

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
SOUTH COAST REGION  
3883 RUFFIN ROAD  
SAN DIEGO, CALIFORNIA 92123



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION No. 1600-2015-0122-R5  
AGUA HEDIONDA CREEK AND TRIBUTARIES THERETO

DIVERSIFIED PROJECTS, INC.  
SAN MARCOS HIGHLANDS

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Diversified Projects, Inc. (Permittee) as represented by Farouk Kubba.

## **RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on July 17, 2015, that 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, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

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

## **PROJECT LOCATION**

The project is located within the bed, channel, and bank of Agua Hedionda Creek and four unnamed tributaries thereto, north of Highway 78, west of Twin Oaks Valley Road, and south of Buena Creek Road, in the City of San Marcos, County of San Diego, State of California; Latitude 33° 10' 17.09" N, Longitude 117° 11' 2.41" W; U.S. Geological Survey (USGS) map San Marcos quadrangle, Section 34, Township 11 South, Range 3 West, SBM; Calwater 4904.320000; Assessor's Parcel Numbers 184-101-14, 184-102-18, 184-240-15, -32, and -33, and 184-241-05, -06, -07, and -08.

## **PROJECT DESCRIPTION**

The San Marcos Highlands Development Project requires several ephemeral stream segments located within the project site be filled using native material, and permanently culverted below ground, to facilitate construction of the proposed project. Project activities occurring within Agua Hedionda Creek include the removal and rebuilding of

an existing earthen dam/road crossing over the Creek, along with impacts to be incurred by the proposed alignment of Las Posas Road. An arch culvert sized approximately 10 feet high, 12 feet wide, and 159 feet long will be constructed over the Creek where the existing dam is located and will serve to allow water flow and movement of wildlife. Grading and reconstruction of natural stream contours will occur within Agua Hedionda Creek as a component of the compensatory mitigation. The project will result in permanent impacts to approximately 5,588 linear feet of streambed, totaling no more than 1.22 acres.

## PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: REPTILES - common side-blotched lizard (*Uta stansburiana*), western fence lizard (*Sceloporus occidentalis*), gopher snake (*Pituophis melanoleucus*); BIRDS - turkey vulture (*Cathartes aura*), red-tailed hawk (*Buteo jamaicensis*), California quail (*Callipepla californica*), mourning dove (*Zenaida macroura*), Anna's hummingbird (*Calypte anna*), Nuttall's woodpecker (*Picoides nuttallii*), western kingbird (*Tyrannus verticalis*), western scrub-jay (*Aphelocoma californica*), common raven (*Corvus corax*), American crow (*Corvus brachyrhynchos*), bushtit (*Psaltriparus minimus*), coastal California gnatcatcher (*Polioptila californica californica*), wrentit (*Chamaea fasciata*), California thrasher (*Toxostoma redivivum*), spotted towhee (*Pipilo maculatus*), California towhee (*Pipilo crissalis*), lesser goldfinch (*Carduelis psaltria*), house finch (*Carpodacus mexicanus*); MAMMALS - desert cottontail (*Sylvilagus audubonii*), California ground squirrel (*Spermophilus beecheyi*), Botta's pocket gopher (*Thomomys bottae*), dusky-footed woodrat (*Neotoma fuscipes*), coyote (*Canis latrans*); riparian vegetation which provides habitat for those species, and all other aquatic and wildlife resources in the project vicinity.

The adverse effects the project could have on the fish or wildlife resources identified above include: loss of natural bed or bank; change in sediment transport; increased turbidity; short-term release of contaminants (e.g., incidental from construction); disruption to nesting birds and other wildlife; direct take of terrestrial species; disturbance from project activity; and loss of 5,588 linear feet of streambed.

## 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 that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Notification Prior to Work. Permittee shall notify CDFW, in writing, at least 5 days prior to initiation of construction (project) activities and at least 5 days prior to completion of construction (project) activities, each time project activities occur. Notification shall be sent to CDFW's South Coast Office at the address above, ATTN: Streambed Alteration Program – SAA # 1600-2015-0122-R5 or to [R5LSACompliance@wildlife.ca.gov](mailto:R5LSACompliance@wildlife.ca.gov).

## **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.

- 2.1 Seasonal Restrictions - Vegetation Removal. Permittee shall not remove vegetation within the stream from February 15 to September 1 to avoid impacts to nesting birds. However, Permittee may remove vegetation during this time if a qualified biologist conducts a survey for nesting birds within 1 week of the vegetation removal, and ensures no nesting birds shall be impacted by the project. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the project.
- 2.2 On-site Biologist with Stopwork Authorization. Permittee shall have a qualified biologist on site weekly during project activity to ensure that Agreement conditions are being met and minimize impacts to fish and wildlife habitat. The biologist shall be authorized to stop construction if necessary to protect fish and wildlife resources.
- 2.3 Work Area Boundary. Work area boundaries shall be delineated by posting signs, staking, flagging, erecting temporary fencing, or otherwise clearly marking to minimize surface and vegetation disturbance. No paint or permanent discoloring agents shall be applied to rocks or vegetation to indicate limits of survey or

construction activity where any sensitive biological resources occur. All temporary fencing and flagging shall be removed at the conclusion of construction activities.

- 2.4 Protected Species. This Agreement does not authorize take, incidental or otherwise, of any protected species. For the purpose of this Agreement, "protected species" means the following: a species fully protected under state law; a species listed under the California Endangered Species Act (Fish & G. Code § 2050 et seq.) and/or Endangered Species Act (16 U.S.C. § 1531 et seq.); a species identified by CDFW as a species of special concern; or any other species for which take is prohibited under state or federal law. No direct or indirect impacts shall occur to any protected species, except as may be authorized by a Natural Community Conservation Plan or one or more individual permits that authorize such impacts.
- 2.5 Leave Wildlife Unharmd. If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed.
- 2.6 Stream Diversion. When work in a flowing stream is unavoidable, Permittee shall divert the stream flow around or through the work area during construction operations.
- 2.7 Culvert Alignment. Storm drains lines/culverts shall be adequately sized to carry peak storm flows for the drainage to one outfall structure. The storm drain lines/culverts and the outfall structure shall be properly aligned within the stream and otherwise engineered, installed and maintained, to assure resistance to washout, and to erosion of the stream bed, stream banks and/or fill. Water velocity shall be dissipated at the outfall, to reduce erosion.
- 2.8 Impairment of Water Flow. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at stream channel grade and bottoms of permanent culverts shall be placed at or below stream channel grade.
- 2.9 Authorized Structures. This Agreement does not authorize the construction of any temporary or permanent dam, structure, flow restriction or fill except as described in Permittee's notification.
- 2.10 Runoff from Steep Areas. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
- 2.11 Erosion Control Measures. Erosion control measures shall be utilized throughout all phases of operation where sediment runoff from exposed slopes threatens to

enter waters of the State. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream.

- 2.12 Operating Equipment and Vehicle Leaks. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Permittee shall maintain all vehicles and equipment in proper working condition to minimize fugitive emissions and accidental spills from motor oil, antifreeze, hydraulic fluid, grease, or other fluids or hazardous materials. All fuel or hazardous waste leaks, spills, or releases shall be stopped or repaired immediately and cleaned up at the time of occurrence. Permittee shall be responsible for spill material removal and disposal to an approved offsite landfill and spill reporting to the permitting agencies. Construction equipment shall be stored at designated areas only. Service/maintenance vehicles shall carry appropriate equipment and materials to isolate and remediate leaks or spills. A spill containment kit shall be available onsite for all fueling, maintenance, and construction activities.
- 2.13 Stationary Equipment. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.
- 2.14 Litter and Pollution Control. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Permittee to ensure compliance.
- 2.15 Stockpiled Materials. Building materials and/or construction equipment shall not be stockpiled or stored where they may be washed into the water or cover aquatic or riparian vegetation.
- 2.16 Hazardous Materials. 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 other substances which could be hazardous to aquatic life, wildlife, or riparian habitat resulting from the project related activities shall be prevented from contaminating the soil and/or entering the waters of the State.
- 2.17 Keep Polluted Water from Entering Stream Zone. Water containing mud, silt, or other pollutants for aggregate washing or other activities shall not be allowed to enter a flowing stream or placed in locations that may be subject to high storm flows.

### 3. Compensatory Measures

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

- 3.1 Mitigation for Authorized Impacts. Permittee shall mitigate the impacts to approximately 5,588 linear feet of streambed, totaling no more than 1.22 acres, as described in the *San Marcos Highlands Habitat Mitigation and Monitoring Plan*, revised by William T. Everett, Everett and Associates and dated April 2013 and as follows. Native riparian vegetation shall be established in Aqua Hedionda Creek in zones currently occupied by an artificial pond and by large patches of exotic or ruderal vegetation. Mitigation activities shall consist of 2.6 acres riparian restoration, 1.0 acre riparian enhancement, and 1.1 acre eucalyptus removal. Included within the eucalyptus removal area will be 0.05 acre wetland creation. The 4.7 acres of restoration and enhancement, along with an additional 2.9 acres of existing southern willow scrub, shall be protected in perpetuity through recordation of a conservation easement.
- 3.2 Additional Enhancement Activities. In addition to the 7.6 acres that will be preserved under a conservation easement, Permittee proposes to conduct 2.3 acres of enhancement within an area occupied by several infrastructure easements which preclude the 2.3 acres from being preserved in perpetuity.
- 3.3 Time Restrictions and Consequences. All mitigation shall be installed within 9 months of project initiation. Any delay in the installation of mitigation will require an amendment to this Agreement and may result in the application of higher mitigation ratios than are currently required by this Agreement to offset the additional temporal loss of habitat function.
- 3.4 Success Criteria from Mitigation Plan. Unless other success criteria are agreed to in writing by CDFW, the mitigation site shall meet the success criteria detailed in 7.1 and 7.2 of the *San Marcos Highlands Habitat Mitigation and Monitoring Plan*, revised by William T. Everett, Everett and Associates and dated April 2013 ("Mitigation Plan").

Criteria from 7.1 of the Mitigation Plan include: wildlife use for 2 consecutive monitoring periods; recruitment of native species as indicated by flower/fruit production or presence of seedlings; and sustainability (no significant maintenance required for 2 consecutive years prior to release).

Criteria from 7.2 of the Mitigation Plan are a set of functional evaluations using qualitative observations and quantitative measurements to compare indicators of habitat, hydrology, and biogeochemistry at the mitigation site to a series of reference descriptions scaled from 0.0 (total failure) to 1.0 (complete success).

Mitigation will be judged successful if the site achieves a score of 0.8 or greater in 6 out of the following 7 categories:

Stream Geomorphology (0.8 = Stream channel carries water for extended periods during a typical rainy season.)

Flood-prone Area (0.8 = Site is part of a floodplain which provides an opportunity for overbank flow during moderate flow events. The site is slightly or moderately confined by obstructions or barriers; however the area available for overbank flow is equal to or greater than twice the width of the channel at bankfull conditions.)

Habitat – Vegetative Structure (0.8 = At least 2 strata are represented with each contributing at least 30 percent cover. Patches of unvegetated ground (other than the stream channel) are smaller than 400 square feet.)

Habitat – Vegetative Cover (0.8 = Cover of native riparian vegetation is 70 – 90 percent.)

Habitat – Vegetative Diversity (0.8 = There are 9 – 12 native riparian plant species.)

Percent Exotic, Invasive Vegetation (0.8 = 5 to 19 percent cover of exotic vegetation.)

Biogeochemistry – Detritus Cover (0.8 = Cover of woody debris, leaf litter, or detritus is between 30 and 50 percent.)

- 3.5 Additional Success Criteria. To ensure a successful revegetation effort, all plants shall be monitored and maintained as necessary for 5 years. At the completion of the monitoring period, the mitigation site shall have received no supplemental irrigation for a period of 2 consecutive years, and the site shall be free of invasive exotic plant species such as tamarisk.
- 3.6 Written Release from Monitoring Obligation. Permittee shall not be released from these maintenance and monitoring obligations until such time as Permittee has requested and received written concurrence from CDFW that the success criteria have been met.

#### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

- 4.1 Mitigation Site As-Built Report. Permittee shall submit a report to CDFW within 90 days of completion of site preparation and planting, acknowledging the completion of the installation phase and documenting the as-built status of the mitigation

project. The report shall include a plan or map diagram showing the mitigation area and the final as-built locations of plantings, irrigation, and other installations. Photographs from representative vantage points shall also be included to document the final site conditions.

- 4.2 Annual Reports. Permittee shall submit an annual mitigation monitoring report to CDFW by January 1 of each year for 5 years after the mitigation installation. This report shall include an evaluation of the site as compared to the success criteria, the number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters. Photographs from designated photograph stations shall be included.

### **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:

Farouk Kubba  
Diversified Projects, Inc.  
7021 Leonard Street  
Carlsbad, California 92011

To CDFW:

California Department of Fish and Wildlife  
South Coast Region  
3883 Ruffin Road  
San Diego, California 92123  
Attn: Lake and Streambed Alteration Program  
Notification #1600-2015-0122-R5

### **LIABILITY**

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

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



## **SUSPENSION AND REVOCATION**

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

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

## **ENFORCEMENT**

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

Nothing in the Agreement limits or otherwise affects 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 obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

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

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

## **AMENDMENT**

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.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, 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 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, 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(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 1605(b) through (e).

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

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the

applicable FGC section 711.4 filing fee listed at  
<https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

## **TERM**

This Agreement shall expire on November 30, 2020, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

## **AUTHORITY**

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

## **AUTHORIZATION**

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

**CONCURRENCE**

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

**FOR DIVERSIFIED PROJECTS, INC.**

  
\_\_\_\_\_

11/24/2015  
Date

Name: FAROUK KUBBA  
\_\_\_\_\_

Title: President  
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**FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

  
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1/28/16  
Date

Gail K. Sevrens  
Environmental Program Manager

Prepared November 2, 2015, by Kelly Fisher, Environmental Scientist