANS will not be responsible for any TRAIL PROJECT permit requirements that vary from those of the CORRIDOR PROJECT permit requirements beyond the wetland mitigation described herein.
- J. CALTRANS has agreed to use a portion of the PROPERTY in the MITIGATION PROJECT for the creation/enhancement of 5.72 acres of palustrine wetlands as environmental mitigation for TRAIL PROJECT's impacts associated with the 401 and 404 Permits. The restoration approach to comply with the CDP for mitigation of impacts to Coastal Wetlands will be to remove *Spartina densiflora* (Spartina) from former or existing tidelands of the Humboldt Bay area.

SCOPE OF PROJECT MITIGATION

- 1. CALTRANS agrees to create/enhance 5.72 acres of palustrine wetlands on the PROPERTY as a condition of the MITIGATION PROJECT, specified in the PERMIT 401 and PERMIT 404 outlining the environmental mitigation and monitoring requirements.
- 2. CALTRANS also agrees to remove Spartina as a condition of the MITIGATION PROJECT specific CDP environmental mitigation and monitoring requirements to offset the 6.16 acres of Coastal Wetlands impacted as a result of the TRAIL PROJECT.
- 3. MITIGATION PROJECT shall occur in accordance with all applicable requirements of the final CDP, 401 PERMIT and 404 PERMIT issued to the COUNTY for the TRAIL PROJECT. The COUNTY shall deliver copies of the final CDP, 401 PERMIT and 404 PERMIT to CALTRANS, and shall keep them on file with the Humboldt County Department of Environmental Services.
- 4. MITIGATION PROJECT shall occur through the general collaboration of CALTRANS and the COUNTY with specific tasks to be undertaken as follows:
 - A. The COUNTY will:
 - Partner with CALTRANS to ensure that conditions set forth in the TRAIL PROJECT permits are the same as those for the CORRIDOR PROJECT.
 - Review, comment on and approve the CALTRANS preliminary MITIGATION PROJECT design plans in a timely manner;
 - Complete all mitigation requirements contained within the final CDP, 401 PERMIT or 404 PERMIT that are in excess of the 6.16 acres of Coastal and 5.72 acres palustrine wetland creation.

B. CALTRANS will:

- Complete all required California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) analyses for MITIGATION PROJECT;
- Provide copies of MITIGATION PROJECT technical studies to the COUNTY.
- Prepare a MITIGATION PROJECT's "Conceptual Mitigation Plan" as required by the CDP, 401 PERMIT and 404 PERMIT, and provide a draft of this Plan to the COUNTY for review and comment prior to finalizing;
- Complete all MITIGATION PROJECT's construction in accordance with the final CDP, 401 PERMIT or 404 PERMIT.
- Perform all required MITIGATION PROJECT's site maintenance and biological monitoring/reporting as required in the final CDP, 401 PERMIT or 404 PERMIT, and ensure that success criteria established in the final CDP, 401 PERMIT or 404 PERMIT are satisfied after completion of MITIGATION PROJECT construction.

C. In the event that the TRAIL PROJECT has wetland impacts in excess of the quantities specified herein and the MITIGATION PROJECT or Spartina removal activities have a surplus of mitigation credits, CALTRANS may elect at its sole discretion to provide a portion of the mitigation surplus to offset the increased wetland impacts associated with the TRAIL PROJECT.

GENERAL CONDITIONS

1. Each party will retain all MITIGATION PROJECT's related records for five (5) years after completion of construction, mitigation monitoring, and final acceptance of all monitoring reports.
2. Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this Agreement. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless COUNTY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this Agreement.
3. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by COUNTY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon COUNTY under this Agreement. It is understood and agreed that COUNTY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of

liability occurring by reason of anything done or omitted to be done by COUNTY, its contractors, sub-contractors, and/or its agents under this Agreement.

4. If the work performed on this MITIGATION PROJECT is done under contract and falls within the Labor Code section 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771, the COUNTY and/or CALTRANS, whichever party contracts for the public work, must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. COUNTY and CALTRANS each agrees to include prevailing wage requirements in its contracts for public work. Work performed by COUNTY's or CALTRANS's own forces is exempt from the Labor Code's Prevailing Wage requirements.
5. This MOU is intended to be the parties' final expression and supersedes all prior oral understanding pertaining to MITIGATION PROJECT.
6. This MOU will terminate upon the California Coastal Commission's, USACOE's, and the NRWQCB's acceptance of the MITIGATION PROJECT, which shall occur after completion of mitigation monitoring and final acceptance of all monitoring reports. However, all indemnification and maintenance articles of this MOU will remain in effect until terminated or modified in writing by mutual agreement.

SIGNATURES

The parties declare that:

1. Each party is an authorized legal entity under California state law.
2. Each party had the authority to execute this MOU.
3. The people signing this MOU have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

COUNTY OF HUMBOLDT

By _____
Matthew K. Brady
District Director, District 1

By _____
Thomas K. Mattson
Director of Public Works

ATTEST:

By _____
Brandon Larsen
Chief, North Region Environmental Office

By _____
Kathy Hayes
Clerk of the Board