CALIFORNIA Water Boards

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JARED BLUMENFELD SECRETARY FOR ENVIRONMENTAL PROTECTION

North Coast Regional Water Quality Control Board

August 27, 2019

In the Matter of Water Quality Certification for the Elm Tree Station Project

APPLICANT:	Mr. Mangal Dhillon
RECEIVING WATER:	Seasonal wetlands on the Santa Rosa plain
HYDROLOGIC UNIT:	Middle Russian River 114.21
COUNTY:	Sonoma
FILE NAME:	Elm Tree Station Project; ECM PIN CW-804373; WDID 1B14016WNSO

FINDINGS BY THE EXECUTIVE OFFICER:

1. On March 28, 2019, Geoff Monk of Monk and Associates on behalf of Mr. Mangal Dhillon (applicant) filed an application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the North Coast Regional Water Quality Control Board (Regional Water Board) for activities associated with the Elm Tree Station Project (project). The applicant previously applied for a 401 certification for the project on February 26, 2014, but the project was never certified and went dormant. The application was deemed complete on May 6, 2019. The project is located 874 North Wright Road in Santa Rosa, at latitude 38.426424°N and longitude 122.76845°W.

2. **Public Notice:** The Regional Water Board provided public notice of the application pursuant to Title 23, California Code of Regulations, Section 3858 on May 6, 2019, and posted information describing the project on the Regional Water Board's website. No comments were received.

3. **Receiving Waters:** The proposed project would cause disturbances to unnamed seasonal wetlands on the Santa Rosa Plain, within the Laguna sub-area of the Middle Russian River hydrologic area (114.21).

4. **Project Description:** The purpose of the project is to construct a fueling station and market. The project will involve subdividing the 0.98-acre parcel into two parcels. Parcel 1 will be developed into a gas and electric fueling station and a neighborhood market. Parcel 2 will be developed into a small retail building with park amenities. There will be two driveways into the site from North Wright Road. Bioretention areas will be constructed to slow, sink, and spread post-construction storm water with

landscape-based treatment per the City of Santa Rosa Low Impact Development Technical Design Manual.

5. **Construction Timing:** The project is expected to commence in 2019.

6. **Project Impacts:** Approximately 0.22 acre of wetlands would be permanently filled.

7. **Mitigation for Project Impacts:** Compensatory mitigation at a ratio of 2:1 mitigation to impacts has been provided with the purchase of 0.45 wetland creation and CTS stacked credits from Hale Mitigation Bank.

8. **Project Tracking:** It has been determined through regional, state, and national studies that tracking of mitigation and restoration projects must be improved to better assess their performance. In addition, to effectively carry out the state's Wetlands Conservation Policy of no net loss to wetlands, the state needs to closely track both aquatic habitat losses and the success of mitigation and restoration projects. Therefore, this certification requires the Applicant to upload impact totals and mitigation measures to a web-based project tracking system called "EcoAtlas" using the "Project Tracker" form, which can be found here: http://ptrack.ecoatlas.org. Instructions and how to request a user name and password are on the Project Tracker website. More information about EcoAtlas is available at: www.ecoatlas.org.

9. **Disturbed Soil Area:** Project implementation will result in greater than one acre of disturbed soil area. The applicant shall obtain coverage under the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ) and prepare a Stormwater Pollution Prevention Plan detailing best management practices (BMPs) to control pollution from the project area during construction. All temporarily disturbed areas within the project area shall be appropriately stabilized and/or replanted with appropriate native vegetation.

10. **Storm Water Control and Treatment:** Landscape based low-impact development (LID) features will be employed to address storm water pollutants from the added impervious area.

11. **Other Agency Actions:** The applicant has applied to the United States Army Corps of Engineers for Nationwide Permit No. 39, *Commercial and Institutional Developments*, pursuant to section 404 of the Clean Water Act.

12. **CEQA Compliance:** As lead agency, the City of Santa Rosa certified a Mitigated Negative Declaration (SCH 2013092008), pursuant to the requirements of the California Environmental Quality Act (CEQA). A notice of determination was filed with the state clearinghouse on October 4, 2013.

13. **Antidegradation Policy:** The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal

policy. The State Water Board established California's antidegradation policy in State Water Board Resolution 68-16, which incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution 68-16 requires that existing high quality waters be maintained unless degradation is justified under specific provisions. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. This Certification is consistent with applicable federal and state antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater, and does not otherwise authorize degradation of the waters affected by this project.

14. This discharge is also regulated under State Water Resources Control Board Order 2003-0017-DWQ, *General Waste Discharge Requirements for Dredge and Fill Discharges that have Received State Water Quality Certification*, which requires compliance with all conditions of this water quality certification. The following is a link to the document: https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Elm Tree Station Project (WDID 1B14016WNSO), 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. Within 30 days of issuance of this Order, the Applicant shall upload Project information to EcoAtlas using the "Project Tracker" form found at the following website: http://ptrack.ecoatlas.org. Required information includes a Project map that may either be uploaded to EcoAtlas or created within EcoAtlas by using the "draw polygon" tool.

2. The Applicant shall implement the storm water treatment and volume control BMPs identified in the Project application, including the December 2018 Final Stormwater LID Submittal prepared by BKF Engineers. BMPs identified in the application include seven bioretention areas and vegetated swales.

3. The mitigation measures detailed in the Mitigated Negative Declaration (SCH 2013092008) are hereby incorporated by reference and are conditions of approval of this certification. Notwithstanding any more specific conditions in this certification,

the applicant shall comply with all mitigation measures identified in the Mitigated Negative Declaration that are within the Regional Water Board's jurisdiction.

Project Specific Conditions Requiring Reports

4. Regional Water Board staff shall be notified in writing at least five working days prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during construction, and to answer any public inquiries that may arise regarding the project.

Standard Conditions

5. 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.

6. 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.

7. 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.

8. A complete fee of $3,188, (Category A, Fill & Excavation Discharges), was received for the Project on February 26, 2014, and August 16, 2019. 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 $1,638; the annual fee is expected to increase every year. The fee calculator may be found on the following website: 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. The applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.

15. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.

16. 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.

17. 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.

18. 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).

19. 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.

20. Disturbance or removal of existing vegetation as detailed within the application shall not exceed the minimum necessary to complete the project.

21. 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 or creeks. 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.

22. 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 work day.

23. 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.

24. 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.

25. 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.

26. 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).

27. The authorization of this certification for any dredge and fill activities expires on August 27, 2024. 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.

Condition 4 is a requirement for information and reports. 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 Kaete King of my staff, at (707) 576-2848, or via e-mail at Kaete.King@waterboards.ca.gov.

Clayton S. Creager

Digitally signed by Clayton S. Creager
Date: 2019.08.27 15:54:20 -07'00'

Water Boards

For: Matthias St. John
Executive Officer

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Original to: Mr. Mangal Dhillon, 2743 Yulupa Ave., Santa Rosa, 95405

cc: State Water Resources Control Board, Stateboard401@waterboards.ca.gov
Jennifer Siu, EPA Wetlands Office, siu.jennifer@epa.gov
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Legend
Confirmed Wetlands (9,623 sq. ft., 0.22 acre)
Data Points
Box Inlet
Septic Hole
Project Site (~1.1 Acre)
Wetland # Sq. Ft.
W 1 917
W 2 8,706
USACE File #2010-00274N
874 North Wright Road, Santa Rosa
September 6, 2013
Enclosure 1
USACE File #2010-00274N
874 North Wright Road, Santa Rosa
September 6, 2013
Preliminary JD
N Wright Rd
W1
W2
Sheet 1. Confirmed Wetland Delineation
Scale: 1 inch = 25 feet
Corps Confirmation Date: September 22, 2010
Confirmed by: Sabrye Cohen
Monk & Associates
Environmental Consultants
1136 Saratoga Avenue, Suite Q