

**PERMIT TO ENTER AND USE PROPERTY**

**by and between**

**CITY AND COUNTY OF SAN FRANCISCO**

**and**

**SAN MATEO RESOURCE CONSERVATION DISTRICT**  
**Permittee**

**to enter and use a portion of property located at**  
**500 Log Cabin Ranch Road,**  
**La Honda, California**

**May 17, 2021**

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ATTACHMENTS:

- EXHIBIT A - Permit Area
- EXHIBIT B – Scope of Work

**CITY AND COUNTY OF SAN FRANCISCO  
PERMIT  
TO ENTER AND USE PROPERTY  
(500 Log Cabin Ranch Road, La Honda)**

THIS PERMIT TO ENTER AND USE PROPERTY (this “**Permit**”), dated for reference purposes only as of May 17, 2021, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”) and SAN MATEO RESOURCE CONSERVATION DISTRICT, a California special district (“**Permittee**” or “**RCD**”).

City and Permittee agree as follows:

**1. LICENSE**

City grants to Permittee a personal, unassignable, non-exclusive, and non-possessory privilege to enter on and use a portion of that certain real property owned by City located at Log Cabin Ranch, La Honda, California, (Assessor’s Parcel Numbers 083290030 and 083300010 ) in the County of San Mateo, more particularly shown in Exhibit A attached to this Permit (the “**Permit Area**”), for the limited purpose and subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only, and nothing in this Permit constitutes a grant by City of any ownership, leasehold, easement, or other property interest or estate whatsoever in the Permit Area, or any portion of it. The privilege given to Permittee under this Permit is effective only to the extent of City’s rights in the Permit Area, and Permittee will obtain any further permission necessary because of any other existing rights affecting the Permit Area.

**2. USE OF PERMIT AREA**

**2.1 Scope of Permitted Use**

Permittee may enter and use the Permit Area for the sole purpose of the following activities in furtherance of the “Mindego Creek Fish Passage Improvement Project” located at and adjacent to Mindego Creek, and necessary activities directly related thereto: (a) pre-project and permit approval preparation, including site visits, surveys, photography, measurements, etc. during Phase I (as defined below); (b) restoration and repair of a fish passage barrier, removal of a Denil fish ladder, removal of water diversion infrastructure, reconstruction of approximately 310 linear feet of channel, and shoring/maintenance of a bridge on an access road leading from Alpine Road sufficient for RCD and its Agents to access the Permit Area, all as more particularly set forth in the “**Scope of Work**” in Exhibit B (collectively, (a) and (b) are the “**Project**”); and (c) monitoring and maintenance of the Project during Phases II, III, and IV (as defined below); and for no other purpose unless consented to by City in its sole discretion. The Project is comprised of four phases: (a) from the date of full execution of this Permit until completion of the Project’s construction (“**Phase I**”); (b) one year starting from the end of Phase I (“**Phase II**”); (c) four years starting from the end of Phase II (“**Phase III**”); and (d) approximately 20 years after the end of Phase III (“**Phase IV**”). Permittee may access the Permit Area for monitoring and maintenance of the Project as follows: (a) as necessary during Phase I and Phase II; (b) no more than 4 visits each year during Phase III; and (c) no more often than 2 visits each year during Phase IV.

### **3. INSTALLATION OF FACILITIES**

Permittee may install the improvements described in Exhibit B which include the following: (a) sufficient shoring/maintenance to an existing bridge located on an access road on the Property leading from Alpine Road to allow for access to the Project and Permit Area; (b) demolition and removal of existing dam and fish ladder and reconstruction of 310 feet of channel at Mindego Creek (including pools and large wood structures); (c) relocation of the diversion intake, and installation of a fish screen at the intake pipe as set forth in Exhibit B; and (d) all other alterations and improvements described in the Scope of Work or approved by the City under this Permit in the City's sole discretion (the "**Improvements**") on the Permit Area only on satisfaction of the following conditions, which are for the sole benefit of City:

#### **3.1 Approval of Plans and Specifications**

Permittee will install the Improvements in accordance with plans and specifications approved in advance and in writing by City.

#### **3.2 Permits and Approvals**

Before beginning any work to install the Improvements ("**Improvement Work**"), Permittee must obtain all permits, licenses, and approvals of any regulatory agencies required to commence and complete the Improvements (collectively, "**Approvals**"). Promptly after receipt of the Approvals, Permittee will deliver copies of them to City. Permittee acknowledges that no approval by City under this Permit for purposes of the Improvements will be deemed to constitute the approval of any federal, state, or local regulatory authority with jurisdiction required for the Improvements, and nothing in this Permit will limit Permittee's obligation to obtain all Approvals, at Permittee's sole cost.

#### **3.3 Installation of Above-Ground Markers**

Permittee will install above-ground markers identifying the location of any underground Improvements installed at the Permit Area. City must approve in writing before installation the location, type, and installation of markers and identifying information.

#### **3.4 As-Built Drawings**

Promptly after completion of the installation of the Improvements, Permittee will furnish City with a complete copy of final as-built drawings for the Improvements.

#### **3.5 Baseline**

Permittee must document the condition of the Permit Area before the commencement of any work through the use of photographs, maps, and any other appropriate documentation to provide a pre-work baseline to monitor impacts. Permittee will consult with City to determine the appropriate documentation. Permittee will provide City with a copy of that documentation before any work begins.

### **3.6 Exercise of Due Care**

Permittee will use, and will cause its Agents (as defined in Section 19 below) to use, due care at all times to avoid any damage or harm to City's property, and, except as specifically contemplated by the Scope of Work set forth in Exhibit B, to native vegetation and natural attributes of the Permit Area and to minimize slope erosion. Permittee will take such soil and resource conservation and protection measures with the Permit Area as City may request. City has the right to approve and supervise any excavation work. Under no circumstances will Permittee damage, harm, or take any rare, threatened, or endangered species on or about the Permit Area. Permittee will do everything reasonably within its power, both independently and on request by City, to prevent and suppress fires on and adjacent to the Permit Area attributable to Permittee's actions or inactions.

### **3.7 Cooperation with City Personnel**

Permittee and its Agents will work closely with City personnel to minimize any potential disturbance (even if temporary) of the natural features of the Permit Area and to avoid disruption (even if temporary) of City property in, under, on, or about the Permit Area and City uses of the Permit Area. Construction sites must be screened with temporary fencing where possible to reduce visual impact.

### **3.8 Work Schedule**

At least five business days (5) days before entry and before commencing any work on the Permit Area, Permittee will notify the Director of Property or their designee (telephone number: 415.554.9850) of the date such entry will occur and/or such work will commence and the intended schedule. Permittee will complete all work within the time period set forth in the permits necessary for implementation of the Project.

### **3.9 Restoration of Permit Area**

Immediately following completion of any work on the Permit Area, Permittee will remove all debris and any excess dirt and restore the Permit Area to its condition as required in the permits necessary for Project implementation, including if required by such regulatory permits, restoring excavated areas with new vegetation and erosion control netting as approved by City.

### **3.10 Responsibility for Maintenance of Facilities**

Permittee will be responsible for correcting any defects or deficiencies related to the installation of the intake pipe installed by Permittee as a component of the Project's Scope of Work. In addition, the Permittee will be responsible for maintaining in good working condition and repair, the fish passage and other facilities and improvements that are installed or constructed in connection with the Project during Phase I through Phase III, provided, however, that the Parties acknowledge and agree that Permittee will shore/maintain the bridge on the access road leading from Alpine Road only to the extent deemed sufficient for Permittee and its Agents to access the Permit Area. City will have no duty whatsoever for any maintenance of the Permit Area, the bridge on the access road leading from Alpine Road to the Permit Area, any improvements made by Permittee, or any facilities in the Permit Area, but in its sole discretion

may maintain and repair the intake pipe, fish passage and other facilities and improvements that are installed or constructed in connection with the Project, as needed or required by regulatory agencies.

### **3.11 Revocability**

Permittee acknowledges that the installation of any facilities in the Permit Area will not in any way limit City's right to revoke this Permit or limit any of City's other rights under this Permit or at law or in equity.

## **4. RESTRICTIONS ON USE**

Permittee acknowledges that the following uses of the Permit Area by Permittee or any other person claiming by or through Permittee are inconsistent with the limited purpose of this Permit and are strictly prohibited. The uses listed below are not exclusive and this Section does not limit the City's authority to specify additional restrictions on the use of the Permit Area, in City's sole discretion.

### **4.1 Improvements**

Except as otherwise expressly provided in this Permit, Permittee may not construct or place any temporary or permanent structures or improvements on the Permit Area, and Permittee will not alter any existing structures or improvements on the Permit Area.

### **4.2 Dumping**

Permittee may not dump or dispose of refuse or other unsightly materials on, in, under, or about the Permit Area.

### **4.3 Hazardous Material**

Permittee will not cause, and will Permittee not allow any of its Agents or Invitees (as defined in Section 19 below) to cause, any Hazardous Material (as defined below) to be brought on, kept, used, stored, generated, or disposed of in, on, or about the Permit Area, or transported to or from the Permit Area. Permittee will immediately notify City when Permittee learns of or has reason to believe that a release of Hazardous Material has occurred in, on, or about the Permit Area. Permittee will comply with all laws requiring notice of releases or threatened releases to governmental agencies, and will take all action necessary to mitigate the release or minimize the spread of contamination. If Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee will, without cost to City and in accordance with all laws and regulations, restore the Permit Area to the condition immediately before the release. In connection with the release and restoration of the Permit Area, Permittee will give City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise proceeding involving Hazardous Material. "**Hazardous Material**" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" under the

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., or under California Health & Safety Code Section 25316; a "hazardous waste" listed under California Health & Safety Code Section 25140; any asbestos and asbestos containing materials whether or not those materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the Permit Area.

#### **4.4 Nuisances**

Permittee will not conduct any activities on or about the Permit Area that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises, or lights) to City, to the owners or occupants of neighboring property or to the public.

#### **4.5 Damage**

Permittee will not do anything about the Permit Area that will cause damage to any of City's property.

### **5. PERMIT FEES**

In consideration of the value to City of the shoring/maintenance Permittee will perform to the bridge and improvements to the Permit Area, and in light of the Project's benefit to the environment and the public, Permittee is not required to pay to City a monthly permit fee or a fee to cover City's processing, inspection, and other administrative costs.

Without limiting any of its other rights hereunder, City may at any time, on not less than thirty (30) days' written notice to Permittee, charge a reasonable fee for use of the Permit Area in response to any use by the Permittee of the Permit Area beyond the scope of the use contemplated by this Permit or contrary to the terms of this Permit, and City may increase the fee from time to time.

Permittee acknowledges that its late payment to City of any monthly fee or other sums due from Permittee under this Permit under will cause City to incur costs not contemplated by this Permit, the exact amount of which will be extremely difficult to ascertain. Those costs include, but are not limited to, processing and accounting charges. Accordingly, if any permit fee or any other sum due from Permittee, is not received by City within fifteen (15) days after it is due, then Permittee must pay to City a late charge of One Hundred Fifty Dollars (\$150). The parties agree that the late charge represents a fair and reasonable estimate of the costs City will incur because of Permittee's late payment. City's acceptance of a late charge by City neither constitutes a waiver of Permittee's default regarding the overdue amount, nor prevents City from exercising any of the other rights and remedies.

### **6. TERM OF PERMIT; REVOCABILITY**

The privilege given to Permittee under this Permit is temporary only and will commence on execution of this Permit by the City and will expire no later than 5:00 p.m. on December 31,



2047. But, if Permittee fails to comply with any of the terms or conditions of this Permit and does not cure the non-compliance within ten (10) business days after notice by City (or if Permittee fails to comply with a non-monetary obligation that cannot be cured within ten (10) business days, and Permittee does not commence the cure within ten (10) business days and diligently pursue the cure until it is timely completed), then City may, without limiting any of its other rights and remedies, revoke this Permit. If City revokes this Permit, then Permittee will no longer have access onto the Permit Area or the Log Cabin Ranch parcel, including Alpine Road, and any rights Permittee may have under this Permit are terminated. Further, City may revoke this Permit with at least six (6) months written notice should the Board of Supervisors decide to sell all or a portion of the Permit Area. Further, City may temporarily revoke this Permit if City determines that there is an emergency requiring revocation of the Permit, provided that the City shall provide Permittee with as much prior notice of such termination as is reasonably possible in light of the emergency giving rise to the need to terminate the Permit.

## 7. INSURANCE

(a) Permittee will procure and keep in effect at all times during the term of this Permit, at Permittee's expense, and cause its contractors and subcontractors to maintain at all times during any work or construction activities on the Permit Area insurance as follows:

(i) General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Permittees, Explosion, Collapse and Underground (XCU), Broad Form Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

(ii) Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable, and Sudden and Accidental Pollution; and

(iii) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

(b) All liability policies must provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents, and employees; and (ii) specify that the policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. The policies must also provide for severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage will not reduce or void the coverage as to any insured, and will afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period: Sudden and accidental pollution coverage in the liability policies required by this Permit will be limited to losses resulting from Permittee's activities (and Permittee's Agents and Invitees) under this Permit (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

(c) All insurance policies Permittee is required to maintain must be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, non-renewal,

or reduction in coverage to both Permittee and City. Notice to City will be mailed to the address(es) for City set forth in Section 36 below.

(d) Before the commencement date of this Permit, Permittee will deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required, together with complete copies of the policies at City's request. If Permittee fails to procure the required insurance, or to deliver the policies or certificates, then City may procure the required insurance for the account of Permittee, and Permittee will pay the cost of those policies will to City within five (5) days after delivery an invoice.

(e) If any of the required insurance is provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in the general annual aggregate limit, then the general aggregate limit must be double the occurrence or claims limits specified above.

(f) If any of the required insurance is provided under a claims made form, then Permittee will maintain that coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration, to the effect that, if any occurrences during the Permit term give rise to claims made after expiration of the Permit, then those claims will be covered by the claims-made policies.

(g) On City's request, Permittee and City will periodically review the limits and types of insurance carried under this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with the Permit Area, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee to conform to the general commercial practice.

(h) Permittee's compliance with the provisions of this Section will in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations under this Permit. Notwithstanding anything to the contrary in this Permit, this Permit will terminate immediately, without notice to Permittee, on the lapse of any required insurance coverage. Permittee will be responsible, at its expense, for separately insuring Permittee's personal property.

## **8. SECURITY FOR PERFORMANCE – Not Applicable**

## **9. COMPLIANCE WITH LAWS**

Permittee will, at its expense, conduct and cause to be conducted all activities on the Permit Area in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances, and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act and any other disability access laws), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee will, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed under this Permit. Permittee understands and agrees that City is entering

into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing in this Permit will limit in any way Permittee's obligation to obtain any required regulatory approvals from City departments, boards, or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

#### **10. COVENANT TO MAINTAIN PERMIT AREA**

During Phase I, in connection with its use of the Permit Area, Permittee will at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary, and slightly condition. After Phase I, during the times Permittee accesses or uses the Permit Area, and to the extent impacted by Permittee's access to or use of the Permit Area, Permittee will maintain the Permit Area in a good, clean, safe, secure, sanitary, and slightly condition.

#### **11. REMOVAL OF IMPROVEMENTS**

In the event of an emergency City may, at its sole option and without notice, alter, remove, or protect, any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or about the Permit Area by Permittee.

#### **12. SURRENDER**

On the expiration of this Permit or within ten (10) days after any other termination of this Permit, Permittee will surrender the Permit Area, and, free from hazards, and clear of all debris, and Permittee will remove all of its property from the Permit Area and any signs or any other personal property permitted under this Permit, and will repair, at no cost to City, any damage to the Permit Area caused by that removal. Permittee's obligations under this Section will survive any termination of this Permit.

#### **13. WAIVER OF CLAIMS; WAIVER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES**

(a) Neither City nor any of its Agents, or their employees, will be liable for any damage to the property of Permittee, its Agents or Invitees, or their employees, or for any bodily injury or death to any persons, resulting or arising from the condition of the Permit Area, the roadways and/or bridge(s) leading from Alpine Road to the Permit Area, or their use by Permittee.

(b) Permittee acknowledges that this Permit is revocable by City as set forth herein and in view of that fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if the expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Agents, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, if City exercises its right to revoke or terminate this Permit.

(c) Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Agents, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Permittee acknowledges that the releases contained in this Permit include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims related to the subject matter of such releases. Permittee acknowledges that it has agreed to this Permit with full knowledge of this waiver and the effect of this waiver, and, being fully aware of the consequences, Permittee intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained in this Permit will survive any termination of this Permit.

#### **14. REPAIR OF DAMAGE**

If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged by Permittee, its Agents or Invitees or as a result of any activities conducted by Permittee, its Agents or Invitees, Permittee will immediately, at no cost to City repair any and all the damage and restore the Permit Area or property, including, but not limited to, Alpine Road, Mindego Creek, any bridges, or other improvements at, adjacent to or affected by the Project, to a reasonably acceptable pre-project condition, as approved by City.

#### **15. SIGNS**

Permittee will not place, erect, or maintain any sign, advertisement, banner, or similar object on or about the Permit Area, except for any temporary sign that is necessary for Permittee's use so long as Permittee first obtains City's written consent, which City may give or withhold in its sole discretion.

#### **16. UTILITIES**

City has no responsibility or liability of any kind for any utilities that may be on, in, or under the Permit Area. Permittee has the sole responsibility to locate all utilities and protect them from damage. Permittee will arrange and pay for any necessary temporary relocation of City and public utility company facilities, subject to the prior written approval by City and any utility companies for any relocation. Permittee will be solely responsible for arranging and paying directly for any utilities or services necessary for its activities; provided, however, that under San Francisco Administrative Code Section 99.3, Permittee will only receive electricity at

the Permit Area from the San Francisco Public Utilities Commission (“SFPUC”) unless SFPUC determines that the service is not feasible.

#### **17. CITY'S RIGHT TO CURE PERMITTEE DEFAULTS**

If Permittee fails to perform any of its obligations under this Permit, to restore the Permit Area or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy the failure for Permittee's account and at Permittee's expense by providing Permittee with three (3) days' prior written or oral notice of City's intention to cure the default (except that no prior notice will be required in an emergency as determined by City). No actions taken by City will be construed as a waiver of any rights or remedies of City under this Permit or otherwise, and nothing in this Permit will imply any duty of City to do any act that Permittee is obligated to perform. Permittee will pay to City on demand, all costs, damages, expenses, or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy the default. Permittee's obligations under this Section will survive the termination of this Permit.

#### **18. NO COSTS TO CITY**

Permittee will bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, and will keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

#### **19. INDEMNITY**

Permittee will indemnify, defend, and hold harmless City, its commissions, departments, boards, officers, agents, employees, contractors or subcontractors (collectively, “**Agents**”), and each of them, from and against all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind (collectively, “**Losses**”), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on, or about the Permit Area, or any part of it, whether the person or property of Permittee, its Agents, its invitees, guests, or business visitors (collectively, “**Invitees**”), or third persons, relating in any manner to any use or activity by Permittee; (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants, or conditions of this Permit; (c) the use of the Permit Area or any activities conducted by Permittee, its Agents, or Invitees; or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents, or Invitees, on, in, under, or about the Permit Area, any improvements on the Permit Area, or into the environment; except solely to the extent of Losses resulting directly and solely from the willful misconduct of City or City's authorized representatives. The foregoing indemnity includes, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time the claim is tendered to Permittee by City and continues at all times thereafter. Permittee's obligations under this Section will survive the expiration or other termination of this Permit.

**20. "AS IS" CONDITION OF PERMIT AREA; DISABILITY ACCESS; DISCLAIMER OF REPRESENTATIONS**

Permittee accepts the Permit Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents, or employees, including, without limitation, the suitability, safety, or duration of availability of the Permit Area or any facilities on the Permit Area for Permittee's use. Without limiting the foregoing, this Permit is made subject to all applicable laws, rules, and ordinances governing the use of the Permit Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title, and other title matters affecting the Permit Area, whether foreseen or unforeseen, and whether those matters are of record or would be disclosed by an accurate inspection or survey. It is Permittee's sole obligation to conduct an independent investigation of the Permit Area and all matters relating to its use of the Permit Area, including, without limitation, the suitability of the Permit Area for its uses. Permittee, at its own expense, will obtain all permissions or other approvals from any third parties with existing rights as may be necessary for Permittee to make use of the Permit Area in the manner contemplated under this Permit.

Under California Civil Code Section 1938, to the extent applicable to this Permit, Permittee is advised that the Permit Area has not undergone inspection by a Certified Access Specialist ("CASp") to determine whether it meets all applicable construction-related accessibility requirements. A CASp can inspect the Permit Area and determine if it complies with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Permit Area, City may not prohibit Permittee from obtaining a CASp inspection of the Permit Area for the occupancy or potential occupancy of Permittee if requested by Permittee. City and Permittee will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Permit Area.

**21. NO ASSIGNMENT**

This Permit is personal to Permittee and may not be assigned, conveyed, or otherwise transferred by Permittee under any circumstances. Any attempt to assign, convey, or otherwise transfer this Permit will be null and void and cause the immediate termination of this Permit.

**22. CESSATION OF USE**

Permittee will not terminate its activities on the Permit Area without prior written notice to City.

**23. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION**

This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Area. Permittee is not a State actor with respect to any activity conducted by Permittee on, in, or under the Permit Area. The giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in, or relating to the Permit Area.

## **24. MACBRIDE PRINCIPLES - NORTHERN IRELAND**

The provisions of San Francisco Administrative Code Section 12F are incorporated into this Permit by this reference and made part of this Permit. By signing this Permit, Permittee confirms that Permittee has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

## **25. NON-DISCRIMINATION**

### **25.1 Covenant Not to Discriminate**

In the performance of this Permit, Permittee will not to discriminate against any employee of, any City employee working with Permittee, or applicant for employment with Permittee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of those protected classes, or in retaliation for opposition to discrimination against those classes.

### **25.2 Subcontracts**

Permittee will include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to the subcontractor in substantially the form of Subsection 25.1 above.

### **25.3 Non-Discrimination in Benefits**

Permittee does not as of the date of this Permit and will not during the term of this Permit, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing the registration.

## **26. TROPICAL HARDWOODS AND VIRGIN REDWOOD BAN**

The City and County of San Francisco urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of San Francisco Environment Code sections 802(b) and 803(b). Permittee will not, except as permitted by the application of sections 802(b) and 803(b), use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in the performance of this Permit.

## 27. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

For the purposes of this Section, a “**City Contractor**” is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. Through its execution of this Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. Permittee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Permittee further acknowledges that (i) the prohibition on contributions applies to Permittee, each member of Permittee’s board of directors, Permittee’s chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Permittee, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Permittee, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Permittee certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

## 28. POSSESSORY INTEREST TAXES

Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on that interest under applicable law. Permittee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Permittee's interest under this Permit or use of the Permit Area and to pay any other taxes, excises, licenses, permit charges, or assessments based on Permittee's usage of the Permit Area that may be imposed on Permittee by applicable law. Permittee will pay all of charges when they become due and payable and before delinquency.

San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublicense, or other transfer of this Permit be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Permittee must provide a copy of this Permit to the County Assessor not later than sixty (60) days after the commencement date of this Permit, and any failure of Permittee to timely provide a copy of this Permit to the County Assessor will be a default under this Permit. Permittee will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.



## **29. RESTRICTION ON THE USE OF PESTICIDES**

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Permittee will not use or apply or allow the use or application of any pesticides on the Permit Area or contract with any party to provide pest abatement or control services to the Permit Area without first receiving City’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Area during the term of this Permit, (ii) describes the steps Permittee will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Permittee’s primary IPM contact person with the City. Permittee will comply, and will require all of Permittee’s contractors to comply, with the IPM plan approved by the City and will comply with the requirements of sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Permittee were a City department. Among other matters, those provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Permittee to keep certain records and to report to City all pesticide use at the Permit Area by Permittee’s staff or contractors.

If Permittee or Permittee’s contractor will apply pesticides to outdoor areas at the Permit Area, Permittee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“**CDPR**”) and any pesticide application must be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

## **30. PROHIBITION OF TOBACCO SALES AND ADVERTISING**

Permittee acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the Permit Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

## **31. PROHIBITION OF ALCOHOLIC BEVERAGE ADVERTISING**

Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Permit Area. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

### **32. DRUG-FREE WORKPLACE**

Permittee acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance under federal law is prohibited on City premises. Permittee agrees that any violation of this prohibition by Permittee, its Agents, or Invitees will be a material breach of this Permit.

### **33. CONFLICTS OF INTEREST**

Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq. and sections 1090, et seq., of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of those provisions, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee will immediately notify the City.

### **34. PERMITTEE'S COMPLIANCE WITH CITY BUSINESS AND TAX AND REGULATIONS CODE**

Permittee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Permittee under this Permit is withheld, then City will not be in breach or default under this Permit, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Permittee, without interest, late fees, penalties, or other charges, upon Permittee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

### **35. NOTICES**

Except as otherwise expressly provided in this Permit, any notices given under this Permit will be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: Log Cabin Ranch Permit

Copy to: Claudia J. Gorham  
[Claudia.gorham@sfgov.org](mailto:Claudia.gorham@sfgov.org)  
415.554.9871 (office)  
415.713.6020 (mobile)

Permittee: San Mateo Resource Conservation District  
80 Stone Pine Rd, Suite 100  
Half Moon Bay, CA 94019  
650-712-7765

Copy to: John D. Nibbelin, Chief Deputy County Counsel  
[jnibbelin@smcgov.org](mailto:jnibbelin@smcgov.org)  
650.363.4757 (office)

Notices under this Permit will be deemed given two (2) days after the date when it has been mailed if sent by first class, certified or overnight courier, or on the date personal delivery is made. For convenience of the parties, copies of notices may be sent by email, but no notice sent only by email will be deemed given and will not be binding on the parties.

### **36. SEVERABILITY**

If any provision of this Permit or the application of a provision of this Permit to any person, entity, or circumstance is invalid or unenforceable, the remainder of this Permit, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected, and each other provision of this Permit will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Permit without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Permit.

### **37. COUNTERPARTS**

This Permit may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. A signature delivered on any counterpart by facsimile or other electronic means shall for all purposes be deemed to be an original signature to this Permit.

### **38. COOPERATIVE DRAFTING**

This Permit has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Permit reviewed and revised by legal counsel. No party will be considered the drafter of this Permit, and no presumption or rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Permit.

### **39. GENERALLY APPLICABLE PROVISIONS**

(a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit will be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in the written waiver. (c) All approvals and determinations of City requested, required, or permitted under this Permit may be made in the sole and absolute discretion of the Director of Property or other authorized City official. (d) This instrument (including the exhibit(s) attached to this Permit) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are

merged into this Permit. **(e)** The section and other headings of this Permit are for convenience of reference only and will be disregarded in the interpretation of this Permit. **(f)** Time is of the essence. **(g)** This Permit will be governed by California law and the City's Charter. **(h)** If either party commences an action against the other or a dispute arises under this Permit, the prevailing party will be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of each party will be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. **(i)** If Permittee consists of more than one person then the obligations of each person will be joint and several. **(j)** Permittee may not record this Permit or any memorandum hereof. **(k)** Subject to the prohibition against assignments or other transfers by Permittee under this Permit, this Permit will be binding on and inure to the benefit of the parties and their respective heirs, representatives, successors, and assigns. **(l)** Intentionally omitted. **(m)** All exhibits attached to this Permit are incorporated by reference.

*[SIGNATURES ON FOLLOWING PAGE]*

Permittee represents and warrants to City that it has read and understands the contents of this Permit and will comply with and be bound by all of its provisions.

PERMITTEE:

SAN MATEO RESOURCE CONSERVATION DISTRICT  
a California special district

By: *Kellyx Nelson*  
Name: Kellyx Nelson  
Its: Executive Director


CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property  
(Approved by Board of Supervisors  
Resolution No. \_\_\_\_\_)

APPROVED AS TO FORM:

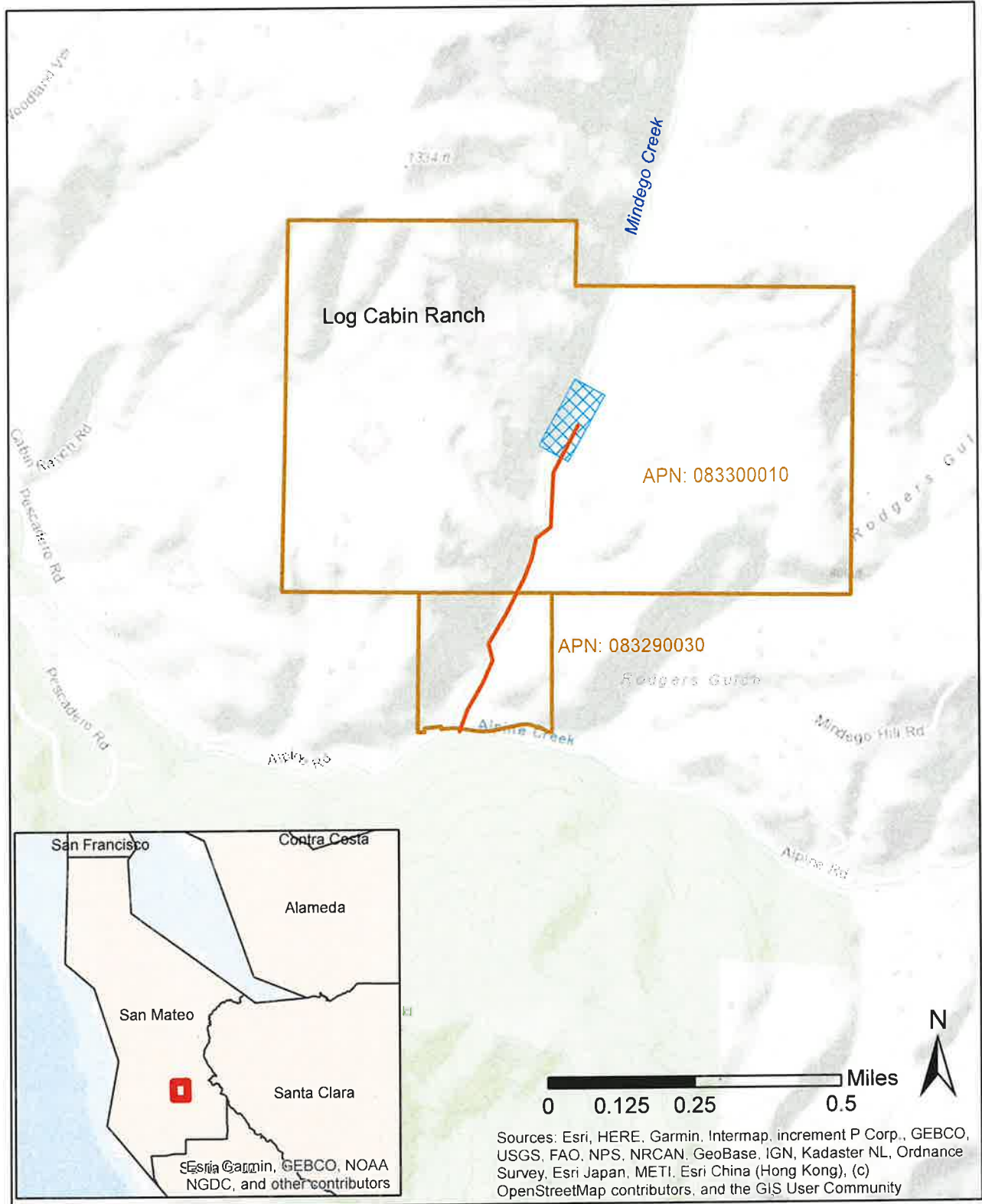
DENNIS J. HERRERA, City Attorney




By:   
773AED1C76FF416...  
Elizabeth A. Dietrich  
Deputy City Attorney

**EXHIBIT A**

**Permit Area**

# Mindego Creek Fish Passage Site Access



-  Approximate Alignment of Access Road
-  Approximate Project Area
-  Access Parcels



**EXHIBIT B**  
**SCOPE OF WORK**



## **Mindego Creek Fish Passage** **Scope of Work**

The Mindego Creek Fish Passage Project (project) will restore fish passage for federally threatened steelhead trout and federally endangered coho salmon in Mindego Creek. The barrier consists of a 6-foot-high concrete dam, Denil-style fish ladder, and water diversion. The existing fish ladder is prone to clogging, which frequently renders it unpassable to fish.

The objectives of the project are to:

- Restore fish passage by removing instream barriers,
- Improve instream habitat complexity to benefit salmonids and other aquatic and riparian species, and
- Maintain a functional water diversion for the landowner that will not entrap fish.

The project will meet these objectives by removing the dam and fish ladder barriers, reconstructing 310 feet of channel, incorporating elements like large woody debris to enhance creek complexity and create fish refugia, relocating the diversion intake, and installing a fish screen on the intake pipe.

All start and completion dates are estimates and subject to change.

### **TASK 1: PROJECT MANAGEMENT**

The San Mateo Resource Conservation District (RCD) will lead overall project management and administration and develop and manage all contracts and subcontracts, including the bid process. RCD will also lead interagency communications and coordination; convening project team meetings among consultants, partners, and stakeholders; and reporting to funders and regulatory agencies.

### **TASK 2: PERMITTING**

RCD will develop and finalize permits (LSAA, 401/404, Coastal Development), and prepare any other necessary environmental compliance documents. RCD will work with the selected contractor, engineer, landowner, CDFW, NOAA Fisheries, and IWRP to develop the final construction schedule, construction best management practices and other environmental measures, review access needs, and review permit conditions.

### **TASK 3: MONITORING AND SURVEYS**

This task includes monitoring for listed species, supporting the construction team on dewatering activities, performing fish relocation (per CDFW and NOAA standard protocols), conducting contractor training related to species and environmental protection, and general project oversight. Prior to the start of construction, the area will be monitored for presence of listed species and appropriate agencies will be contacted

as necessary if they are discovered. During construction, biological monitoring will take place per permit requirements.

This task also includes all post-project monitoring including physical surveys, photo monitoring, vegetation monitoring, and habitat monitoring. An as-built survey will be conducted by the engineer along with a technical memo. Within the first two years following implementation, a topographic survey of the project reach will be conducted. A habitat survey will be conducted once post-implementation as part of the topographic survey to survey stream characteristics. Vegetation monitoring will be conducted for the first two years after implementation. Photo monitoring will be conducted from for 25 years following construction (yearly via time lapse cameras for the first five years following implementation, then in the spring following occurrence of a 5+ year storm).

#### **TASK 4: CONSTRUCTION**

This project will address the creek's fish passage barrier by removing the channel-spanning dam, ladder, and submersible pump and by relocating the diversion intake to an instream pool. The new gravity-fed diversion will have a regulated weir plate and fish screen designed to meet CDFW and NMFS criteria to protect against fish entrapment. Approximately 310 linear feet of channel will be reconstructed, and two rock weir pools will be integrated to provide resting habitat along with two large woody debris installations to enhance habitat complexity and capture sediment.

The design approach includes the demolition of the existing concrete dam and fish ladder. The concrete building and other elements of the water diversion will remain intact to provide the necessary infrastructure to support continued pumping to Log Cabin Ranch. Approximately 310 linear feet of channel will be reconstructed, and the diversion intake moved approximately 95 feet upstream to a constructed pool to allow for the installation of a fish screen and gravity flow diversion pipe to the pump vault. The channel design is intended to mimic the natural stream characteristics for fish passage, sediment transport, and flood and debris conveyance present immediately upstream and downstream of the current passage barrier. Material will be salvaged from the channel where feasible to limit the need for imported material.

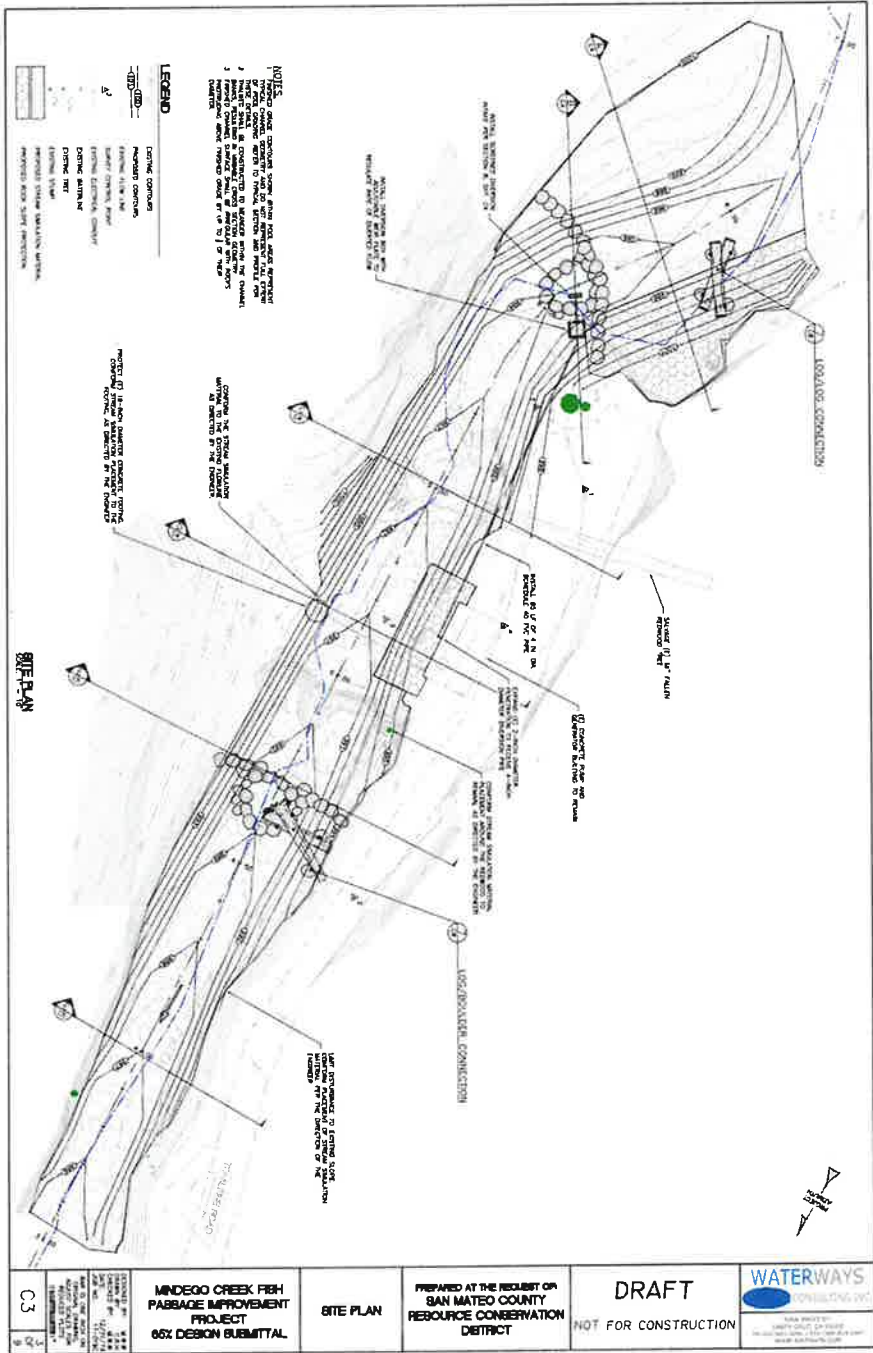
This task will be largely conducted by a TBD construction contractor to be selected through a competitive bid process, with oversight by the RCD. This task includes site preparation and access, staging, dewatering, barrier removal, diversion intake relocation, channel reconstruction, site restoration, and all creek restoration elements, equipment, and materials required to implement the project.

The selected contractor will be required to comply with all environmental protection measures included in final permit conditions during project implementation. Construction will take place during summer and fall when stream flows are at a minimum. A water diversion structure will be required to dewater the project site and facilitate instream construction and to reduce potential impacts to downstream water quality. Prior to placement of the diversion, block nets will be installed, and fish and other aquatic

species will be relocated by a qualified biologist (see Task 3). Water discharge from the construction site, either by gravity or pumping, will be performed in a manner to prevent excessive turbidity into the creek.

Construction (implementation) is estimated to take place summer to fall 2022.

**Site Map of Construction Area (Draft)**










# Rushmore: Log Cabin Access Agreement with SF (Mindego Creek): Sara & John N Reviewed

Final Audit Report

2021-07-06

Created:	2021-07-02
By:	San Mateo RCD (sign@sanmateorcd.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAANBHKPiLowkoCIVak0YmwLDg-78mfxh_j

## "Rushmore: Log Cabin Access Agreement with SF (Mindego Creek): Sara & John N Reviewed" History

-  Document created by San Mateo RCD (sign@sanmateorcd.org)  
2021-07-02 - 9:59:18 PM GMT - IP address: 108.248.122.228
-  Document emailed to Kellyx Nelson (kellyx@sanmateorcd.org) for signature  
2021-07-02 - 10:02:14 PM GMT
-  Email viewed by Kellyx Nelson (kellyx@sanmateorcd.org)  
2021-07-06 - 5:03:32 PM GMT - IP address: 67.247.76.73
-  Document e-signed by Kellyx Nelson (kellyx@sanmateorcd.org)  
Signature Date: 2021-07-06 - 5:04:03 PM GMT - Time Source: server- IP address: 67.247.76.73
-  Agreement completed.  
2021-07-06 - 5:04:03 PM GMT

