#### CALIFORNIA COASTAL COMMISSION CENTRAL COAST DISTRICT OFFICE

CENTRAL COAST DISTRICT OFFIC 725 FRONT STREET, SUITE 300 SANTA CRUZ, CA 95060 PHONE: (831) 427-4863 FAX: (831) 427-4877 WEB: WWW.COASTAL.CA.GOV





Filed:	11/28/2008
180th day:	5/27/2009
Staff report prepared:	4/16/2009
Staff report prepared by:	Katie Morange
Staff report approved by:	Dan Carl
Hearing date:	5/7/2009

## **COASTAL DEVELOPMENT PERMIT APPLICATION**

Application number	. 3-08-046, Carmel River Lagoon Water Management Project
Applicant	California Department of Parks and Recreation
Project location	The mouth of the Carmel River Lagoon on Carmel River State Beach just downcoast of the City of Carmel and Carmel Point in unincorporated Monterey County.
Project description	Annual spring modification of the sandy beach area between the lagoon and the ocean to create a berm and a high-elevation outlet channel in the berm in order to restore and enhance habitat for fish and wildlife in the lagoon.
File documents	Coastal Commission coastal development permit (CDP) files for 3-02-056- W, 3-05-051-G, 3-94-005, 3-96-125-G, 3-98-081-G, 3-00-007-G, 3-00- 159, 3-05-020-G, 3-05-051-G, 3-05-035; Draft and Final <i>Carmel River</i> <i>State Beach Lagoon Water Level Management Project Initial</i> <i>Study/Mitigated Negative Declaration</i> (California Department of Parks and Recreation, July and September 2008); <i>Study Plan for Long Term Adaptive</i> <i>Management of the Carmel River State Beach and Lagoon</i> (Carmel Lagoon Technical Advisory Committee, April 2007); California Department of Fish and Game Streambed Alteration Agreement No. 2008-0185-R4.
Staff recommendation	Approve with Conditions

## A.Staff Recommendation

## **1. Summary of Staff Recommendation**

The California Department of Parks and Recreation (State Parks) requests a permit to manage the water level of the Carmel River lagoon at Carmel River State Beach each spring. The project would involve annual creation of a sandy berm that would close the lagoon, and creation of a high elevation outlet channel in the berm along the beach. The purpose of the project is to maximize the volume of fresh water in the lagoon during the summer to enhance habitat for the federally-listed threatened steelhead trout and other sensitive, protected species that exist at the lagoon, including federally-listed threatened



California red-legged frog. The lagoon naturally closes each summer, but this typically occurs once river flows have ceased for the year and water levels are too low and too saline to support optimum juvenile steelhead rearing conditions. Such lack of adequate stream flows for the river and lagoon is primarily due to the fact that the Carmel River is the major water source for the Monterey Peninsula. Although there are ongoing issues with respect to water rights, and ongoing State Water Resource Control Board (SWRCB) actions attempting to address this issue, water withdrawals have historically and continue to adversely impact river and lagoon habitats, including for these species. The project would increase the odds that adequate quantity and quality of water will be maintained as long as possible during a time when the lagoon is otherwise receiving minimal or no freshwater inputs. Once constructed, no ongoing work to maintain the berm features would occur, and it is expected that the berm and outlet channel would be removed each year over time by natural processes until the following spring when berm creation would occur again.

The project has been designed to enhance an environmentally sensitive habitat area (ESHA) that is compromised by human actions upstream (namely, water withdrawals from the Carmel River) and includes various built-in best management practices to ensure that construction work would not have or introduce unintended ESHA, water quality, or public access impacts. That said, the project is a controlled experiment of sorts requiring monitoring and evaluation of its efficacy. In addition, management efforts associated with the Carmel River Lagoon have been ongoing for many years, and subsequent planning and regulatory initiatives may affect or be affected by the proposed project. Likewise, the water rights and withdrawal context is liable to change, and affect the parameters of the project in the future. Accordingly, staff recommends that the project be conditioned such that it is limited to a five-year term, and to require that the proposed annual reports (that describe and evaluate the actions taken during each project episode, and the results of each episode throughout the remainder of the year on both lagoon habitat and public access) be submitted so that in the future the Commission can make use of such data in determining whether a continuation of the project or some different project is appropriate at this location.

Overall, based on the project description and subject to the recommended conditions, the project is appropriate to protect and enhance sensitive habitat, will avoid adverse environmental impacts to coastal estuarine, lagoon, and marine resources, and will protect public access and recreation. Therefore, Staff recommends that the Commission approve a CDP with conditions for the proposed Carmel River Lagoon water level management project. The necessary motion is found directly below.

## 2. Staff Recommendation on CDP Application

Staff recommends that the Commission, after public hearing, **approve** the CDP for the proposed development subject to the standard and special conditions below.

**Motion.** I move that the Commission approve coastal development permit number 3-08-046 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a YES vote. Passage of this motion



will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve a Coastal Development Permit.** The Commission hereby approves the coastal development permit on the ground that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development.

## **Report Contents**

A.	Staff Recommendation	1
	1. Summary of Staff Recommendation	1
	2. Staff Recommendation on CDP Application	2
B.	Findings and Declarations	4
	1. Project Location and Background	4
	2. Project Description	7
	3. Standard of Review	8
	4. Coastal Development Permit Determination	9
	A. Estuarine Lagoons and Related Areas	9
	B. Public Access and Recreation	13
	C. Flood Hazards	14
	5. Coastal Development Permit Conditions of Approval	16
	A. Standard Conditions	16
	B. Special Conditions	16
	6. California Environmental Quality Act (CEQA)	20
C.	Exhibits	
	Exhibit A: Project Location	
	Exhibit B: Project Site	

Exhibit C: Project Site and Outlet Channel

- Exhibit D: 2007 and 2008 experimental project photos
- Exhibit E: Project-specific construction best management practices

Exhibit F: Department of Fish and Game Streambed Alteration Agreement No. 2008-0185-R4



## **B.Findings and Declarations**

The Commission finds and declares as follows:

## 1. Project Location and Background

#### **Carmel River Lagoon and Environs**

The Carmel River Lagoon is located in unincorporated Monterey County, south of the City of Carmel, and west of Highway 1 where the Carmel River flows into Carmel Bay and the Pacific Ocean. The lagoon located at and is part of Carmel River State Beach (established in 1949), a mile-long beach that extends from the edge of residential development in the Carmel Point area south to (and including) Monastery Beach (see Exhibit A).

Carmel River is the largest freshwater stream flowing into the Carmel Bay. The Carmel River lagoon and related wetland areas are part of a dynamic interface between marine and freshwater environments. After the Carmel Mission was established in 1770, the area around the lagoon began to be converted from riparian forests and wetlands to agricultural uses. In 1974, State Parks purchased what is known as the "Odello West" land, a low-lying floodplain area adjacent to the lagoon, and it was incorporated into the State Beach. In 1985, the lagoon area was designated the Carmel River Lagoon and Wetlands Natural Preserve, and in 1996, in cooperation with Caltrans and the California Coastal Conservancy, State Parks began converting the agricultural lands back to wetlands and riparian forest. Habitat restoration efforts are ongoing and include planting of native vegetation and exotic species control.<sup>1</sup>

#### **Carmel River Extractions**

Carmel River is a primary water supply source for the Monterey Peninsula, and Carmel River flows are significantly reduced due to withdrawals by the California-American Water Company (Cal-Am), the water supplier for the peninsula area. It has been long established that current Cal-Am water withdrawals are having significant adverse impacts on the Carmel River. The river, which lies within the approximate 250 square mile Carmel River watershed, flows 35 miles northwest from the Ventana wilderness in Big Sur to the Ocean. Surface diversions and withdrawals from the river's alluvial aquifer have had significant impacts on riparian habitat and associated species, particularly in the lower reaches.<sup>2</sup> This includes adverse impacts to two federally-listed threatened species, the California red-legged frog (*Rana aurora draytonii*), listed in 1996, and steelhead (*Oncorhynchus mykiss irideus*), listed in 1997. In particular, water diversions and withdrawals reduce the stream flows that support steelhead

<sup>&</sup>lt;sup>2</sup> See, for example, Instream Flow Needs for Steelhead in the Carmel River: Bypass flow recommendations for water supply projects using Carmel River Waters, National Marine Fisheries Service, June 3, 2002.



<sup>&</sup>lt;sup>1</sup> See, for example, CDP waiver 3-02-056-W, authorized by the Commission on March 5, 2004.

habitat and the production of juvenile fish, especially during dry seasons.

In 1995, the SWRCB issued Water Rights Order 95-10 ("Order 95-10") in response to complaints alleging that Cal-Am did not have a legal right to divert water from the Carmel River and that the diversions were having an adverse affect on the public trust resources of the river. SWRCB found that Cal-Am was diverting 14,106 acre-feet per year (afy), yet only had a legal right to withdraw about 3,376 afy from the river, and that the Cal-Am diversions were having an adverse effect on the lower riparian corridor of the river, the wildlife that depends on this habitat, and the steelhead and other fish inhabiting the river. SWRCB thus ordered Cal-Am to implement measures to terminate its unlawful diversions.

SWRCB Order 95-10 also reduced the amount of water Cal-Am could take from the Carmel River and its alluvial aquifer by 20 percent in the near-term and up to 75 percent in the long-term. SWRCB further required that any new water that is developed/obtained by Cal-Am must first completely offset Cal-Am's unlawful diversions from the Carmel River before it can be used for new construction or expansions in use. Since that time, the jurisdictions along the Monterey peninsula have been implementing conservation measures, and have focused their efforts on improving water conservation programs, while also working on other potential water supply augmentation proposals.<sup>3</sup>

In the time since Order 95-10 in 1995, however, Cal-Am has made no significant reductions in its diversions above its legal right from the Carmel River. As a result, SWRCB issued a draft cease and desist order in 2008 that would compel Cal-Am to reduce its pumping of the Carmel River by 15% by October 2009, increasing to a 50% reduction by 2016.<sup>4</sup> The draft order states that Cal-Am's unauthorized diversions are continuing to have adverse effects on the public trust resources of the Carmel River and should be reduced. Further, notwithstanding Order 95-10, Cal-Am water withdrawals have not been reduced beyond the initial 20% reduction in 1995, even while the Monterey peninsula urban population has increased from approximately 100,000 in 1995 to 112,000 today. Thus, the draft order observes:

Order 95-10 condition 2 intended that Cal-Am would make one-for-one reductions in the unlawful diversions from the Carmel River for water obtained from other sources, such as conservation. The current water management strategy used by Cal-Am/MPWMD, however, has not resulted in any significant reduction of unlawful diversions from the Carmel River since 1998. Instead, it appears that water savings resulting from conservation efforts have been redirected to support marginal increases in development.

The cease and desist order hearings have been completed and a decision is pending from the SWRCB. It is clear that the cease and desist order could potentially drastically limit Cal-Am extractions, and could

<sup>&</sup>lt;sup>4</sup> State of California, State Water Resources Control Board, Division of Water Rights, Draft Cease and Desist Order WR 2008-00XX-DWR (January 15, 2008).



<sup>&</sup>lt;sup>3</sup> For example, along with other regional stakeholders, and largely to address Order 95-10 issues, Cal-Am has been pursuing development of a large-scale desalination facility (known as the "Coastal Water Project") in north Monterey County (in Marina or Moss Landing) capable of producing 10-13 MGD (11,210-14,573 afy) of potable water. The project, however, is in the preliminary environmental assessment stage, and it is unknown when or if such a facility may come online. The California Public Utilities Commission recently distributed a draft EIR for the Coastal Water Project in February 2009, and is currently soliciting comments on it.

significantly affect flows to the lagoon. In the meantime, it is clear that the public water supply currently drawn from the Carmel River is having a significant adverse impact on the coastal resources of the Carmel River system.

#### Lagoon Management/Breaching

Like other coastal river/lagoon systems, the Carmel River can flow quite heavily to the ocean during the winter months, providing significant freshwater inputs to the lagoon. When river flows essentially cease in the spring and early summer due to less precipitation and high water supply demands, a sand berm typically forms on the beach and creates a closed lagoon. When river flow levels then begin to resume in the fall and early winter, the lagoon rises and under natural conditions, keeps rising until it overtops the barrier beach that separates the lagoon from the ocean, eroding an outlet channel. To reduce flood risk to residences and infrastructure to the north of the lagoon, the County typically manages the location of the lagoon outflow channel by lowering a section of the barrier beach on an emergency basis, resulting in artificial breaching, oftentimes just hours or days before a natural outlet channel might have formed.<sup>5</sup> Historically, the cut for the lagoon has been located on the southern end of the beach separating the lagoon from the ocean near several rocky outcrops. The resultant outflow from the lagoon often cuts a large, nearly straight channel in the beach that is low enough to cause the lagoon to drain to a level that significantly reduces aquatic habitat for fish, including steelhead trout.

In the winter of 2005, the river mouth was artificially directed to the north end of the lagoon in an attempt to create an outlet channel across the barrier beach while allowing the lagoon to retain sufficient volume to support fish and wildlife.<sup>6</sup> The National Oceanic and Atmospheric Administration (NOAA)'s National Marine Fisheries Service (NOAA Fisheries) and the California Department of Fish and Game (DFG) considered the experiment a success in avoiding a breach and maintaining higher water levels in the lagoon.<sup>7</sup> However, the artificial breach was nearer to Carmel Point and Scenic Road atop Carmel Point than previous breaches had been, and in the spring, large ocean swells, high tides, and the flowing river removed much of the beach sand adjacent to the Scenic Road bluff, undermining the State Beach parking lot and threatening the stability of Scenic Road.

In June 2005, the Carmel Lagoon Technical Advisory Committee (TAC) was formed to address management of the lagoon and barrier beach. The TAC is comprised of staff from the public agencies responsible for management of the lagoon system, including State Parks, Monterey County, NOAA Fisheries, DFG, U.S. Army Corps of Engineers (ACOE), Coastal Commission, U.S. Fish and Wildlife

<sup>&</sup>lt;sup>7</sup> California Department of Parks and Recreation. Carmel River State Beach Lagoon Water Level Management Project Draft Initial Study/Mitigated Negative Declaration. July 2008.



<sup>&</sup>lt;sup>5</sup> Such breaching events have historically been recognized by emergency and regular CDPs in some cases (e.g., 3-94-005, 3-96-125-G, 3-98-081-G, and 3-00-007-G), and has also occurred without benefit of CDPs in other cases. To address resource and permitting issues in that respect, Monterey County has been pursuing a joint CDP application with State Parks for a long-term lagoon management plan that would allow breaching subject to certain protocols. That application (CDP application 3-00-159) has been pending for almost a decade, but has never been filed because it has been waiting for consensus among resource managers from various agencies on how best to manage the system. Commission staff and staff of various agencies continue to coordinate on such efforts, and it is expected that a complete CDP application will be before the Commission in the near term.

<sup>&</sup>lt;sup>6</sup> This action was taken without benefit of a CDP.

Service (USFWS), the Regional Water Quality Control Board (RWQCB), the Monterey Peninsula Water Management District (MPWMD), and other interested local parties. The TAC is charged with determining the information needed to make informed decisions and plans to preserve and enhance the geological, hydrological, and ecological functions of the Carmel River lagoon and barrier beach. In 2007, the TAC developed the Study Plan for Long Term Adaptive Management of the Carmel River State Beach and Lagoon which describes the necessary studies and analyses needed for development and implementation of a long-term strategy for managing the lagoon. The TAC has also coordinated on the proposed project (described below), which is intended as an interim strategy to address fish and wildlife concerns until a long-term management plan is developed.

## 2. Project Description

State Parks, in coordination with the TAC, has determined that it would be beneficial to maximize the volume of fresh water in the lagoon to increase the odds that adequate quantity and quality of water will be maintained as long as possible when the lagoon is receiving minimal or no freshwater inputs. Therefore, State Parks proposes to manage the water level in the Carmel River lagoon each spring to maximize the volume of freshwater at the beginning of the summer dry season. To do this, State Parks proposes to modify the sandy beach between the lagoon and the ocean in a manner designed to close the lagoon, increase the height of the beach, and create a high-elevation outlet channel in the sand to the south of the lagoon. The primary objective of the project is to protect and enhance habitat for the Carmel River populations of the federally-threatened steelhead trout and California red-legged frog.

The proposed closure of the lagoon and development of a high elevation outlet channel would occur each spring before river flows to the lagoon cease for the summer. The goal is to maximize the lagoon water level up to a maximum elevation of 10 feet NGVD.<sup>8</sup> Although beach conditions vary from year to year, it is expected that the beach would need to be raised 3 to 5 feet in elevation by pushing sand from adjacent portions of the beach to create the berm. It is expected that the raised berm area would typically be about 50 feet wide and about 200 feet long. The high elevation outlet channel is expected to be approximately 10 feet wide and up to 600 feet long. The work would be timed so that river flow through the outlet channel, if it occurs at all, would cease within a few days. All modifications to the beach would be accomplished using one to three bulldozers that would be temporarily stored at the Carmel River State Beach parking lot at the corner of Carmelo Street and Scenic Road during the construction period. The total volume of sand moved would vary from year to year, but is expected to be approximately 1,000 cubic yards.

State Parks has indicated that the work would be completed over three consecutive weekdays in April, May, or June of each year once river flows decline to a range between 20 and 25 cubic feet per second (CFS). However, if river flows unexpectedly increase after the work is completed and/or the berm and

<sup>&</sup>lt;sup>8</sup> NGVD, or National Geodetic Vertical Datum, is similar to but is not to be confused with Mean Sea Level (MSL). MSL is the local mean sea level whereas NGVD is a fixed datum adopted as a standard reference for heights (where MSL was held fixed as observed at 26 stations in the U.S. and Canada). NGVD for this area was adjusted in 1961 and revised in 1986. For this area, MSL is +0.03 feet NGVD, or about a third of an inch above NGVD. NGVD is generally used in this report to describe elevations.



channel are washed away otherwise during that time frame, State Parks would re-establish them again. No other ongoing work throughout the year would be required to maintain the berm features once created. Spring wave and wind regimes should start to reshape the beach as soon as the berm is created. And each fall, large ocean waves should overtop the beach berm, pushing seawater into the lagoon and eliminating any trace of the beach berm and outlet channel. There may be years when insufficient sand is available on the beach to construct the berm to the desired height or width or to construct the outlet channel. In that case, State Parks indicates that the features may not be constructed or may be constructed at a reduced scale. See Exhibits B and C for locations of the berm and outlet channel.

State Parks has conducted two experimental trials of this project (in Spring 2007 and Spring 2008, see Exhibit D),9 and describes the project as representing the best-known management practices, based on current information and currently available financial resources and tools, to enhance fish and wildlife habitat. The project will also assist the TAC in determining the best course of action for long-term lagoon habitat management. State Parks indicates that it will discuss each annual event with the TAC in advance, and work will be based on consensus recommendations of that group. The effects of the project on fish and wildlife habitat will be monitored by measuring water quantity and quality parameters once a month (at a minimum). When staff and funding are available, steelhead population counts will be conducted as frequently as twice each year. Typically, one sampling event will occur in early summer following annual beach berm formation, and another sampling event will occur in late fall before the berm is washed away. A summary of management actions undertaken and the results will be discussed at each TAC meeting, and a summary annual report for regulatory agencies and stakeholder groups (and the public, upon request) will be prepared and distributed by December 31st of each year. Each annual report will cover the 12-month period of October 1 through September 30 (widely accepted as the "water year" by hydrologists and meteorologists). State Parks has received a Streambed Alteration Agreement from DFG for the project (No. 2008-0185-R4).

The proposed project is not designed to allow or authorize breaching of the lagoon, including that it is not proposed with respect to somehow authorizing prior such breaching activities that have occurred without benefit of a CDP. As indicated previously, it is expected that a CDP application for more comprehensive management of the lagoon, including potential breaching protocols, will be developed at a future date. The application before the Commission in this case is solely directed to increasing water levels as a means of enhancing fish and wildlife habitat.

## 3. Standard of Review

Coastal development permit jurisdiction for most of the Monterey County's coastal zone was granted to the County in 1988 following certification of the County's LCP. The Commission, however, retains coastal permit jurisdiction over tidelands, submerged lands, and public trust lands, including lands located seaward of the ambulatory mean high tide, and in areas of where LCP certification has been deferred. The Carmel River Lagoon and Carmel River State Beach are located within the Commission's retained coastal permitting jurisdiction, and are mapped as such on the Monterey County Post-LCP

<sup>&</sup>lt;sup>9</sup> These trials were conducted without benefit of CDPs.



certification permit and appeal jurisdiction map. LCP policies can provide non-binding guidance, but the standard of review for development in this area is the Coastal Act.

## 4. Coastal Development Permit Determination

#### A. Estuarine Lagoons and Related Areas

#### 1. Applicable Policies

Coastal Act Sections 30231, 30233, 30235, 30236, and 30240 protect rivers, lagoons, beaches, and related areas making up estuarine lagoon systems, and offer an additional level of protection to such resources that are deemed environmentally sensitive. Applicable policies include:

Section 30231: The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233: (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (6) Restoration purposes.
- (7) Nature study, aquaculture, or similar resource dependent activities.



...(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. ...

Section 30235: Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Section 30236: Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240: (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30107.5: "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

#### 2. Analysis

The Carmel River lagoon area is a naturally-functioning, dynamic ecosystem that is comprised of freshwater marsh, seasonal wetlands, brackish open water habitat, and certain sandy beach area, all of which are considered ESHA at this location. Special status species that occur or have the potential to occur in the vicinity of the project area include southwestern pond turtle (*Actinemys marmorata pallida*), black legless lizard (*Anniella pulchra nigra*), western snowy plover (*Charadrius alexandrius nivosus*), globuse dune beetle (*Coelus globosus*), steelhead trout (*Oncorhynchus mykiss irideus*), California red-legged frog (*Rana aurora draytonii*), and California brown pelican (*Pelecanus occidentalis californicus*).

As previously indicated, State Parks has been actively restoring the lagoon area since 1996. This restoration has included conversion of agricultural fields and re-creation of natural landforms and plant communities similar to those that occurred historically at the site. Restoration work has included the re-



creation of the south arm of the Carmel River to expand open water and wetland habitat; lowering various areas to improve floodplain functionality and expand wetland habitat; and ongoing enhancement of restored areas to create suitable habitat for special status species. As a result of restoration efforts, it appears that habitat values have improved for certain special status species, including steelhead trout and California red-legged frog.<sup>10</sup>

However, as described above, water supply withdrawals from the Carmel River system cause the river to go dry during most summers, depriving the lagoon of surface inflow and adversely affecting lagoon plant, fish, and wildlife species. If the barrier beach forms during the spring/early summer period when there is sufficient river flow, the lagoon rises and converts to primarily freshwater, which provides abundant and valuable breeding and rearing habitat during critical life history stages of fish and wildlife species. Alternatively, if the barrier beach forms late, after river flows have nearly ceased, a significant volume of saltwater remains in the lagoon over the summer and the volume of aquatic habitat is reduced. The ecosystem remains compromised until winter rains return, bringing river, subsurface, and overland flows which flush out the salt water.

The proposed project involves manual closure of the lagoon during the spring or early summer to protect against this second scenario. In many years, natural sandbar formation and an unmanaged lagoon no longer provide the best aquatic environment for the species that it supports due to the fact that the spring and summer flows are artificially lower than they would be naturally. The project would increase the odds that an adequate volume and quality of freshwater will be maintained in the lagoon during the dry period. The proposed project is expected to improve lagoon habitat for salmonids and other sensitive species so as to increase their chances for survival and the likelihood for robust populations not only throughout the summer and fall, but also in preparation for lagoon evacuation in the winter if the river breaches.

The project is the product of collaboration between the various resource agencies charged with protecting the lagoon and the special-status species it supports, and represents the best known and tested science for this particular system. It is consistent with the recovery objectives outlined in USFWS's *Recovery Plan for the California Red-legged Frog* (May 2002) and the *Federal Recovery Outline for the Distinct Population Segment of the South-Central California Coast Steelhead* (September 2007) because estuarine/lagoon habitat improvement and protection of existing populations are identified in both plans as key recovery actions for the two species. The project embodies the Coastal Act requirement to maintain and restore the biological productivity and quality of coastal waters and wetlands to a level appropriate to maintain optimum populations of marine organisms (Section 30231). To the extent minimal fill of the estuary occurs from sand berm creation, the project is consistent with Coastal Act Section 30233 which allows such fill for restoration purposes provided that there is no feasible less damaging alternative, where feasible mitigation measures are provided to minimize adverse environmental impacts, and functional capacities are maintained – all of which are the case here. The project assists with improving the functional capacity of the lagoon, and would assist in maintaining optimum populations of lagoon species in a system that is compromised by human actions upstream as

<sup>&</sup>lt;sup>10</sup> California Department of Parks and Recreation, 2006 Carmel River Lagoon Enhancement Project Report, January 2007.



well as at the river mouth. The project includes various measures to ensure protection of special status species and water quality during project activities, including protections against equipment leaks and malfunctions, use of erosion control mechanisms if necessary to prevent additional silt and debris from entering the lagoon, and avoidance measures and buffers (if necessary) for nesting birds (see Exhibit E). DFG's Streambed Alteration Agreement includes additional measures that are part of the proposed project including a timeframe within which work may occur for optimum steelhead protection (April 1 to June 30) and special California red-legged frog avoidance and protection measures (see Exhibit F). The project is also consistent with Coastal Act Section 30236 which allows alteration of rivers for developments where the primary function is the improvement of fish and wildlife habitat provided that the best mitigation measures feasible are incorporated, and Section 30235 which allows alteration of natural shoreline processes to serve coastal-dependent uses (such as the estuarine habitat enhancement proposed here). Finally, the project has been designed such that it will prevent inadvertent constructionrelated impacts to ESHA and will assist with the continuance of a healthy ecosystem at the lagoon. Thus, it is consistent with Section 30240 of the Coastal Act which allows for resource dependent uses (such as restoration) in ESHA, provided that the proposed use will not significantly disrupt habitat values. In this case, the proposed development will enhance habitat values.

#### 3. Conclusion

The proposed project is intended to enhance and improve Carmel River lagoon habitat and has been designed to ensure maximum protection of the habitat during construction activities. The project includes various built-in resource protection measures. To ensure consistency with them, the approval includes these measures as special conditions of approval of this permit, including incorporation of the project description (Special Condition 2), implementation of best management practices during project work (Special Condition 3), and a requirement that annual TAC reports and long-term status reports be provided to the Executive Director (Special Conditions 4 and 5). In addition, the Commission's approval does not obviate State Parks from receiving other necessary approvals (from USFWS and ACOE), and thus a special condition is applied to require evidence of these agencies approvals (see Special Condition 6). Also, given the history of breaching activities at this location, and as a means of ensuring that this permit is not somehow referenced as recognizing or otherwise allowing activities associated with artificial breaching of the lagoon, a special condition is also added that states as much for the record (Special Condition 6).

Finally, the project is a controlled experiment of sorts, and it is not appropriate to authorize such an experiment indefinitely. Rather, resource managers need to appropriately learn from this effort, and adapt future protocols accordingly. The required monitoring and evaluation described above will assist in this respect, but future permitting will be necessary to reassess appropriate measures at this location. In addition, management efforts associated with the Carmel River Lagoon have been ongoing for many years, and subsequent planning and regulatory initiatives may affect or be affected by the proposed project. Likewise, the water rights and withdrawal context is liable to change, and affect the parameters of approvable projects here in the future. Accordingly, Special Condition 1 limits the permit's lifespan to five years to provide the Commission with the ability to review any new information or changed circumstances that may require changes to the project design and/or the need for alternative ESHA



protection in the future. As designed and conditioned, the project is consistent with Sections 30231, 30233, 30235, 30236, and 30240 of the Coastal Act as cited in this finding.

#### **B. Public Access and Recreation**

#### 1. Applicable Policies

Coastal Act Sections 30210 through 30221 specifically protect public recreational access opportunities. In particular:

Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

*Section 30212 (a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects....* 

*Section 30220:* Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30223: Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

#### 2. Analysis and Conclusion

Carmel River State Beach is a very popular mile-long beach that experiences the heaviest use at its northern (near Scenic Road and the lagoon) and southern (at Monastery Beach) ends. Like most river/lagoon systems, the sandy beach area in the vicinity of the lagoon is a dynamic area that experiences significant annual changes as a result of river flows, wave action, wind, and tides. Public use of the sandy beach in the vicinity of the lagoon and river mouth adjusts seasonally in response to naturally changing conditions.

Managing the lagoon level each spring is not expected to adversely affect public access to and along the beach. Closure of the lagoon earlier in the season than what would happen without the project would not adversely affect public use of the beach because it would involve a slightly raised berm and temporary



outlet channel, both of which are formations that often occur naturally at this location. If anything, closure of the lagoon could improve lateral access along the beach in front of the lagoon sooner than what would occur naturally each year. As shown in Exhibit D, ample sandy beach area remained on the seaward side of the lagoon during and after experimental construction of the berm and outlet channel in 2007 and 2008. The short-term (3 days) construction activities to create the berm and outlet channel would cause a temporary limited disturbance to a small portion of Carmel River State Beach parking lot on Scenic Road, but the remainder of the beach will be available to the public during this process. Once lagoon berming is complete, no further manipulation of the beach and lagoon would occur, and natural processes would resume to reshape the beach as they do each year.

To ensure that the above public recreational access understanding holds true, this approval has been conditioned to require that the annual summary reports provide information on the effect of the project on public access at Carmel River State Beach before, during, and after berm construction, and that provide remedial measures to address any impacts (see Special Condition 4). In addition, the permit has also been limited to a five-year term so that if State Parks wishes to continue the project after five years, the Commission may adjust the project accordingly to address any public access concerns (see Special Condition 1). As designed and conditioned, the proposed development is consistent with the public recreational access policies of the Coastal Act that prohibit development from interfering with the public's right of access to the sea (Section 30211), that require provision of maximum public recreational access opportunities (Section 30210), that protect coastal areas suited for water-oriented activities, (Section 30220), that require protection of oceanfront land suitable for recreational use (Section 30221), and that reserve upland areas for recreational use (Section 30223) as cited in this finding.

#### C. Flood Hazards

#### 1. Applicable Policies

Section 30253: New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- *(c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.*
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.



#### 2. Analysis and Conclusion

As shown in Exhibit A, the lagoon is adjacent to low-lying residential development to the north. When the river begins flowing into the lagoon each fall or early winter, the lagoon rises and would, under natural conditions, keep rising until it overtops the barrier beach and creates an outlet channel through the beach. If this process were allowed to occur naturally, the low-lying residential neighborhood to the north of the lagoon would likely be flooded when lagoon surface water levels exceed about 10 feet NGVD. As described above in the "Project Location and Background," Monterey County oftentimes conducts yearly artificial breaching of the lagoon on an emergency basis to avoid flooding of this residential neighborhood.<sup>11</sup> While artificial breaching prevents flooding of structures and infrastructure, including Scenic Road, it can have deleterious effects on fish and wildlife in the lagoon, especially juvenile salmonids that may not be ready to exit the lagoon and move on to their next life stage in the ocean. As such, Monterey County, in coordination with the various responsible resource agencies have attempted various breaching configurations to both prevent flooding and avoid full evacuation of the lagoon. The northern barrier beach area, because of elevation and geology factors, has been viewed as an ideal location for creation of an outlet channel that would still retain sufficient lagoon levels for habitat. However, because of proximity to Scenic Road and low-lying residences, attempts to create an outlet channel at this location have resulted in the undermining of Scenic Road and State Park's parking lot, as described previously. As such, the outlet channel has been directed towards the southern end of the barrier beach in recent years, and the proposed project is an attempt to improve lagoon habitat so that salmonid populations are robust enough to withstand possible premature lagoon evacuation.

The proposed project is not intended to address flooding of the Carmel River lagoon, and is not expected to change the existing flood risk context. It is expected that a long-term adaptive management plan for the Carmel River State Beach and Lagoon, which is currently in preparation by the State Parks under direction of the TAC, will address all of the beach and lagoon issues, including flooding. Implementation of such a management plan will require future permit consideration by the Commission. This proposed project is just a small project relative to such an overall management plan. As proposed, the berm would be designed to allow up to 10 feet NGVD in the lagoon, but not higher than that. In addition, work would occur during times of the year when flooding is not generally a threat. It is expected that the higher lagoon levels created by the project would decline steadily throughout the summer and fall until the river begins flowing again. As a result, the project should not affect flood risks due to elevated lagoon water levels significantly.

During the two experimental trials of this project that were conducted in 2007 and 2008, large ocean waves overtopped the beach berm in the fall (typical for that time of year and the onset of large northwest winter swells), pushed seawater into the lagoon, and eliminated any trace of the berm and outlet channel created in the spring. It is possible that the lagoon level could be higher than without the project when river flows resume each year, but that is not expected, and the project would not prejudice future appropriate flood risk response. Although it is likely that the morphology of the high elevation outlet channel on the southern end of the beach would be nonexistent by the winter, it is also possible that enough of it could remain that it could help the river to reach the ocean at that time. However, the

<sup>11</sup> Id.



project has not been designed nor conceived for that purpose, it is not a breaching application, and this approval is conditioned to ensure it is not somehow referenced as recognizing or otherwise allowing activities associated with artificial breaching of the lagoon (Special Condition 6).

Finally, there are inherent risks associated with development at the interface of the ocean to the land (including hazards from episodic and long-term bluff retreat and coastal erosion, tidal scour, wave and storm events, sea level rise, tsunami, flooding, bluff and other geologic instability, and the interaction of same). Although such risks have been minimized by project design and by condition, they cannot be eliminated. As such, the Permittee must assume those risks, and must waive any liability that may accrue to the Commission as a result of its approval of the proposed project (see Special Condition 8).

Thus, as conditioned, the proposed project has been designed in such a way as to avoid contributing to flood risks, and thus can be found consistent with Coastal Act Section 30253. The adaptive management nature of the project and the yearly monitoring reports (built into the project and also required by Special Conditions 4 and 5) will assist the State Parks and the TAC in determining the best possible long-term program to address both habitat management and flooding in the future.

## **5. Coastal Development Permit Conditions of Approval**

#### A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- **3.** Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- **4. Assignment**. The permit may be assigned to any qualified person, provided assignee files with the Commission an 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.

### **B. Special Conditions**

1. Permit Term and Extension. This coastal development permit allows implementation of the Carmel River Lagoon Water Level Management Project (as described and detailed in the application materials received in the Commission's Central Coast District Office on September 11, 2008 and



October 29, 2008) on an annual basis for five years from the date of the Commission's approval (i.e., until May 7, 2014). Any request to extend the term of this permit past May 7, 2014 shall be in the form of a permit amendment request to amend the permit term, and must be authorized by the Coastal Commission prior to the end of the permit term or the permit shall be deemed to have expired. Any such permit amendment shall include all supporting documentation, including an evaluation of the efficacy of prior implementation of the Project, and shall include evidence of all other necessary approvals or permissions (including, but not limited to, from DFG, USFWS, NOAA Fisheries, ACOE, RWQCB, and Monterey County).

- 2. Approved Project. The Permittee shall undertake development in accordance with the project description as provided in the coastal development permit application materials (dated received in the Commission's Central Coast District Office on September 11, 2008 and October 29, 2008) as modified by these conditions of approval. Minor changes to the approved project that will not adversely impact coastal resources may be approved by the Executive Director, but any other proposed changes shall require an amendment to this coastal development permit.
- **3.** Construction Best Management Practices. All construction management measures described in Exhibit E and all conditions of DFG's Streambed Alteration Agreement No. 2008-0185-R4 (Exhibit F) shall be implemented. In addition to these construction best management practices, all construction activities shall limit impacts to beach recreational access, the Carmel River Lagoon, and the Pacific Ocean to the maximum extent feasible including by, at a minimum, adhering to the following construction requirements (which may be adjusted by the Executive Director if such adjustments: (1) are deemed necessary due to extenuating circumstances; and (2) will not adversely impact coastal resources):
  - a. All work shall take place during daylight hours. Lighting of the lagoon and beach area is prohibited.
  - b. Construction work and equipment operations shall not be conducted seaward of the mean high water line unless tidal waters have receded from the authorized work areas.
  - c. Grading of intertidal areas is prohibited.
  - d. Any construction materials and equipment delivered to the beach area shall be delivered by rubber-tired construction vehicles. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.
  - e. All construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from the beach area by sunset each day that work occurs.



- f. All construction areas shall be minimized and demarked by temporary fencing designed to allow through public access and protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
- g. The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach; etc.).
- h. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment are prohibited. Equipment washing, refueling, and/or servicing shall not take place on the beach. Any erosion and sediment controls used shall be in place prior to the commencement of construction as well as at the end of each work day.
- i. All beach areas and all shoreline access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand in the area that is impacted by construction shall be filtered as necessary to remove all construction debris.
- j. All contractors shall insure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment. Construction contracts shall contain appropriate penalty provisions sufficient to offset the cost of retrieval/clean up of foreign materials not properly contained and/or remediation to ensure compliance with this permit otherwise.
- k. Copies of this permit shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of this permit, and the public review requirements applicable to it, prior to commencement of construction.
- 1. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the site where such contact information is readily visible from public viewing areas, along with indication that the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and



shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry

- m. The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of each construction episode, and immediately upon completion of work and required beach-area restoration activities. If planning staff should identify additional reasonable measures necessary to restore the beach and beach access points, such measures shall be implemented immediately.
- 4. Annual Monitoring Reports. BY DECEMBER 31st OF EACH YEAR THAT THE PERMIT IS EFFECTIVE (see Special Condition 1), the Permittee shall submit, for Executive Director review and approval, the monitoring report to be submitted to the Carmel River TAC that describes and evaluates the actions taken during each project episode, and the results of each episode throughout the remainder of the year. In addition, the annual report shall also include details on the project's effects, if any, on public access at Carmel River State Beach, including construction-related effects and lateral access fronting the lagoon throughout the year after construction of the berm and outlet channel. The report shall identify appropriate remediation measures to address and rectify any public access-related impacts of the approved project.
- **5.** Long-Term Plan Status Reports. BY DECEMBER 31st OF EACH YEAR FOR THAT THE PERMIT IS EFFECTIVE (see Special Condition 1), the Permittee shall submit, for Executive Director review and approval, status reports that identify the status and expected timeline for completion of the long-term adaptive management plan for the Carmel River State Beach and Lagoon. The long-term plan status reports may be included as part the annual monitoring reports described in Special Condition 4.
- 6. Breaching. This coastal development permit does not authorize any manipulation of the Carmel River lagoon or river mouth past that recognized as the approved project (see Special Condition 2), and does not authorize any breaching of the Carmel River lagoon or river mouth. Any such activities that are not part of this approved project must be recognized by a valid coastal development permit.
- **7. Other Agency Review and Approval.** PRIOR TO COMMENCEMENT OF THE FIRST CONSTRUCTION EPISODE, the Permittee shall submit to the Executive Director evidence that USFWS, ACOE, and NOAA Fisheries have reviewed and authorized the approved project.
- 8. Assumption of Risk, Waiver of Liability and Indemnity Agreement. The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to hazards from episodic and long-term bluff retreat and coastal erosion, tidal scour, wave and storm events, sea level rise, tsunami, flooding, bluff and other geologic instability, and the interaction of same; (ii) to assume the risks 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; (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; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.

## 6. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

On September 3, 2008, State Parks, acting as the lead agency, determined that the project qualified for a mitigated negative declaration under CEQA. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Natural Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).





Carmel River Lagoon Water Level Management Project Carmel River State Beach Figure 2 - Project Site







CARMEL RIVER LAGOON WATER LEVEL MANAGEMENT PROJECT CARMEL RIVER STATE BEACH FIGURE 3 - PROPOSED OUTLET CHANNEL



SCALE



#### Carmel Lagoon Water Level Management Project Spring 2007 Experimental Management Photos





Figure 5 - Outlet Channel Site after Flow Ended for Season (5/18/07)



Figure 6 – Beach Berm Site with Lower Lagoon Level; Typical Summer Conditions (7/9/07)



#### Carmel Lagoon Water Level Management Project Spring 2008 Experimental Management Photos







Construction (5/5/08)





Construction (5/5/08)



Figure 6 – Raised Beach Berm Site Following Construction (5/7/08)



# Carmel River Lagoon Water Level Management Project Carmel River State Beach Mitigation Monitoring and Reporting Plan September 2008

Status / Commenti

Mitigation Measure	Timing	Responsible for Implementing Mitigations	Responsible for insuring Implementation	Required for Task to be Complete	Date Status Completed
Biologic PROJECT REQUIREMENT: SENSITIVE FISH SPECIES. When working near bodies of water where there is potential for sediment entering the water, silt fencing, staw wattles, or other approved forms of sediment entrapments shall be installed to insure that no silt, solir or debits enters the stream.	cal Resources Prior to equipment	Project Manager	Project Manager	No silt, soil or debris enters the stream.	
PROJECT REQUIREMENT: MIGRATORY BIRD SPECIES AVOIDANCE all construction-related activities are scheduled to begin between March 1 and September 15, a DPR-qualified Environmental Scientist will conduct a survey for nesting bird species within three days prior to commencement of construction at each atle to ensure that no nesting birds will be impacted by the project. The survey area will include the project site and a 100-foot buffer zone. aff active nests are located, a 100-foot buffer zone will be established around each active nest. No construction-related activities will occur within this buffer area until young have fiedged and there is no evidence of a second attempt at nesting (as determined by a State Parks Environmental Scientist.	Prior to equipment operation	Project manager, State Parks Natural Resources Staff	Project manager, State Parks Natural Resources Staff	No nesting birds impacted by the project.	
	al Resources				
MITIGATION MEASURE – EEDROCK MORTARS The State Acceedingist will be notified when equipment is mobilized to manage lagron water levels. An archeologist will be on sits to monitor to the exposure of bunde bedrock mortars when equipment moves across the beach at the river mouth on either the north or south sides. In the event that the mortars are exposed, every effort will be made to avoid damaging them.	Prior to equipment operation	Project Manager, State Parks Cultural Resources Staff	Project Manager, State Parks Cultural Resources Staff	Impacts to bedrock motors avoided.	
PROJECT REQUIREMENT: PREVIOUSLY UNDOCUMENTED ARCHAEOLOGICAL RESOURCES a Prior to the start of construction, a locally knowledgeable archaeologist will review any ground disturbing activities that disturb soil to a depth of > 60 cm (24'). a If the specialist determines that buried archaeological deposits could be present, prior to the start of construction, a DPR-qualified Cultural Resource Specialist will prepare a research design, including appropriate tenching and/or per-construction excavations (if necessary). a In the event that previously undocumented outhral resources (including but not limited to dark soil containing shellfish, bone, flaked stone, ground stone, or deposits of historic trash) are encountered during project construction by anyone, the state representative will tenporarily hall at that specific location and direct contractors to other project-related tasks. A DPR-qualified archaeologist will record and evaluate the find and work with state representative to implement avoidance, preservation, or recovery measures as appropriate prior to any work resumpts are discribed work with state representative to implement avoidance, preservation, or recovery measures as appropriate prior to any work resumpts are specific location aff the DPR-qualified archaeologist will record and evaluate the find and work with state representative to implement avoidance, preservation, or recovery measures as appropriate prior to any work resumpts are active to attrate oligist, and/or Native American representative (if appropriate) will monitor all subsurface work including tenching, grading, and excavations in that area.	Prior to equipment operation	Project Manager, State Parks Cultural Resources Stati	Project Manager, State Parks Cultural Resources Staff	Impacts to archaeological resources avoided.	
PROJECT REQUIREMENT: ARCHAEOLOGICAL BURIAL SITES on the event that human remains and discovered, work will clease immediately in the area of the find and the project manager/site supervisor will notify the appropriate DPR personnel, kny human termains and/or humany objects will be left in place or returned to the point of discovery and covered with soil. The DPR Sector Superintendent (or authorized representative) will notify the County Coroner, in accordance with §7050.5 of the California Health and Safety Code, and the Native American Heritage Commission (or Tribal Representative). If a Native American monitor is on-site at the time of the discovery, the monitor will be responsible for notifying the appropriate Native American authorities.					
The local County Corner will make the determination of whether the human bone is of Native American origin. The local County Corner will make the determination of whether the human bone is of Native American origin. If the coroner determines the remains represent Native American interment the NAHC in Saramento and/or the will be consulted to identify the most likely descendants and appropriate disposition of the remains. Work will not resume in the area of the find until proper disposition is complete (PRC §5097.99). No human remains or function y objects will be cleaned, photographed, analyzed, or removed from the site prior to determation of it is determined the find indicates a sacred or religious site, the site will be avoided to the maximum extent practicable. Formal consultation with the State Historic Preservation Office and review by the Native American Hentage Commission/Tribal Cultural representatives will occur as necessary to define additional site mitigation or future restrictions.	Upon discovery of human remains	Project Manager, Sector Superintendent State Parks Cultural Resources Staff	Project Manager, Sector Superintendent, State Parks Cultural Resources Statt	Impacts to human remains avoided and or procedures followed.	
Hazards and PROJECT REQUIREMENT: HAZMAT • All equipment will be inspected for leaks immediately prior to the start of construction and regularly inspected thereafter until equipment is removed	Hazardous Materia	G			
<ul> <li>from park premises.</li> <li>Equipment operators will maintain a spill kit on-site when equipment is within the State Beach. In the event of any spill or release of any chemical in any physical form on or immediately adjacent to Carmel River SB during construction, the operator will immediately notify the appropriate staff (e.g., project manager or supervisor).</li> <li>Equipment will be cleaned and repaired (other than emergency repairs) outside the park boundaries. All contaminated water, sludge, spill residue, or other hazardous compounds will be disposed of outside park boundaries, at a lawfully permitted or authorized site.</li> <li>All fueling and maintenance of vehicles, other equipment, and staging/storing areas shall be located at least 100 feet from any riparian habitat or water body. The Operator shall ensure contamination of habitat does not occur during such operations.</li> </ul>	Prior to equipment operation	Project Manager, Equipment Operators	Project Manager, Equipment Operators	No site impacts for hazardous materials.	t <u>E</u> pages]
PROJECT REQUIREMENT: FIRE SAFETY •Spark arrestors or turbo chargers (which eliminate sparks in exhaust) and fire extinguishers will be required for all heavy equipment. •Construction crews will be required to park vehicles away from flammable material such as dry grass or brush. At the end of each workday, heavy equipment will be parked over mineral soil, asphalt, or concrete to reduce the chance of fire.	Prior to equipment operation	Project Manager, Equipment Operators	Project Manager, Equipment Operators	No fires caused by project related activities.	Exhib ⊥of⊥
PROJECT REQUIREMENT: EROSION CONTROL BMPs	AND WATER QUAI	ŢŢ			
<ul> <li>Dest, vianagement if acues (non-2) will be used in an onsurviour aleas or enhance or enhance the userial ge of son, survice water (union, and pollutants during all excession, grading and tenching.</li> <li>If construction activities extend into the rainy season (October 15 to April 15) or if an un-seasonal storm is anticipated, the contractor will properly winterize the site by covering (farping) any stockpiled materials or soils and by constructing silt fences, straw bale barriers, fiber rolls, or other winterize the site by covering (farping) any stockpiled materials or soils and by constructing silt fences, straw bale barriers, fiber rolls, or other winterize the site by covering (farping) any stockpiled materials or soils and by constructing silt fences, straw bale barriers, fiber rolls, or other winterize the site by covering (farping) any stockpiled materials or soils and by constructing silt fences.</li> </ul>	Prior to equipment	Project Manager	Project Manager	No discharge of soil, runoff or pollutants into water.	<b>CC</b> (pag

PROJECT REQUIREMENT: EROSION CONTROL BMPs - Best Management Practices (BMPs) will be used in all construction areas to reduce or eliminate the discharge of soil, surface water runoff, and pollutants during all excavation, grading, and trenching. - If construction activities extend into the rainy season (October 15 to April 15) or if an un-seasonal storm is anticipated, the contractor will properly winterize the site by covering (tarping) any stockpiled materials or soils and by constructing sit fences, straw bale barriers, fiber rolls, or other structures around stockpiles and graded areas.

Project Manager Project Manager

equipment operation

No discharge of soil, runoff or pollutants into water.



California Fish and Game Code Section 1602 Stream Alteration Agreement No. 2008-0185-R4 Carmel River, Monterey County

**Parties:** 

**California Department of Fish and Game Central Region 1234 East Shaw Avenue** Fresno, California 93710

AGREEMENT COASTAL COMMISSION CENTRAL COAST AREA

RECEIVED

MAR 1 6 2009

Ken Gray **California Department of Parks and Recreation** 2211 Garden Road Monterey, California 93940

#### WHEREAS: 1

2

Mr. Ken Gray, (hereinafter referred to as the "Operator"), on September 11, 2008, notified 3 1. ("Notification" No. 2008-0185-R4) the Department of Fish and Game ("Department") of their 4 intent to divert or obstruct the natural flow of, or change the bed or banks of, or use materials 5 from the Carmel River in Monterey County, waters over which the Department asserts 6 jurisdiction pursuant to Division 2, Chapter 6 of the California Fish and Game Code. 7 8

The Operator may not commence any activity that is subject to Fish and Game Code 9 2. Sections 1600 et seq., until the Department has found that such Project shall not substantially 10 adversely affect an existing fish or wildlife resource or until the Department's proposals, or the 11 12 decisions of a panel of arbitrators, have been incorporated into such projects. 13

Fish and Game Code Sections 1600 et seq., make provisions for the negotiation of 14 3. agreements regarding the delineation and definition of appropriate activities, Project 15 modifications and/or specific measures necessary to protect fish and wildlife resources. 16 17

18 4. The Department has determined that without the mitigative features identified in this 19 Agreement, the activities proposed in the Notification could substantially adversely affect fish 20 and wildlife.

> Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

CCC Exhibit f

 $(page \perp of \perp 3 pages)$ 

Page 1 of 13

#### **1** NOW THEREFORE, IT IS AGREED THAT:

The receipt of this document ("Agreement"), by the Operator, satisfies the Department's
 requirement to notify the Operator of the existence of an existing fish and wildlife resource that
 may be substantially adversely affected by the Project that is described in the Notification.

7 2. The contents of this Agreement constitute the Department's proposals as to measures
8 necessary to protect fish and wildlife resources, and satisfy the Department's requirement to
9 submit these proposals to the Operator.

10

2

The signature of the Operator's representative on this Agreement constitutes the Operator's
 commitment to incorporate the Department's proposals into the Project described in the
 Notification.

14

15 4. This Agreement does not exempt the Operator from complying with all other applicable
16 local, State and Federal law, or other legal obligations.

17

This Agreement, alone, does not constitute or imply the approval or endorsement of a
Project, or of specific Project features, by the Department of Fish and Game, beyond the
Department's limited scope of responsibility, established by Code Sections 1600 et seq. This
Agreement does not therefore assure concurrence, by the Department, with the issuance of
permits from this or any other agency. Independent review and recommendations shall be
provided by the Department as appropriate on those projects where local, State or Federal
permits or environmental reports are required.

25

6. This Agreement does not authorize the "take" (defined in Fish and Game Code Section 86
as hunt, pursue, catch, capture, or kill; or attempt to hunt, pursue, catch, capture, or kill) of
State-listed threatened or endangered species. If the Operator, in the performance of the agreed
work, discovers the presence of a listed species in the Project work area, work shall stop
immediately. The Operator shall not resume activities authorized by this Agreement until such
time as valid "take" permits are obtained from the Department pursuant to Fish and Game Code
Sections 2081(a) and 2081(b) as appropriate.

To the extent that provisions of this Agreement provide for the diversion of water, they are
 agreed to with the understanding that Operator possesses the legal right to so divert such water.

37 8. To the extent that the provisions of this Agreement provide for activities that require the
38 Operator to trespass on another owner's property, they are agreed to with the understanding that
39 the Operator possesses the legal right to so trespass.

40

33

41 9. To the extent that the provisions of this Agreement provide for activities that are subject to
42 the authority of other public agencies, said activities are agreed to with the understanding that all
43 appropriate permits and authorizations shall be obtained prior to commencing agreed activities.

Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

**CCC Exhibit** \_

(page 2 of 3 pages)

Page 2 of 13

All provisions of this Agreement remain in force throughout the term of the Agreement.
 Any provision of the Agreement may be amended at any time, provided such amendment is
 agreed to in writing by both parties. Mutually approved amendments become part of the original
 Agreement and are subject to all previously negotiated provisions. The Agreement may be
 terminated by either party, subject to 30 days written notification.

7 11. The Operator shall provide a copy of the Agreement to the Project supervisors and all
8 contractors and subcontractors. Copies of the Agreement shall be available at work sites during
9 all periods of active work and shall be presented to Department personnel upon demand.

10

11 12. The Operator agrees to provide the Department access to the Project site at any time to
 12 ensure compliance with the terms, conditions, and provisions of this Agreement.

13

14 13. The Operator and any contractor or subcontractor, working on activities covered by this
15 Agreement, are jointly and separately liable for compliance with the provisions of this
16 Agreement. Any violation of the provisions of this Agreement is cause to stop all work
17 immediately until the problem is reconciled. Failure to comply with the provisions and
18 requirements of this Agreement may result in prosecution.

19

14. The Operator assumes responsibility for the restoration of any fish and wildlife habitat
which may be impaired or damaged either directly or, incidental to the Project, as a result of
failure to properly implement or complete the mitigative features of this Agreement, or from
activities which were not included in the Operator's Notification.

24

15. It is understood that the Department enters into this Agreement for purposes of establishing
protective features for fish and wildlife, in the event that a Project is implemented. The decision
to proceed with the Project is the sole responsibility of the Operator, and is not required by this
Agreement. It is agreed that all liability and/or incurred costs, related to or arising out of the
Operator's Project and the fish and wildlife protective conditions of this Agreement, remain the
sole responsibility of the Operator. The Operator agrees to hold harmless and defend the
Department of Fish and Game against any related claim made by any party or parties for personal
injury or other damage.

33

The terms, conditions, and provisions contained herein constitute the limit of activities
agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the
Operator is precluded from doing other activities at the site. However, activities not specifically
agreed to and resolved by this Agreement are subject to separate notification pursuant to Fish and
Game Code Sections 1600 et seq.

39

40 California Environmental Quality Act (CEQA) Compliance: In approving this Agreement,
 41 the Department is independently required to assess the applicability of CEQA. The features of
 42 this Agreement shall be considered as part of the overall Project description.

Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

CCC Exhibit F (page 3 of 3 pages)

Page 3 of 13

1 The Operator's concurrence signature on this Agreement serves as confirmation to the 2 Department that the activities that shall be conducted under the terms of this Agreement are 3 consistent with the Project described in the CEQA Mitigated Negative Declaration and Notice of 4 Determination titled Carmel River State Beach Lagoon Water Level Management Project (State Clearinghouse Number 2008071097) that was filed with the State Clearinghouse on November 5 21, 2008, by the California Department of Parks and Recreation as the Lead Agency. A copy of 6 this document was provided with the Section 1602 Notification. 7 8 9 The Department, as a CEQA Responsible Agency, shall make findings and submit a Notice of Determination to the State Clearinghouse upon signing this Agreement. 10 11 12 This Agreement contains a Monitoring and Reporting Program (MRP), to incorporate monitoring and reporting requirements for the activities authorized in this Agreement. 13 14 15 **Project Location**: The work authorized by this Agreement will occur within or adjacent to the 16 Carmel River Lagoon in Monterey County, California. More specifically, work will occur along 17 the beach between the Carmel River Lagoon and the Pacific Ocean at the Carmel River State 18 Beach (Township 16S, Range 1W, MDB&M, APNs 009-481-004 and 243-011-001) (Figure 1). 19 Unless changes are submitted and approved by the Department, the Project shall be built in the 20 location indicated on the maps/drawings that were submitted with the Notification. 21 22 Project Description: The Operator's Notification includes Fish and Game Notification Form 23 FG2023, maps and other submitted information. The Notification comprises the Operator's 24 Project description, and it is used as the basis for establishing the protective provisions that are 25 included in this Agreement. Any changes or additions to the Project as described in the 26 Notification shall require additional consultation and protective provisions. The Department's 27 CEQA Determination is based upon the Operator's commitment to full implementation of the 28 provisions of this Agreement. The proposed Project would consist of elevating the level of the 29 sand bar by 3 to 5 feet by pushing beach sand from adjacent portions from the ocean side of the 30 beach. The berm along this area would be approximately 50 feet wide and 200 feet long. One to 31 three dozers would be used to perform the work and would access the site from the north end of 32 the beach. Work would typically occur in April, May, or June. No sand would be imported to or from the beach. 33 34 35 The following bulleted activities are authorized by this Agreement: 36 37 Use dozers to move sand from the ocean side of the beach to create a berm, approximately 50 feet wide, 200 feet long, and 3 to 5 feet high along the Carmel River 38 39 lagoon beach. Approximately 1,000 cubic yards would be moved during Project 40 activities. 41 Implement erosion and sediment prevention measures to prevent sand or pollutants 42 . from entering the Carmel River lagoon. 43 Agreement No. 2008-0185-R4 Mr. Ken Grav Carmel River Monterey County Page 4 of 13

> CCC Exhibit F (page 4 of 13 pages)



<sup>(</sup>page <u>Sof</u> <u>B</u> pages)

#### Importation of sand to or exportation of sand from the Carmel River State Beach is strictly prohibited under this Agreement.

3

4 Plant and Animal Species of Concern: This Agreement is intended to minimize and mitigate
5 adverse impacts to the wildlife resources that may occupy this area of the unnamed tributary and
6 adjacent habitat. Species that could potentially be impacted include but are not limited to
7 southern steelhead (*Oncorhynchus mykiss irideus*), California red-legged frogs (*Rana aurora*8 *draytonii*), Western snowy plover (*Charadrius alexandrinus nivosus*), as well as birds, mammals,
9 fish, reptiles, amphibians, invertebrates and plants that comprise the local ecosystem.

## 11 GENERAL MEASURES FOR PROTECTION OF BIOLOGICAL RESOURCES

Agreed activities within the streams may commence after protective features are
 implemented. This Agreement shall take effect on the date it is signed by the Department and
 shall remain in effect until December 31, 2013. If the Project is not completed prior to the
 expiration date defined above, the Operator shall contact the Department to negotiate a new
 expiration date and any new requirements.

18

When known, the Operator shall provide a construction/work schedule to the Department.
The construction schedule shall either be mailed to the Central Region office at 1234 East Shaw
Avenue, Fresno, California 93710, Attention: Stream Alteration Program, or faxed to
(559) 243-4594. Refer to Notification 2008-0185-R4 when notifying the Department. The
names, phone numbers, cellular phone numbers, pager numbers of key personnel shall be
included in this Notification.

25

26 3. Prior to starting any activity within the stream, all workers shall have received training from
27 the Operator on the contents of this Agreement, the resources at stake, and the legal
28 consequences of non-compliance.

29

The stream bed and any disturbed banks shall be fully restored upon completion of
 construction. Vegetation in the vicinity of the site shall not be disturbed during construction
 activities.

33

This Agreement <u>does not</u> allow for the "take," or incidental "take," of any State- or Federallisted threatened or endangered species.

36

6. The Operator affirms that no "take" of listed species will occur as a result of this Project and will take prudent measures to ensure that all "take" is avoided. The Operator acknowledges that they fully understand that they do not have State incidental "take" authority. If any State- or Federal-listed threatened or endangered species occur within the proposed work area or could be impacted by the work proposed, and thus "taken" as a result of Project activities, the Operator is responsible for obtaining and complying with required State and Federal threatened and endangered species permits or other written authorization before proceeding with this Project.

> Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

CCC Exhibit

(page 6 of 12 pages)

Page 6 of 13

7. Liability for any "take," or incidental "take," of such listed species remains the separate 1 responsibility of the Operator for the duration of the Project. 2

3

The Operator shall immediately notify the Department of the discovery of any such rare, 8. 4 threatened, or endangered species prior to and/or during construction. 5

6 7

8

9

If construction is scheduled to occur during the nesting season of February 15 to August 1, 9. preconstruction surveys shall be conducted by a qualified biologist to determine the presence of nesting birds in the riparian zone. If active raptor nests are found to be present, construction 10 within 100 yards of the active nests shall be delayed until the qualified biologist determines that

the young have fledged. If active nests of non-raptor species are found to be present, 11

construction within 25 yards of the active non-raptor nests shall be delayed until the qualified 12 biologist determines that the young have fledged. 13

14

10. All litter, construction debris, and waste shall be picked up daily and properly disposed of 15 at an appropriate site. During all activities at Project work sites, all trash that may attract 16 predators shall be properly contained, removed from the work site, and disposed of regularly. 17 Following construction, all trash and construction debris shall be removed from work areas. 18

19

No pets shall be allowed at the Project site. 11. 20

21

12. Building materials and/or construction equipment shall not be stockpiled or stored where 22 they could be washed into the water or where they will cover aquatic or riparian vegetation. 23 24

The number of access routes, number and size of staging areas, and the total area of the 25 13. work site activity shall be limited to the minimum necessary to complete the restoration action. 26 Any equipment entering the active stream (e.g., in the process of installing a coffer dam) shall be 27 28 preceded by an individual on foot to displace wildlife and prevent them from being crushed. To avoid any potential for negative impacts to listed species, the following measures shall be 29 implemented: 30

31

#### 32 Steelhead (Oncorhynchus mykiss)

33

14. Construction activities shall occur between April 1 and June 30. Construction activities 34 may be extended prior to or after this period on a day-to-day and case-by-case basis by contacting 35 Mr. Mike Hill at (805) 471-7222 or the Central Region office at (559) 243-4014, extension 240. 36 37

38 15. Prior to the start of construction, the Project limits shall be clearly marked using flagging, temporary construction fencing, or other suitable and visible means. Construction personnel and 39 40 equipment shall not enter areas outside of the Project limits.

41

42 16. An emergency response plan shall be prepared prior to the start of construction and kept on-site during all phases of construction. The plan shall identify the actions that shall be taken in 43

> Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

(page\_7\_of\_13\_pages)



the event of a spill of petroleum products, contaminated soil, or other material harmful to fish,
plants, or aquatic life. Emergency response materials shall be kept at the site and readily
available to allow rapid containment and cleanup of any spilled material. Within 24 hours of any
hazardous material spill, including but not limited to petroleum products, the Operator shall
contact Mr. Mike Hill by calling (805) 471-7222 and the Department's Central Region by calling
(559) 243-4014, extension 240.

8 17. If necessary, silt fence, straw wattles, or other sediment containment devices shall be
9 installed between the Carmel River lagoon and the construction area to prevent sand and other
10 materials from entering the lagoon.

11

#### 12 California Red-Legged Frog (Rana aurora draytonii)

13

18. The Project site has been identified as an area that is potentially inhabited by a threatened
species, the California red-legged frog. The operator is required to comply with all applicable
State and Federal laws, including the California and Federal Endangered Species Acts. This
Agreement does not authorize the "take" of any State- or Federal- listed species. Liability for any
"take" or incidental "take" of such listed species remains the responsibility of the Operator for
the duration of the Project. Any unauthorized "take" of such listed species may result in
prosecution and nullification of the Agreement.

21

Prior to construction, a qualified biologist shall conduct training sessions to familiarize all
construction personnel with identification of southern steelhead and California red-legged frogs,
their habitat, general provisions and protections afforded by the Endangered Species Act,
measures implemented to protect southern steelhead and California red-legged frogs, and a
review of the Project boundaries. During construction, a qualified biologist shall monitor
construction activities including, but not limited to, excavation of the sites, installation and
removal of diversion structures, and sediment/erosion control devices.

30 20. To minimize the possibility of injuring California red-legged frogs and other wildlife,
31 herbaceous and small shrubby vegetation within the Project boundaries that would be disturbed
32 by subsequent Project activities shall be removed by hand prior to the use of heavy equipment or
33 machinery.

34

All trash shall be removed from the site daily to avoid attracting potential predators to the
 site.

37

38 22. No pets shall be permitted to be at the site during construction.

39

Within 48 hours prior to construction, the Project site shall be surveyed for California redlegged frogs by a qualified biologist. If any California red-legged frogs are found, work shall not
start until the U.S. Fish and Wildlife Service has been contacted and has given approval for work

Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

(page\_8\_of\_13\_pages)

Page 8 of 13

to continue. If any California red-legged frogs are found, the Department of Fish and Game shall
 be contacted within 24 hours at (805) 471-7222.

3

#### Western snowy plover (Charadrius alexandrinus nivosus)

5

6 24. No more than three (3) days prior to initiating construction activities, a qualified biologist
7 shall conduct surveys for nesting snowy plovers and other birds. If nesting birds are found, a
8 100-foot buffer zone shall be established around each active nest. No construction-related
9 activities shall occur within the 100-foot buffer area until all young have fledged and the
10 biologist determines no evidence exists of a second attempt of nesting at the nest site.

11

#### 12 Sensitive plant species

13

Preconstruction surveys shall be conducted to determine the presence of sensitive plants. If
sensitive plant species are determined to be present within the Project site, a minimum 10-foot
buffer zone shall be established around each such plant. No construction-related activities shall
occur within the 10-foot buffer area. Ingress and egress routes to the site shall be routed around
any sensitive plants throughout Project activities.

19

#### 20 HAZARDS AND HAZARDOUS MATERIALS

21

22 26. All heavy equipment used at the Project site shall be maintained be in proper working
23 condition and shall be free of drips and leaks of coolant and petroleum products. No equipment
24 shall be used on the site unless such equipment is free of leaks and drips.

25

26 27. Staging/storage areas for equipment, materials, fuels, lubricants and solvents, shall be
27 located outside of the stream's high water channel and associated riparian area. Stationary
28 equipment such as motors, pumps, generators, compressors, and welders, located within the dry
29 portion of the stream channel or adjacent to the stream shall be positioned over drip-pans.
30 Vehicles and equipment shall be moved out of the normal high water area of the stream prior to
31 refueling and lubricating.

32

28. All fueling and maintenance of vehicles, other equipment, and staging/storage areas shall
be located in the parking lot area along the north side of Carmel River State Beach. The
Operator shall ensure contamination of habitat does not occur during such operations.

37 29. All equipment operators shall be trained in the procedures to be taken should an accident
38 occur. Prior to the commencement of work, the Operator shall provide the Department with a
39 plan allowing for prompt and effective response to any accidental spills. All workers shall be
40 informed of the importance of preventing spills and of the appropriate measures to take should a
41 spill occur.

Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

CCC Exhibit \_\_\_\_\_ (page \_\_\_\_\_\_ of \_\_\_\_\_ pages)

Page 9 of 13

30. Absorbent materials designed for spill containment and cleanup shall be available at all
 times at the activity site for use in case of an accidental spill. Any equipment or vehicles driven
 and/or operated within or adjacent to the lagoon shall be checked and maintained daily, to
 prevent leaks or materials that if introduced to water could be deleterious to aquatic life.

5

6 31. Debris, soil, silt, bark, rubbish, creosote-treated wood, raw cement/concrete or washings
7 thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other
8 substances which could be hazardous to aquatic life, resulting from Project-related activities,
9 shall be prevented from contaminating the soil and/or entering the "Waters of the State". Any of
10 these materials, placed within or where they may enter a stream or lake, by Operator or any party
11 working under contract, or with the permission of the Operator, shall be removed immediately.

12

14

#### 13 WATER QUALITY

15 32. No sand or other material shall be placed in the wetted portion of the Carmel River lagoon.
 16

17 33. Effective erosion and sediment control measures shall be in place at all times during
18 construction. Project activities shall not begin until all temporary erosion and sediment controls
19 are installed throughout the Project site. Erosion and sediment control measures shall be
20 inspected not less than once weekly and shall be maintained in proper functioning condition
21 throughout construction. If erosion and sediment control measures are found to be in need of
22 repair or not in proper working order for any reason, construction shall immediately cease until
23 the measures are repaired.

24

34. Adequate erosion control supplies shall be kept at all the site to ensure sediment is kept out
of water bodies. Erosion control measures shall be utilized throughout all phases of operation
where sediment run-off from exposed slopes threatens to enter "Waters of the State". At no time
shall silt laden run-off be allowed to enter the stream or be placed where it may enter the stream.

30 35. No sand, soil, or other fill shall be imported to or exported from the site.

31

#### 32 SITE RESTORATION

33

34 36. Restoration measures shall commence immediately upon completion of the construction
 35 activities. All areas temporarily disturbed shall be returned to pre-Project conditions.

36

37 37. The Operator shall submit an annual Restoration Monitoring Report as provided in the38 "Monitoring and Reporting Program" below.

40 GENERAL MEASURES

41

39

42 38. A copy of this Agreement shall be kept on-site at all times during construction and until the
 43 Project is complete.

Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

CCC Exhibit \_

(page 10 of 13 pages)

Page 10 of 13

39. If in the opinion of the Department, conditions arise, or change, in such a manner as to be
 considered deleterious to the stream or wildlife, operations shall cease until corrective measures
 approved by the Department are implemented.

4

40. To modify, amend, or renew the Agreement beyond the expiration date, a written request
for a renewal must be submitted to the Department (Stream Alteration Program, 1234 East Shaw
Avenue, Fresno, California 93710) for consideration prior to the Agreement expiration date.
Fees for modifications, amendments, and renewals can be obtained at <u>www.dfg.ca.gov/1600</u> or
by phone at (559) 243-4014, extension 230. Modifications, amendments, and renewals of the
original Agreement are issued at the discretion of the Department.

11

#### 12 MONITORING AND REPORTING PROGRAM (MRP):

13 14 <u>PURPOSE</u>

15

The purpose of the MRP is to ensure that the protective measures required by the Department are
 properly implemented, and to monitor the effectiveness of those measures.

18

19 OBLIGATIONS OF THE OPERATOR

20

The Operator shall have primary responsibility for monitoring compliance with all protective
measures included as "Provisions" in this Agreement. Protective measures must be implemented
within the time periods indicated in the Agreement and the program described below. The
Operator shall submit the following Reports to the Department:

25

26 • A construction schedule (Provision 2).

An emergency response plan (Provision 16).

29 30

31 32 • If necessary, a Pre-Construction biological survey and report if sensitive species are found (Provision 23).

A Project Report to be submitted within 30 days after the Project construction is completed
 each year in which Project activities occur. The final report shall summarize the Project
 construction, including any problems relating to the protective measures of this Agreement.
 "Before and after" photo documentation of the Project site shall be required.

A Project Report submitted within 30 days of each anniversary date of the Department representative's signature on this Agreement. The report to include an assessment of the effectiveness of the mitigation features that were implemented and recommendations, if any, for improving the effectiveness of mitigation measures. The Operator's monitoring of the revegetation effort shall commence immediately following the first planting.
Monitoring of revegetation shall continue for two (2) years after seeding and planting the

44 site. "Before and after" photo documentation of the Project site shall be required.

Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

CCC Exhibit \_\_\_\_\_ (page\_ll of \_13 pages)

Page 11 of 13

In addition to the above monitoring and reporting requirements, the Department requires as part
 of the MRP that the Operator:

3

5 6

7

- Immediately notify the Department in writing if monitoring reveals that any of the protective measures were not implemented during the period indicated in this program, or if
- it anticipates that measures shall not be implemented within the time period specified.
- 8 Immediately notify the Department if any of the protective measures are not providing the level of protection that is appropriate for the impact that is occurring, and recommendations, if any, for alternative mitigation measures.
- 11

#### 12 VERIFICATION OF COMPLIANCE:

13

14 41. The Department shall verify compliance with management compliance measures to ensure
15 the accuracy of the Operator's monitoring and reporting efforts. The Department may, at its sole
16 discretion, review relevant Project documents maintained by the Operator, interview the

17 Operator's employees and agents, inspect the Project area, and take other actions to assess

18 compliance with or effectiveness of management compliance measures for the Project.

Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County

Page 12 of 13



**CONCURRENCE:** APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME 3-3\_,2009. on Jeffrey R. Single, Ph.D., Regional Manager, Central Region **ACKNOWLEDGMENT** The undersigned acknowledges receipt of this Agreement and, by signing, accepts and agrees to comply with all terms and conditions contained herein. The undersigned also acknowledges that adequate funding shall be made available to implement the measures required by this Agreement. Date: 2/24/09 By Ken Gray Agreement No. 2008-0185-R4 Mr. Ken Gray Carmel River Monterey County Page 13 of 13

