

APPENDIX C
CORPS PERMIT FOR FSDRIP

Name of Applicant Mr. Bruce McIntyre

Effective Date July 12, 1985

Expiration Date (if applicable) July 12, 1995

**DEPARTMENT OF THE ARMY
PERMIT**

Referring to written request dated May 11, 1984 for a permit to:

() Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

(X) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344);

() Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1062; P.L. 92-532);

Mr. Bruce McIntyre
MEM Associates
Mooney-Lettieri and Associates
9903-B Businesspark Avenue
San Diego, California 92131

is hereby authorized by the Secretary of the Army
to construct a 7,000 foot earthen flood control channel as part of the First San Diego River Improvement Project (FSDRIP) by placing approximately 1 million cubic yards of dredged and fill material///

in the San Diego River and adjacent wetlands///

at Mission Valley, city of San Diego, California///

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings, give file number or other definite identification marks.)

"CORPS OF ENGINEERS APPLICATION NO. 84-132"

SECRETS 1 THROUGH 5

DATED: JULY 1984

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subject to the following conditions:

I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1344), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1067), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, or any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in reasonable accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

j. That this permit does not obviate the requirement to obtain state or local assent required by law for the activity authorized herein.

k. That this permit may be either modified, suspended or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be materially false, materially incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

o. That if the activity authorized herein is not completed on or before day of , 19 , (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t herEOF, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

That there shall be no unreasonable limitations on the use of the property.

L. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferor's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

u. That if the permittee during prosecution of the work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the area subject to Department of the Army jurisdiction that might be eligible for listing in the National Register of Historic Places, he shall immediately notify the district engineer.

II. Special Conditions: (Here list conditions relating specifically to the proposed structure or work authorized by this permit):

(See enclosed sheet for conditions)///

CONDITIONS FOR PERMIT NO. 84-132-AA

a. This permit is not valid until the State of California, Regional Water Quality Control Board, San Diego Region certifies that the activities permitted herein meet all applicable State water quality standards.

b. The permittee shall offset the wetland habitat losses incurred by the permitted work (FSDRIP) by reconstructing, revegetating, monitoring, and managing the wetland habitats for their habitat value, as follows;

1. The revegetation, maintenance, and monitoring of the wetland habitat within the project site shall be accomplished in accordance with the 25 April 1984 Revegetation Plan for the First San Diego River Improvement Project (FSDRIP), incorporated by reference herein as Exhibit B, except as specified in this permit.

2. The revegetation plan shall be in conformance with the conceptual rendering shown as Figure 6 of Exhibit B and result in not less than 26.8 acres of forested wetland of complex structure and vigorous growth, 9.7 acres of emergent vegetated marsh, and 8.7 acres of open water, all of high habitat value as determined by the U.S. Fish and Wildlife Service. With the exception of 1.3 acres of forested wetland located in the buffer, this vegetation shall exist within the floodway between State Route 163 and Stadium Way, upon completion of the management period specified below. The wetland revegetation landscape plans shall be approved by the Corps of Engineers in consultation with the U.S. Fish and Wildlife Service prior to construction of each phase and shall include at a minimum, the size, number, location, and species of each woody plant, and a description of the area treatment of herbaceous species and groundcover.

3. Implementation of the revegetation plan shall follow the schedule shown in Exhibit B, Table 3, particularly in that tree clearing and earthwork in phase two shall not begin until the initial wetland habitat landscaping called for in phase one has been completed. Management and maintenance to maximize the wetland habitat value of the revegetated area shall be the responsibility of the permittee, as specified in Exhibit B, for a period of 5 years following the completion of construction, including wetland landscaping, of each phase.

4. Annual biological monitoring reports shall be submitted to the Corps of Engineers and the U.S. Fish and Wildlife Service by December 1 of each year during the specified monitoring period for each phase. The monitoring period for phase one will extend 5 years after planting; monitoring periods for subsequent phases can be less than 5 years if approved by the Corps of Engineers in consultation with the U.S. Fish and Wildlife Service. These reports shall be prepared on the basis of field studies outlined in Exhibit B and shall document and summarize the status of the wetland revegetation/habitat reconstruction effort. The Corps of Engineers and the U.S. Fish and Wildlife Service shall consider the monitoring reports, and the findings of direct observation, and the revegetation milestones specified below in "b.5," in evaluating the process of the revegetation effort.

5. Specific wetland revegetation milestones shall be:

a) Upon completion of each phase of wetland revegetation landscaping, the vegetation shall be determined to be as shown in the wetland landscape plans previously approved by the Corps of Engineers in consultation with the U.S. Fish and Wildlife Service. Open water areas shall be undisturbed by construction or development activities related to actions allowed by the FSDRIP Specific Plan.

b) At intervals of 6 and 12 months from the completion of each phase of wetland landscaping, plant survival shall be determined, and mortality greater than ten percent of transplanted container stock shall be offset by in-kind (size and species) replacement. Ground cover vegetation shall be at least 75 percent in the area between tree canopies and shrub plantings.

c) At 24 months from completion of each phase of wetland landscaping, surviving tree species (i.e. willow species, cottonwood, and sycamore) shall be ranked by the applicant's biological consultant for their relative growth, as determined by height, and foliage volume, and/or other acceptable measures. Individual specimens which rank in the lowest twenty percent shall then receive appropriate remedial attention.

d) At 36 months, the combined canopy cover of perennial shrubs and trees shall be greater than 40 percent, with a mean tree height greater than 4 meters, within the 26.8 acres designed to ultimately be wooded wetland. General irrigation shall be curtailed, except as a specific remedial measure.

e) At 48 months, the combined canopy cover of perennial shrubs and trees shall be greater than 60 percent, with a mean tree height greater than 6 meters, within the 26.8 acres designed to be wooded wetland.

f) At the end of the 5-year management/maintenance period for each phase, the 26.8 acres shall have a combined canopy cover of perennial shrubs and trees of at least 100 percent. The composition of the vegetation will reflect that defined in Exhibit B (section IV .2.B.2). For example, extrapolating from this composition, cottonwood trees (with a mean height greater than 6 meters) would contribute no less than 21 percent of the total, willow species would contribute 60 percent canopy, alders, sycamores and oaks would contribute 4 percent canopy, and herbs and shrubs should comprise the remaining 15 percent cover.

g) Remedial measures aimed at achieving plan goals, and satisfying required milestones, recommended by the Fish and Wildlife Service and the Corps of Engineers in response to special conditions 4 and 5, shall be carried out within the ensuing year by the permittee. Remedial measures to satisfy milestones may include, but not be limited to, replacement of failed vegetation, additional planting, fertilization, pest species removal, irrigation modification, control of land-use practices within the floodway wetlands, modification of field studies, and erosion control and repair.

6. Before initiating construction on a phase, the permittee shall post a bond adequate (as determined by the Corps of Engineers) to insure satisfaction of the above monitoring, management, and revegetation milestones spanning the specified revegetation management and monitoring period for that phase.

7. The permittee shall assure the long-term conservation of the

vegetation wetland by deed restriction or environmental easement acceptable to the U.S. Fish and Wildlife Service, upon completion of wetland landscaping of each phase. This conservation easement or deed restriction will not include the buffer, with the exception of the 1.3 acres set aside as wetland woodland. The easement over the woodland in the buffer area would prohibit recreation amenities and maintenance such as pruning or other manicuring activities but would allow pedestrian/bikeway paths.

8. No riprap, rock, or other impermeable materials shall be discharged within the project floodway, except as needed for protection of the three road-crossings (Mission Center Road, Camino del Este, and Stadium Way), or as shown on the wetland landscape plan approved the Corps in consultation with the U.S. Fish and Wildlife Service.

9. The permittee may prepare a monitoring plan which includes specific field studies, vegetation analysis, revegetation milestones, and remedial measures, which would supplant these conditions, with the approval of the Corps in consultation with the U.S. Fish and Wildlife Service.

WORKS IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:

That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee will not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING:

a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for _____ NONE years from the date of issuance of this permit (ten years unless otherwise indicated);

b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGE OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR 230;

b. That the discharge will consist of suitable material free from toxic pollutants in toxic amounts.

c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

DISPOSAL OF DREDGED MATERIAL INTO OCEAN WATERS:

a. That the disposal will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-202.

b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or disposal of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

See attached sheets for signatures.

PERMITTEE

DATE

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

July 12, 1985

Dennis P. Butler, Colonel

DATE

DISTRICT ENGINEER,
U.S. ARMY, CORPS OF ENGINEERS

Transferee hereby agrees to comply with the terms and conditions of this permit.

TRANSFEREE

DATE

EXHIBIT A

**CORPS OF ENGINEERS APPLICATION 84-132
APPLICANTS**

MBM Associates

**C. Dennis Marteeny
General Partner
533 Broadway, Suite 104
El Cajon, CA 92117**

**May Centers, Inc.
General Partner
William Grafstrom
611 Olive Street
St. Louis, MO 63101**

Mission Valley Partnership

**General Partner
May Centers Inc.
William Grafstrom
611 Olive Street
St. Louis, MO 63101**

Mission Valley One

**Donald P. Sammis
General Partner
2650 Camino del Rio North, Suite 100
San Diego, CA 92108**

Sammis Properties

**Donald P. Sammis
President
2650 Camino del Rio North, Suite 100
San Diego, CA 92108**

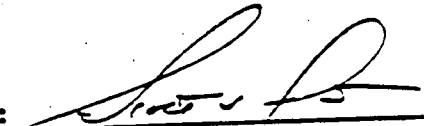
CalMat Co.

**Scott J Wilcott
Senior Vice President, Legal
Counsel and Secretary
Box 2950, Terminal Annex
Los Angeles, CA 90051**

THE UNDERSIGNED PERMITTEE HEREBY ACCEPTS AND AGREES TO
COMPLY WITH THE TERMS AND CONDITIONS OF THE PERMIT ATTACHED
HERETO AND BY THIS REFERENCE MADE A PART HEREO.

DATED: June 21 1995

CALMAT CO.
SCOTT J WILCOTT
SENIOR VICE PRESIDENT, LEGAL
COUNSEL AND SECRETARY

BY: 
SCOTT J WILCOTT

THE UNDERSIGNED PERMITTEE HEREBY ACCEPTS AND AGREES TO
COMPLY WITH THE TERMS AND CONDITIONS OF THE PERMIT ATTACHED
HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

DATED: JUNE 15th 1985

SAMMIS PROPERTIES
DONALD F. SAMMIS
PRESIDENT

BY: 


DONALD F. SAMMIS

THE UNDERSIGNED PERMITTEE HEREBY ACCEPTS AND AGREES TO
COMPLY WITH THE TERMS AND CONDITIONS OF THE PERMIT ATTACHED
HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

DATED: JUNE 15th 1985

MISSION VALLEY ONE
DONALD F. SAMMIS
GENERAL PARTNER

BY:


DONALD F. SAMMIS

THE UNDERSIGNED PERMITTEE HEREBY ACCEPTS AND AGREES TO
COMPLY WITH THE TERMS AND CONDITIONS OF THE PERMIT ATTACHED
HEREIN AND BY THIS REFERENCE MADE A PART HEREOF.

DATED: 6-27-85

MEM ASSOCIATES
A CALIFORNIA LIMITED PARTNERSHIP

BY: MAY CENTERS INC.
A MISSOURI CORPORATION

WJ BY: William J. Johnson ac

BY: _____

THE UNDERSIGNED PERMITTEE HEREBY ACCEPTS AND AGREES TO
COMPLY WITH THE TERMS AND CONDITIONS OF THE PERMIT ATTACHED
HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

DATED: 6-27-85

MISSION VALLEY PARTNERSHIP
MAY CENTERS INC.
GENERAL PARTNER

BY: William Gustave