



# County of Santa Cruz

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## DEPARTMENT OF PUBLIC WORKS

701 OCEAN STREET, ROOM 410, SANTA CRUZ, CA 950604070  
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JOHN A. FANTHAM  
DIRECTOR OF PUBLIC WORKS

**AGENDA: NOVEMBER 16, 1999**

November 5, 1999

SANTA CRUZ COUNTY BOARD OF SUPERVISORS  
701 Ocean Street  
Santa Cruz, California 95060

**SUBJECT: BRANCIFORTE CREEK HOMES PROTECTION EMERGENCY  
WATERSHED PROTECTION PROJECT**

Members of the Board:

On June 22, 1999, your Board authorized the County, through the Public Works Department, to act as the local sponsor for the Branciforte Creek Homes Protection Project, approving emergency procedures to expedite taking related actions to facilitate the financing, design, review, permitting, and construction of the project. Project plans and specifications have been circulated to contractors under those emergency procedures, but opening of bids for construction of the project has been postponed due to a dispute over a key element in the permitting process.

In order to enter the creek to construct the project, the County and its contractor must have a Streambed Alteration Agreement (1601) approved by the California Department of Fish and Game (DFG), pursuant to Section 1601 of the California Fish and Game Code. Although an emergency exemption from the California Environmental Quality Act (CEQA) was issued for this project by the County Planning Department, DFG decided only very recently that it will not approve the 1601 for this project without pursuing its own CEQA review.

According to DFG, this project does not fit DFG's definition of "emergency" insofar as qualifying for an exemption from CEQA. DFG's interpretation of Section 1601 would essentially leave the County in a position at this late date where the County or its contractor could only enter the stream at the time that high water in the creek were actively causing the imminently endangered structures to fall into the creek. DFG is understandably under some pressure because of recent adverse court rulings to apply CEQA coverage strictly. But it does not seem reasonable to conclude that the law was intended to restrict the definition of "emergency" so as to preclude preventative action until the final destructive event is actually in motion.

Counsel has advised us that this project will qualify for an exemption from Section 1601 of the California Fish and Game Code should your Board make the following findings in accordance with paragraph (f)(1), thereof (attached).

1. The Branciforte Creek Homes Protection Emergency Watershed Project involves immediate emergency work necessary to protect life or property. The project has been funded by the Department of Agriculture's Natural Resources Conservation Service (NRCS), because severe streambank erosion along Branciforte Creek has already caused great loss of property and threatens to undermine existing residential structures with the next high flows in the creek.
2. The Branciforte Creek Homes Protection Emergency Watershed Project involves immediate emergency repairs to public service facilities necessary to maintain service as the result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor. Although the project could not be funded by NRCS until the streambank failure posed an imminent threat to the structures, NRCS has asserted that the damage was initiated by the El Niño storms of 1998 during a state of emergency declared by the Governor, and has been monitored by them ever since. This project constitutes part of the repairs necessary to maintain in-service, a sewer pump station operated by the City of Santa Cruz.

Attached are statements from representatives of the NRCS and the City of Santa Cruz in support of these findings.

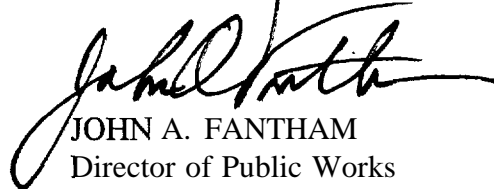
In order to expedite the award of the contract once this matter is resolved, the Director of Public Works will need authority from your Board to award and sign the construction contract.

It is therefore recommended that the Board of Supervisors take the following actions.

1. Declare that the Branciforte Creek Homes Protection Emergency Watershed Project involves immediate emergency work necessary to protect life or property.
2. Declare that the Branciforte Creek Homes Protection Emergency Watershed Project involves immediate emergency repairs to public service facilities necessary to maintain service as the result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor.

3. Authorize the Director of Public Works to award and sign the construction contract for The Branciforte Creek Homes Protection Emergency Watershed Project on behalf of the County.

Yours truly,

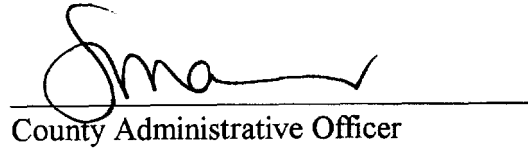


JOHN A. FANTHAM  
Director of Public Works

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Attachments

RECOMMENDED FOR APPROVAL:



County Administrative Officer

Copy to: Natural Resources Conservation Service  
California Department of Fish & Game  
County Counsel  
Planning Department  
Public Works

## Library References

Fish 12.  
WESTLAW Topic No. 176.  
C.J.S. Fish § 28 et seq.

## Notes of Decisions

**Conservation standard 1****1. Conservation standard**

Section 1603, which provides in effect that it is unlawful to substantially divert or obstruct the natural flow or substantially change bed, channel or bank of any river, stream or lake

designated by fish and game department without notifying department and obtaining its approval, is not void for lack of standards; statutorily dictated policy of conservation of fish and wildlife resources is a sufficient standard. *Willsen v. Justice Court of Oroville Judicial Dist.* (App. 3 Dist. 1983) 188 Cal.Rptr. 488, 139 Cal. App.3d 171.

§ 160 1. Public construction projects impacting water resources: protection of fish or wildlife; arbitration; exceptions: agreements

(a) Except as provided in this section, general plans sufficient to indicate the nature of a project for construction by, or on behalf of, any state or local governmental agency or any public utility shall be submitted to the department if the project will (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit, (2) use material from the streambeds designated by the department, or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by the department. If an existing fish or wildlife resource may be substantially adversely affected by that construction, the department shall notify the governmental agency or public utility of the existence of the fish or wildlife resource together with a description thereof and shall propose reasonable modifications in the proposed construction that will allow for the protection and continuance of the fish or wildlife resource, including procedures to review the operation of those protective measures. The department's description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected. The proposals shall be submitted within 30 days from the date of receipt of the plans, except that the time period may be extended by mutual agreement. Upon a determination by the department and after notice to the affected parties of the necessity for an onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall make an onsite investigation of the proposed construction and shall make the investigation before it proposes any modifications.

(b)(1) Within 14 days from the date of receipt of the department's proposals, the affected agency or public utility shall notify the department in writing whether the proposals are acceptable, except that the time period may be extended by mutual agreement. If the department's proposals are not acceptable to the affected agency or public utility, the agency or public utility shall so

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notify the department. Upon request, the department shall meet with the affected agency or public utility within seven days of receipt of the notification, or at a time mutually agreed upon, for the purpose of developing proposals that are acceptable to the department and the affected agency or public utility.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established. The panel of arbitrators shall be established within seven days from the date of the meeting, or at a time mutually agreed upon, and shall be composed of one representative of the department, one representative of the affected agency or public utility, and a third person mutually agreed upon, or if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as chair of the panel. The panel may settle disagreements and make binding decisions regarding the fish and wildlife modifications. The arbitration shall be completed within 14 days from the date that the composition of the panel is established, unless the time is extended by mutual agreement. The expenses of the department representative shall be paid by the department; the expenses of the representative of the governmental agency or the public utility shall be paid by the governmental agency or the public utility; and the expenses of the chair of the panel shall be paid one-half by each party.

(c) A governmental agency or public utility proposing a project subject to this section shall not commence operations on that project until the department has found that the project will not substantially adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the project. The department shall not condition the streambed alteration agreement on a project subject to this section on the receipt of another state or federal permit.

(d) The department shall determine and specify types of work, methods of performance, or remedial measures that are exempt from the operation of this section.

(e) With regard to any project that involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to, and agreement with, the department is not required subsequent to the initial notification and agreement, unless the work as described in the agreement, is substantially changed or conditions affecting fish and wildlife resources substantially change, and the resources are adversely affected by the activity conducted under the agreement...; This subdivision applies in any instance where notice to, and agreement with, the department has been attained, prior to January 1, 1977.

(f) This section does not apply to any of the following projects, except that notification by the agency or public utility performing any of the following projects shall be made to the department within 14 days from the date of the Commencement of the project:

(1)(A) Immediate emergency work necessary to protect life or property.

(B) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a

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state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of operations on projects subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

(Added by Stats.1976, c. 603, p. 1446, § 2. Amended by Stats.1992, c. 646 (A.B.2654), § 1; Stats.1995-96, 1st Ex.Sess., c. 11 (S.B.12), § 1, eff. Dec. 1, 1996; Stats.1996, c. 825 (A.B.2963), § 2.5.)

**Historical and Statutory Notes**

Section 1 of Stats.1996, c. 825 (A.B.2963), provides:

"(a) The Legislature hereby finds and declares that the maintenance of a sound state highway system is declared to be of the utmost interest to the people of the state. Safe, available, and sound highways are essential to the people of the state.

"(b) Accordingly, it is the intent of the Legislature that any highway damaged by fire, flood, storm, earthquake, or landslide should be repaired as quickly as possible to ensure the smooth flow of traffic and prevent unnecessary inconvenience and delay."

Under the provisions of § 9 of Stats.1998, c. 825 (A.B.2963), the 1996 amendment of this section by Stats.1995-96, 1st Ex.Sess., c. 11

(S.B.12), eff. Dec. 1, 1996, was given effect until Jan. 1, 1997, and then was incorporated in the amendment by § 2.5 of c. 825, operative Jan. 1, 1997. An amendment of this section by § 2 of Stats.1996, c. 825, failed to become operative under the provisions of § 9 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Former § 1601, added by Stats.1961, c. 909, p. 2532, § 2, amended by Stats.1970, c. 1357, p. 2522, § 1, relating to similar subject matter, was repealed by Stats.1976, c. 603, p.1446, § 1.

**Derivation:** Former § 1601, added by Stats. 1961, c. 909, p. 2532, § 2, amended by Stats. 1970, c. 1357, p. 2522, § 1.

**Cross References**

Punishment, second or subsequent violation of this section on the same project or streambed alteration agreement, see Fish and Game Code § 12007.  
State Contract Act, notice inviting bids on project specifying locations of possible materials for use in project subject to this section, see Public Contract Code § 10109.

**USDA NATURAL RESOURCES CONSERVATION SERVICE**

820 Bay Avenue, Suite 107 - Capitola, California 95010  
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November 5, 1999

John Fantham  
Director of Public Works  
County of Santa **Cruz** Department of Public Works  
701 Ocean **Street**, Room 410  
Santa **Cruz**, CA 95060-4070

SUBJECT: **Branciforte** Creek Homes Protection Emergency Watershed Protection (**EWP**)  
Project

Dear Mr. **Fantham**:

I am writing in support of the Santa **Cruz** County Board of Supervisors making the following **findings** regarding the emergency nature of the **Branciforte** Creek Homes Protection EWP project:

That corresponding to the California Department of Fish and Game Code Section 1601 .f.1 .A & B this emergency project should proceed immediately without further delay. The Code Section states the following under A & B:

- A) **Immediate** emergency work necessary to protect **life** or property, and
- B) The emergency repairs are necessary to **protect** public service **facilities** and maintain service as a result of a disaster in which a state of emergency has been proclaimed., .

It is my understanding that Fish and Game will require an additional 30 day CEQA review **period** and delay of work if this project is not highly considered as an **emergency** situation under their definition of "emergency".

The Natural Resources Conservation Service (**NRCS**) is a federal agency under the United States Department of Agriculture with the authority to proclaim a County or region a natural disaster area and make Emergency Watershed Protection funds available to eligible sponsors in need. We exercised this authority **earlier** this year when we declared Santa **Cruz** County a disaster area following the February 1999 storms. By doing so, we were able to secure nearly one quarter of million dollars in **funds** under the EWP program for the **Branciforte** Creek Homes Protection EWP Project.

As you will recall the project has been identified by NRCS, along with the County and City of Santa **Cruz** as local co-sponsors, as an emergency situation where lives and high value property are endanger and where there remains an imminent threat of **future** damage.

The emergency work **needs** to be completed before the coming **1999-2000** winter to **safeguard** lives, **homes**, properties, natural resources and public utilities. Any **further** delays may prevent the ability to do work this **Fall** and will most certainly jeopardize the use of EWP funds for the project.

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I urge the Board of Supervisors to make the findings that the **Branciforte** Creek Homes Protection EWP Project is in **deed** an immediate **emergency** under the California Fish and Game Code Section **1601.f.1.A&B** and for the other reasons stated above so that work can begin and be **completed** before any significant high water events occur.

**If I** can provide **further** support or **information**, please do not hesitate to contact me.

We're running out of time.

Sincerely,

USDA NATURAL RESOURCES  
CONSERVATION SERVICE

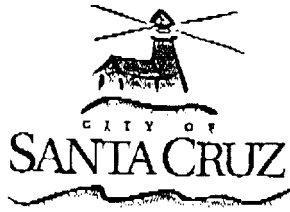


Richard **Casale**, CPESC #3  
District conservationist

- cc: Carter Christenson, **NRCS, Salinas**  
Doug Toews, NRCS, Santa Maria  
**Rixon** Rafter, **NRCS, Half** Moon Bay  
**Glen** Goepfert, County Public Works, Santa **Cruz**  
Dan **Whatley**, City of Santa **Cruz**, Santa **Cruz**

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PUBLIC WORKS DEPARTMENT

November 7, 1999

Mr. Glenn Goepfert, Senior Civil Engineer  
Department of Public Works  
county of Santa Cruz  
701 Ocean Street, Room 401  
Santa Cruz, CA. 95060-4070

Dear Mr. Goepfert:

Re: Branciforte Creek at Isbel Street, Santa Cruz County

As you know the City is a party to a request for Federal assistance under the provisions of Section 403, Agricultural Credit Act of 1978, to restore portions of the damaged channel and stream facilities of Branciforte Creek in the vicinity of Branciforte Drive and Isbel Street, Santa Cruz, California. The subject area of concern is composed of public and private property, and includes lands situated in the jurisdictions of the City of Santa Cruz and Santa Cruz County. The City owns and operates a sewer lift station on the north side of the Creek, adjacent to Isbel Street.

The City is gravely concerned that the work has not yet been initiated. The City anticipates increased erosion of the channel bank during the upcoming storm season. This work is needed to safeguard lives and property from an imminent hazard of flood flows.

The City urges that the County of Santa Cruz move this program ahead without further delay by finding, in accordance with Section 160 1(f) (1) (A and B) of the California Fish and Game Code that this work is 1) immediate emergency work necessary to protect life and property, and 2) that the emergency repairs are necessary to protect a public service facility to maintain essential service.

If you need any additional information, please contact me by mail at the address listed below, or by call my office at (831) 420-5556.

Sincerely,

Dan Whatley, Operations Manager  
City of Santa Cruz Public Works Department  
809 Center Street, Room 201  
Santa Cruz, California 95060

cc: Rich Casale, NRCS Soquel, S 16 1 Soquel Drive, #F, Soquel, Ca. 95073  
Director of Public Works  
Assistant Director of Public Works

File No: 420-20.33