

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE APPROVING CONDITIONAL USE PERMIT NO. 23-002 TO IMPLEMENT A STREAM GAUGE FISH PASSAGE IMPROVEMENT PROJECT ON PROPERTY LOCATED WITHIN ARROYO GRANDE CREEK IN PROXIMITY TO CLARENCE AVENUE AND MYRTLE STREET (APN 077-572-031), APPLIED FOR BY CREEK LANDS CONSERVATION (CLC), APPROVING THE REQUESTED FEE WAIVER, AND FINDING THE PROJECT EXEMPT FROM CEQA

WHEREAS, the City Council of the City of Arroyo Grande has considered Conditional Use Permit No. 23-002, applied for by CLC to modify an existing broad-crested weir spanning the width of Arroyo Grande Creek (“Project”); and

WHEREAS, the funding for the Project was received from the National Fish and Wildlife Foundation (NFWF) and the California Department of Fish and Wildlife (CDFW); and

WHEREAS, CLC applied for and received funding through NFWF and CDFW to implement the proposed Project which will lower the weir and restore reliable access to 3.3 miles of critical steelhead habitat upstream of the barrier; and

WHEREAS, the City Council has reviewed the project in compliance with CEQA and has determined that the project is exempt based upon Sections 15301, 15302, and 15304 of the State CEQA Guidelines for the reasons articulated below; and

WHEREAS, the Project is consistent with General Plan Objective C/OS2, which aims to “[s]afeguard important environmental and sensitive biological resources contributing to healthy, functioning ecosystems.” The Project is also consistent with General Plan Implementing Policy C/OS2-1.6: “[p];an, design, and develop sites to: Protect scenic resources, water quality and natural creekside habitat, including opportunities for wildlife habitation, rest, and movement. Further the restoration of damaged or degraded habitat, especially where a continuous riparian habitat corridor can be established;” and

WHEREAS, on December 12, 2023, the City Council conducted a duly noticed public hearing to consider the staff report, recommendations by staff, and public testimony concerning the proposed ordinance. Following the public hearing, the City Council to adopt the prepared Resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Arroyo Grande finds, determines, resolves, and recommends:

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1. **Recitals.** All recitals above are true and correct and hereby incorporated by reference.
2. **CEQA.** This Project is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15301 (Existing Facilities). This exemption consists of the operation, repair, maintenance or minor alterations to existing public or private structures involving negligible or no expansion of existing or former use. This includes maintenance of artificial wildlife waterway devices to protect fish and wildlife resources. Here, the Project involves the operation, repair, and minor alteration to the existing stream gauge that involves little to no expansion of the existing use. Further, the stream gauge will continue to be used for its original purpose of improving the critical steelhead trout habitat.

Alternatively, the Project is also exempt from review under CEQA pursuant to State CEQA Guidelines Section 15302 (Replacement or Reconstruction). This exemption consists of the replacement or reconstruction of existing structures where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The Project will involve the reconstruction of the stream gauge, located on the same site as the existing stream gauge, and will have the same purpose of improving the steelhead trout habitat with the same capacity as the existing structure.

Lastly, the Project is exempt from review under CEQA pursuant to State CEQA Guidelines Section 15304 (Minor Alterations to Land). This exemption consists of minor alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees. This includes minor alterations in land and water to fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production. Here, the Project involves reconstruction of the stream gauge that will lead to the improvement of habitat for the steelhead trout.

None of the exceptions to the categorical exemptions set forth in State CEQA Guidelines section 15300.2 have any applicability here. The Project will not impact any environmental resource of hazardous or critical concern, will not result in significant cumulative impacts, is not subject to any unusual circumstances that could result in a significant environmental impact, would not damage any scenic resources within a scenic highway, is not located on

a hazardous waste site identified on any list compiled pursuant to Government Code section 65962.5, and would not impact an historical resource.

Staff is directed to file the corresponding Notice of Exemption within five working days from the approval of this Project.

3. Conditional Use Permit Findings:

- a) The proposed use is permitted within the subject district pursuant to the provisions of this section and complies with all the applicable provisions of this title, the goals, and objectives of the Arroyo Grande General Plan, and the development policies and standards of the City.

The proposed use of the site for a stream gauge improvement project is permitted with approval of a conditional use permit by the City Council after receiving a recommendation from the Planning Commission, and the project complies with all applicable provisions of the Arroyo Grande General Plan and Municipal Code.

- b) The proposed use would not impair the integrity and character of the district in which it is to be established or located.

The proposed use of the site for a stream gauge improvement project will not impair the integrity of the project site due to the intent of the project to return the site to its natural condition after construction along with biological monitoring.

- c) The site is suitable for the type and intensity of use or development that is proposed.

The site is an existing stream gauge that will be improved to remove a fish passage barrier. The type of development is suitable for the location near the creek and will be monitored by various responsible agencies.

- d) There are adequate provisions for water, sanitation, and public utilities and services to ensure public health and safety.

The project involves completing a stream gauge replacement in Arroyo Grande Creek. No aspect of the proposed project is anticipated to be overly impactful to the existing services. Conditions of approval developed for the project will additionally ensure public services are minimally impacted.

- e) The proposed use will not be detrimental to the public health, safety or

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welfare or materially injurious to properties and improvements in the vicinity.

The proposed use will not be detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity, as it will comply with City conditions of approval specifically developed for the project as well as monitoring conditions required of the project's funding sources.

4. Fee Waiver.

a) The proposed fee waiver request of \$6,388 otherwise required for project is granted by the City Council because the project:

i. Serves a public purpose of promoting the public health, safety, and general welfare by:

1) Implementing general plan policies to enhance natural creek functions and values by providing erosion control, sedimentation prevention, enhancement of riparian habitat corridors, water quality protection and aesthetic and recreational opportunities; and

2) Improving habitat for a federally threatened fish species.

ii. Serves a public purpose by safeguarding important environmental and sensitive biological resources contributing to a healthy, functioning ecosystem.

5. **Severability.** If any section, division, sentence, clause, phrase or portion of this resolution or the document in the record in support of this resolution is determined by a court of competent jurisdiction to be invalid, unenforceable, unconstitutional or otherwise void, that determination shall not affect the validity of the remaining sections, divisions, sentences, clauses, phrases of this Resolution.

On motion by Council Member _____, seconded by Council Member _____, and by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

The foregoing Resolution was adopted this 12th day of December, 2023.

CAREN RAY RUSSOM, MAYOR

ATTEST:

JESSICA MATSON, CITY CLERK

APPROVED AS TO CONTENT:

BILL ROBESON, INTERIM CITY MANAGER

APPROVED AS TO FORM:

ISAAC ROSEN, CITY ATTORNEY

**EXHIBIT A
CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT 23-002
AG CREEK STREAM GAUGE REPLACEMENT PROJECT**

COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

GENERAL CONDITIONS

1. The applicant shall ascertain and comply with all Federal, State, County and City requirements as are applicable to this project.
2. The applicant shall comply with all conditions of approval for Conditional Use Permit 23-001.
3. This application shall automatically expire on December 12, 2025 unless a Lake and Streambed Alteration permit is issued by the California Department of Fish and Wildlife (CDFW). Thirty (30) days prior to the expiration of the approval, the applicant may apply for an extension of one (1) year from the original date of expiration.
4. Development shall occur in substantial conformance with the plans presented to the City Council at the meeting of December 12, 2023, and marked Exhibit B.
5. The applicant shall agree to indemnify and defend at his/her sole expense any action brought against the City, its present or former agents, officers, or employees because of the issuance of City's discretionary approvals associated with this project, or in any way relating to the implementation thereof, or in the alternative, to relinquish such approval. The applicant shall reimburse the City, its agents, officers, or employees, for any court costs and attorney's fees which the City, its agents, officers or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his/her obligations under this condition.
6. A copy of these conditions shall be incorporated into all construction documents.
7. At the time of application for construction permits, plans submitted shall show all development consistent with the approved site plan, floor plan, architectural elevations and landscape plan.
8. All conditions of this approval run with the land and shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Development Code Section 16.08.100.
9. All project improvements shall be designed and constructed in accordance with the most recent version of the City of Arroyo Grande Standard Specifications and Engineering Standards.
10. Preserve existing survey monuments and vertical control benchmarks in compliance with Standard Specifications Section 5-1.26A.

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11. The applicant shall be responsible for obtaining an encroachment permit for all work within a public right-of-way (City, County and/or Caltrans). This shall include City approval of a traffic control plan for the partial closure of Myrtle Street.
12. At least thirty (30) days prior to commencement of any earthmoving activities, the applicant shall notify all neighbors located within a 500' radius of the project area. The notification shall include information about the construction schedule and location of the staging area.
13. Prior to issuance of an Encroachment Permit, submit property owner authorization for staging and construction areas.
14. Construction activities shall be limited to 8:00 AM – 5:00 PM Monday through Friday (no construction on Saturdays or Sundays).
15. The applicant shall submit evidence of obtaining permits from all resource agencies that have regulatory authority over this project.
16. The applicant shall submit a Stormwater Pollution Prevention Plan/Erosion Control Plan prior to any earthmoving activities.
17. The applicant shall restore the site access area to pre-construction condition.
18. The applicant shall coordinate project work with the County Flood Control District.
19. The applicant shall submit a creek bypass plan, including any pumping requirements, pump hours of operation, pump storage, who to call with noise complaints, and the size of the pump. CDFW shall be responsible for approving the bypass plan.
20. The applicant shall adhere to all conditions of approval associated with permits issued by CDFW, NFWF and other responsible agencies.
21. The applicant shall be responsible for replacing in-kind any fencing that is removed as part of this project.
22. If it is determined that the rock slope on the southern creek bank is not connected to the outfall structure, the applicant shall obtain all necessary permits to complete the work.

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**EXHIBIT B
PROJECT PLANS**