

NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

assignee files with the Commission and affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

NOTE: IF THE **SPECIAL CONDITIONS** REQUIRE THAT DOCUMENT(S) BE RECORDED WITH THE COUNTY RECORDER, YOU WILL RECEIVE THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS). IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE DISTRICT OFFICE.

- 1. Humboldt Bay Harbor, Recreation, and Conservation District Approval.**

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-20-0712, the permittee shall provide to the Executive Director a copy of a permit issued by the Humboldt Bay Harbor, Recreation, and Conservation District, a letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the District. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
- 2. Submittal of Final Plans.**
 - A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-20-0712, the permittee shall submit, for the review and approval of the Executive Director, a set of final construction plans that are consistent with all special conditions of this coastal development permit and that substantially conform with the 60% plans and associated specifications prepared by GHD Inc. and dated April 27, 2020 (Exhibit 3). The permittee shall submit evidence that an appropriate licensed professional has reviewed and approved final foundation plans for the new public restroom, and certified that the final plans are consistent with the recommendations of June 2019 geotechnical investigation report prepared by GHD, Inc.
 - B. The final plans shall demonstrate that the new sign acknowledging the funding of the facility by the Department of Boating and Waterways will be visually compatible with surrounding area signage with respect to height and bulk, will not exceed the maximum dimensions of three feet by four feet, and will not significantly obstruct views from public vantage points.

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C. The approved development shall substantially conform to the approved final construction plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

3. Construction Responsibilities. The permittee shall comply with the following construction-related requirements:

A. Timing of Construction:

- i. In-water construction shall be conducted only during the period of July 1 through September 30 to minimize potential impacts to sensitive aquatic species;
- ii. Construction activities occurring below the high-water mark shall be timed to occur during low tides;
- iii. All work shall occur during the dry season (May 19th – October 15); and
- iv. All ground-disturbing activities and asphaltic-concrete paving operations shall occur during dry weather only. No work shall occur within 72 hours of 50% or greater forecast of rain by the National Weather Service.

B. In-water Work Best Management Practices (BMPs):

- i. Construction activities within tidal and upland work areas shall not commence until all sediment, turbidity, and runoff control measures as appropriate have been properly installed in and around active work areas;
- ii. Any heavy equipment to be operated over the waters of Humboldt Bay shall use vegetable oil-based hydraulic fluids only;
- iii. The applicant shall only use precast concrete piles. No creosote-treated wooden piles shall be placed in the waters of Humboldt Bay;
- iv. Piles shall be driven with a vibratory hammer; use of an impact hammer is prohibited; and
- v. All temporary construction ground support pads and any associated materials shall be completely removed at the end of in-water work.

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C. Erosion, Runoff, and Sediment Control:

- i. No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to entering Humboldt Bay. All onsite stockpiles of soil and construction debris shall be contained at all times to minimize discharge of sediment and other pollutants;
- ii. If rainfall is forecasted during the time construction activities are being performed, all onsite stockpiles of soil and construction debris shall be covered and secured, and fiber rolls shall be placed around all disturbed areas before the onset of precipitation;
- iii. Suitable sediment control BMPs such as silt fencing or straw waddles shall be installed downgradient of disturbed areas;
- iv. Exposed soils shall be stabilized using mulch or other erosion control measures; and
- v. Only wildlife-friendly 100% biodegradable erosion control products that will not entrap or harm wildlife shall be used. Erosion control products shall not contain synthetic (that is, plastic or nylon) netting. Photodegradable synthetic products are not considered biodegradable.

D. Debris Disposal:

- i. During construction, all trash shall be removed from the work site and disposed of on a regular basis. Any and all spoils and debris resulting from construction activities shall be removed from the project site and disposed of consistent with the final Debris Disposal Plan approved pursuant to Special Condition 5 within 10 days of project completion and/ or prior to the onset of the rainy season, whichever is earlier.
- ii. At the end of the construction period, the permittee shall inspect the project area and ensure that no debris, trash, or construction materials remain on land or in the water, and that the project has not created any hazard to navigation.

E. Hazardous Materials Management

- i. Fuels, lubricants, and solvents shall not be allowed to enter Humboldt Bay. All equipment used during construction shall be free of oil and fuel leaks at all times. Staging, fueling and equipment maintenance shall occur in the designated staging area at least 50 feet away from the high water mark. Within the staging area,

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refueling will occur on a pad to capture any drips or spills. Equipment washing if necessary shall occur offsite;

- ii. All equipment used during construction shall be free of leaks at all times; and
- iii. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available and immediately on-hand at the project site. A registered first-response, professional, hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be contained rapidly and cleaned up. In the event of a spill, the permittee shall notify the appropriate regulatory agencies immediately.

F. Concrete Paving and Grinding Operations:

- i. BMPs for concrete paving and grinding operations and storm drain inlet protection shall be employed to prevent concrete grindings, concrete slurry, and paving rinseate from entering drop inlets or sheet-flowing into coastal waters. No concrete will be poured below the high water mark.

4. Final Erosion and Sediment Control and Pollution Prevention Plan. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-20-0712, the permittee shall submit, for the review and approval of the Executive Director, an Erosion and Sediment Control and Pollution Prevention Plan.

- A. The plan shall demonstrate that temporary impacts to the biological productivity and quality of nearby coastal waters shall be minimized during construction activities consistent with the provisions of Special Condition 3.
- B. The plan shall include, at a minimum, the following required components:
 - i. A construction site map delineating the construction site, and the location of all temporary construction-phase BMPs (including silt fences, fiber rolls, and inlet protection), staging and stockpiling areas, vehicle and equipment maintenance and fueling areas, and concrete washout areas;
 - ii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities; and
 - iii. A schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training).

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C. The permittee shall undertake development in accordance with the approved final Erosion and Sediment Control and Pollution Prevention Plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. **Debris Disposal Plan.** PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-20-0712, the permittee shall submit, for the review and written approval of the Executive Director, a final Debris Disposal Plan for the disposal of excess construction and demolition debris and excavated soils. The plan shall identify authorized disposal site(s) where materials will be lawfully disposed of on a regular basis and describe the manner and schedule by which the materials will be removed from the construction site. The permittee shall undertake development in accordance with the approved final Debris Disposal Plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. **Final Eelgrass Monitoring and Mitigation Plan.** PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-20-0712, the permittee shall submit, for the review and approval of the Executive Director, a final Eelgrass Monitoring and Mitigation Plan in substantial conformance with the City's Mitigation Measure BIO-2.

A. The final plan shall demonstrate that:

- i. A pre-construction eelgrass survey shall be conducted and completed during the active growing season for eelgrass (May-September) no more than 60 days prior to the beginning of construction. Eelgrass spatial distribution, aerial extent, percent vegetated cover, and turion density shall be sampled within the action area and at an appropriate reference site to help determine whether changes in eelgrass characteristics are attributable to natural variability or project actions. The survey shall be conducted in all intertidal and shallow subtidal areas within 10 meters of the in-water project footprint ("the action area") and at the reference site, and shall be conducted in substantial conformance with the National Marine Fisheries Service (NMFS)' October 2014 California Eelgrass Mitigation Policy and Implementing Guidelines (CEMP). Survey results shall be submitted for the review and approval of the

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Executive Director no more than 30 days after the pre-construction survey occurs;

- ii. If the pre-construction eelgrass survey detects eelgrass within 10 meters of the in-water project area:
 1. A post-construction survey of the eelgrass habitat in the action area and at the reference site conducted using the same sampling protocols as the pre-construction survey shall be completed within 30 days of completion of construction. If project completion occurs after the eelgrass active growth season (September 30), the post-construction eelgrass survey shall occur the following year during the same month as the pre-construction eelgrass survey. The post-construction survey shall be performed in substantial conformance with NMFS' October 2014 CEMP;
 2. A monitoring report shall be provided to the Executive Director for review and approval within 90 days of completion of the post-construction growing season survey. The monitoring report shall include both the pre- and post-construction growing season survey results and include eelgrass maps and information on the spatial distribution, areal extent, percent cover, and turion density of eelgrass at the project and reference site within the defined survey areas at the time of each survey. The reports shall also include: (1) a summary of work operations; (2) photo-documentation of pre- and post-construction site conditions; (3) an impact analysis, including a quantitative assessment of any impacts on eelgrass that may have occurred as a result of project actions; and (4) a calculation of the area required for compensatory mitigation if needed and a description of how mitigation requirements will be met;
 3. If the post-construction survey and monitoring report demonstrates to the satisfaction of the Executive Director that eelgrass distribution and density has not decreased and there has been no loss of extent of vegetated cover, then no further monitoring or mitigation is required; and
 4. If the post-construction survey and monitoring report indicates any decrease in eelgrass distribution or density attributable to project impacts, then an extended eelgrass mitigation and monitoring plan shall be prepared and submitted as an

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application for an amendment to Coastal Development Permit 1-20-0712 that provides for compensatory mitigation.

- B. The final plan shall include, at a minimum, the following components:
- i. A map of the project survey area and reference site;
 - ii. Detailed schedule and methods for conducting pre- and post-construction eelgrass monitoring in substantial conformance with NMFS' October 2014 CEMP;
 - iii. Clear standards for quantifying project impacts on eelgrass triggering compensatory mitigation;
 - iv. A preliminary plan for potential compensatory mitigation to provide for an initial mitigation area to impact area ratio of at least 1.2:1; and
 - v. A schedule for submittal of monitoring reports to the Executive Director.
- C. Eelgrass monitoring, mitigation, and reporting shall be conducted at all times in accordance with the final approved Eelgrass Monitoring and Mitigation Plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

- 7. Final Coastal Wetlands and Waters Fill Mitigation Plan. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-20-0712, the permittee shall submit, for the review and approval of the Executive Director, a final Coastal Wetlands and Waters Fill Mitigation Plan to mitigate in-kind for the filling of 340 square feet of coastal waters and three (3) square feet of soft bottom wetland habitat by removing the existing defunct floating dock and two guide piles to mud level as proposed by the permittee.**

- A. The final plan shall demonstrate that:
- i. Mitigation will be achieved through removal of the 545-square-foot floating dock from the mudflat immediately after installation of the new personal watercraft launching facility;
 - ii. Piles will be cut at or below the mudline;
 - iii. Piles and dock debris will be disposed of at an authorized location and any potentially hazardous waste materials will be disposed of at a landfill equipped to handle hazardous waste. The piles and debris

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disposal shall be included in the Final Debris Disposal Plan required by Special Condition 5;

- B. The plan shall include, at a minimum, the following components:
 - i. A description of the proposed mitigation work;
 - ii. A schedule for implementing the mitigation work immediately following construction of the new dock; and
 - iii. Provisions for submittal within 30 days of completion of the mitigation work photo-documentation of before and after conditions and a narrative discussion demonstrating that the mitigation work has been completed in accordance with the approved final mitigation plan.
- C. The permittee shall undertake development in accordance with the approved final Mudflat Fill Mitigation Plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

8. Rare Salt Marsh Plant Species Protection Plan.

- A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT 1-20-0712, the permittee shall submit, for the review and approval of the Executive Director, a plan prepared by a qualified botanist for the protection of salt marsh and sensitive plant species in the project area.
 - i. The plan shall demonstrate that:
 - 1. All existing salt marsh habitat in the project area shall be avoided and protected to the maximum extent feasible; and
 - 2. If impacts to salt marsh species will be unavoidable, (a) a qualified botanist shall collect and conserve all seeds of the individuals to be affected prior to disturbance and distribution of the seeds in a suitable habitat (with suitable host plants, native plant cover, elevations, and tidal exchange for the species) that already contains Humboldt Bay owl's clover and Point Reyes bird's beak near to where the seeds were collected; and (b) collected seeds shall be distributed into the identified habitat areas at the phenologically appropriate time, as determined by the qualified botanist.
 - ii. The plan shall include at a minimum the following components:

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1. Updated preconstruction seasonally appropriate botanical surveys conducted by a qualified botanist for Humboldt Bay owl's clover and Point Reyes bird's beak that indicate the number of special-status plant individuals, if any, to be impacted by construction activities;
 2. A narrative and site plan map that describes avoidance measures proposed, including but not limited to, (1) flagging and staking for avoidance the upper elevational boundary limit of the salt marsh vegetation on the site; and (2) limiting grading work and other disturbance to areas outside of the staked area; and
 3. A narrative description and map of the seed distribution site that explains why the distribution site is suitable habitat, indicates when the distribution will be scheduled, and explains why the scheduled seed distribution will occur at the phenologically appropriate time.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without an amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
- 9. Protection of Sensitive Bird Nesting Habitat.** If it is not feasible to avoid project construction during the avian nesting season (i.e. between March 1 and August 15), a survey for nesting birds in and adjacent to the project construction area shall be conducted by a qualified biologist according to current California Department of Fish and Wildlife (CDFW) protocols no more than seven days prior to the commencement of construction activities. If any sensitive bird ESHA is detected (i.e., detection of an active nesting areas of sensitive species) during preconstruction surveys, the biologist, in consultation with CDFW, shall determine the extent of a construction-free buffer zone to be established around the nest, and construction in the buffer zone shall be delayed until after the young have fledged, as determined by additional surveys conducted by a qualified biologist.
- 10. Assumption of Risk, Waiver of Liability and Indemnity.**
- A. By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to ground shaking, liquefaction, wave run-up, storm surges, flooding, and erosion, many of which will worsen with future sea level rise; (ii) to assume the risks

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to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- B. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (i) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (ii) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

11. Area of Archaeological Significance.

- A. AT LEAST TWO WEEKS PRIOR TO COMMENCEMENT OF GROUND-DISTURBING ACTIVITIES AUTHORIZED BY COASTAL DEVELOPMENT PERMIT 1-20-0712**, the permittee shall notify the Tribal Historical Preservation Officers (THPOs) from the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria of the construction schedule and arrange for tribal representative(s) to be present to observe ground-disturbing activities if deemed necessary by the THPOs. A cultural resources monitor approved by the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria shall be present to oversee all ground disturbing activities authorized by Coastal Development Permit 1-20-0712 unless evidence has been submitted for the review and

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approval of the Executive Director that the THPOs of these three entities have agreed that a cultural resources monitor need not be present.

- B. If an area of cultural deposits or human remains is discovered during the course of the project, all construction shall cease and shall not recommence until a qualified cultural resource specialist, in consultation with the THPOs of the Wiyot Tribe, the Bear River Band of Rohnerville Rancheria, and the Blue Lake Rancheria, analyzes the significance of the find and prepares a supplementary archaeological plan for the review and approval of the Executive Director, and either: (a) the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, or (b) the Executive Director reviews the Supplementary Archaeological Plan, determines that the changes proposed therein are not de minimis, and the permittee has thereafter obtained an amendment to coastal development permit 1-20-0712.

Receiving Water:	Eureka Plain hydrologic area 110.00
Filled and/or Excavated Areas:	
Permanent Impacts	9 linear feet (0.001 acre) of impacts to wetlands
Temporary Impacts	100 linear feet (0.069 acre) of impacts to wetlands
Latitude/Longitude:	40.855525°N / 124.098566°W
Certification Expiration:	August 19, 2025

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Arcata Marsh Kayak Boat Launch Project (WDID 1B20090WNHU), 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. Work within State waters shall occur only between June 15th and October 15th. Any deviation from this timeframe restriction shall be subject to prior approval by Regional Water Board staff.

Standard Conditions

2. 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.
3. 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.
4. 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.

5. A complete fee of \$1,949.00, (Low Impact Discharge Fee), was submitted to the Regional Water Board on May 26, 2020. This Certification will be subject to annual billing while the project is constructed and monitored, per the fee schedule that is current at the time of annual billing. Currently the annual fee is \$260; the annual fee is expected to increase every year. The fee calculator may be found on the State Water Board website at:
https://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm

Annual fees will be automatically invoiced to the Applicant. **The applicant must notify the Regional Water Board at project and/or mitigation completion with a final report in order to request to terminate annual billing. Notification should be sent to the staff listed at the bottom of this Order and to Northcoast@waterboards.ca.gov.** Regional Water Board staff will verify conditions of the Certification have been met and may request a site visit at that time to confirm status of Project and compliance with this Certification.

6. 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.
7. 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.
8. 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.
9. 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
10. 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.

11. 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.
12. The applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
13. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.
14. 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.
15. 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.
16. Prior to implementing any change to the project that may be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the applicant shall obtain prior written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of the material change to the discharge, it will be considered a violation of this certification, and the applicant may be subject to Regional Water Board enforcement action(s).
17. 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.
18. Disturbance or removal of existing vegetation as detailed within the application shall not exceed the minimum necessary to complete the project.

19. 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 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.
20. 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 workday.
21. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401 (d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification. In response to a suspected violation of any condition of this certification, the 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.
22. The Regional Water Board may add to or modify the conditions of this Certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
23. In the event of any change in control of ownership of land presently owned or controlled by the applicant, the applicant shall notify the successor-in-interest of the existence of this certification by letter and shall email a copy of the letter to the 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.

24. Except as may be modified by any preceding conditions, all certification actions are contingent on:

- i) the discharge being limited to and all proposed mitigation being completed in strict compliance with the applicant's Project description, and
- ii) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

25. The authorization of this certification for any dredge and fill activities expires on **August 19, 2020**. 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.

Any requirement for a report made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, section 13268.

If you have any questions or comments, please contact Brandon Stevens of my staff, at (707) 576-2377, or via e-mail at Brandon.Stevens@waterboards.ca.gov.

Sincerely,

Matthias St. John
Executive Officer

200819_BDS_er_ArcataMarsh_Kayak_BoatLaunch_401

Original to: Emily Benvie
City of Arcata
736 F Street
Arcata, CA 95521
ebenvie@cityofarcata.org

cc: State Water Resources Control Board, Stateboard401@waterboards.ca.gov
Jennifer Siu, EPA Wetlands Office, siu.jennifer@epa.gov
Kasey Sirkin, ACOE, L.K.Sirkin@usace.army.mil

flounder, juvenile lingcod, juvenile rockfish, and others. Coastal Pelagic Species in the work area include: northern anchovy, jack mackerel, and Pacific sardine.

NMFS determined that the following conservation recommendations are necessary to avoid, minimize, mitigate, or otherwise offset the impact of the proposed action on EFH.

1. The Project must comply with NMFS (2014) California Eelgrass Mitigation Policy (CEMP)¹ and demonstrate, in accordance with CEMP, that eelgrass is not present in the action area prior to beginning work by conducting the appropriate surveys. If eelgrass is confirmed to be present in the action area, compensatory mitigation will be required to offset the any loss of eelgrass in the action area to fulfill the requirement in CEMP regarding no net loss of eelgrass resources. If eelgrass is present, further survey efforts will be required after the Project to document the effects in accordance with CEMP. The Applicant will stay in close communication with the Corps and NMFS regarding the results of the CEMP pre-project eelgrass surveys and compensatory mitigation measures undertaken if needed.
2. To compensate for adverse effects to the Estuary HAPC for the Pacific Coast Salmon and Coastal Pelagic Species FMP's, and for benthic impacts adversely affecting EFH designated by the Pacific Coast Groundfish FMP, the Applicant shall utilize grated or other decking for the dock that allows for greater than 50% light penetration to compensate for the substantial adverse shading effects. The gangway and other infrastructure should be accounted for in evaluating the light permeability of the new structure. The terminal end of the structure should be the highest priority for achieving maximum amount of light permeability given the suitable elevations for current and future eelgrass colonization.
3. Incorporate locally sourced oyster shell into or onto the surfaces of the concrete abutments to offset the adverse effects to Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagic Species by increasing complexity and providing for appropriate attachment media for Olympia oyster and other organisms to more rapidly recolonize the area.

As required by section 305(b)(4)(B) of the MSA, the Corps must provide a detailed response in writing to NMFS within 30 days after receiving EFH Conservation Recommendations. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations unless NMFS and the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of the measures proposed by the agency for avoiding, minimizing, mitigating, or otherwise offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with the Conservation Recommendations, the Federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects (50 CFR 600.920(k)(1)).

¹ NMFS (2014) California Eelgrass Mitigation Policy and Implementing Guidelines (NMFS 2014) can be downloaded at: <https://www.fisheries.noaa.gov/region/west-coast#habitat>

This authorization will not be effective until you have obtained a concurrence from the California Coastal Commission that your project will comply with California's Coastal Zone Management Act. If the Commission fails to act on a valid request for concurrence with your certification within six months after receipt, the Corps will presume a concurrence has been obtained. You shall submit a copy of the concurrence to the Corps prior to the commencement of work.

General Condition 18 stipulates that project authorization under a NWP does not allow for the incidental take of any federally-listed species in the absence of a biological opinion with incidental take provisions. As the principal federal lead agency for this project, the Corps initiated consultation with the National Marine Fisheries Service (NMFS) to address project related impacts to listed species, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 *et seq.* By letter of July 29, 2020, NMFS concurred with the determination that the project was not likely to adversely affect Southern Oregon/Northern California Coast Coho salmon, California Coastal Chinook salmon, Northern California Steelhead, and North American Green Sturgeon and designated critical habitat for these species.

In order to ensure compliance with this NWP authorization, the following special conditions shall be implemented:

1. Incidents where any individuals of Southern Oregon/Northern California Coast Coho salmon, California Coastal Chinook salmon, Northern California Steelhead, and North American Green Sturgeon listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this NWP shall be reported to NOAA Fisheries, Office of Protected Resources, at (301) 713-1401 and the Regulatory Office of the San Francisco District of the U.S. Army Corps of Engineers at (415) 503-6795. The finder should leave the plant or animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved, and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.
2. The NMFS concurred with the determination that the project was not likely to adversely affect Southern Oregon/Northern California Coast Coho salmon, California Coastal Chinook salmon, Northern California Steelhead, and North American Green Sturgeon and designated critical habitat for this species. This concurrence was premised, in part, on project work restrictions and the description of the proposed

action outlined in the provided biological evaluation. These work restrictions are incorporated as special conditions to the NWP authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.

3. The Corps initiated consultation with the NMFS to address project related impacts to Essential Fish Habitat. The conservation recommendations outlined on page 7 in the Letter of concurrence shall be fully implemented as stipulated.
4. Any change in the project design, materials, or construction methods, must be approved by the Corps in writing.
5. If future operations by the United States require the removal, relocation, or other alteration of the work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the U. S Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
6. All appropriate best management practices shall be implemented throughout the project site to help minimize sediment disturbance and suspension within the water.

You may refer any questions on this matter to myself by telephone at 707-443-0855 or by e-mail at l.k.sirkin@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: <http://www.spn.usace.army.mil/Missions/Regulatory.aspx>

Sincerely,

L. Kasey Sirkin
Lead Biologist, Eureka Field Office