

Substantial Conformance Review for Individual Maintenance Plan (IMP) and Individual Technical
Assessments for Tijuana River Pilot Channel and Smuggler's Gulch, City of San Diego Site Development
Permit No. 1134892, Master Storm Water System Maintenance Program

Attachment 2

Regulatory Permits

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RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON NOV 15, 2013
DOCUMENT NUMBER 2013-0677613
Ernest J. Dronenburg, Jr., COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 2:30 PM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Internal Order No. 21002863

SITE DEVELOPMENT PERMIT NO 1134892 AMENDING AND SUPERSEDING
SITE DEVELOPMENT PERMIT NO. 714233/
COASTAL DEVELOPMENT PERMIT NO. 714232
MASTER STORM WATER SYSTEM MAINTENANCE PROGRAM
PROJECT NO. 320787 (MMRP)
CITY COUNCIL

This Site Development Permit No. 1134892, which amends and supersedes Site Development Permit No. 714233/Coastal Development Permit No. 714232, is granted by the City Council of the City of San Diego to the City of San Diego Transportation & Storm Water Department, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0501. The approximate 32 miles of natural and man-made (concrete/earthen) channels, detention basins and storm drain outfalls are located with the City's 342.4-square mile metropolitan area, and within the City's public right-of-way or storm water easements dedicated to the City of San Diego and maintained by the City of San Diego's Transportation & Storm Water Department. These storm water facilities are also located within portions of the Coastal Overlay, Open Space, Agricultural, Residential, Commercial and Industrial Zones and within the Clairemont Mesa, College Area, Encanto Neighborhoods, Linda Vista, Mid-City Communities, Mira Mesa, Mission Valley, Navajo, Otay Mesa-Nestor, Pacific Beach, Peninsula, Skyline-Paradise Hills, Southeastern San Diego, Tijuana River Valley, and Torrey Pines Community Planning areas within the City of San Diego.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owner/Permittee for cleaning and long term maintenance of storm water facilities subject to the Master Storm Water System Maintenance Program (dated June 2009 and last revised July 2013) (Exhibit "A") and Program Environmental Impact Report SCH No. 2004101032; Project No. 42891, on file in the Development Services Department.

THIS PERMIT AMENDS DOCUMENT NO.2013-0576344 RECORDED
SEPTEMBER 19, 2013 AND PROVIDES FINAL EXHIBITS "A" AND "B".

This Permit provides the City of San Diego Transportation & Storm Water Department the authority to:

- a. Fulfill the mandate of Section 26.1 of the San Diego City Charter to provide essential public works and public health services by maintaining the storm water conveyance system for the purpose of reducing flood risk;
- b. Implement a comprehensive program that will govern the future maintenance of the City's storm water system in an efficient, economic, environmentally and aesthetically acceptable manner for the protection of property and life, in accordance with Council Policy 800-04;
- c. Ensure implementation of Best Management Practices (BMPs) and maintenance protocols during maintenance activities to avoid and/or minimize effects on environmental resources; and
- d. Implement a comprehensive review process for annual maintenance activities; and
- e. Allow Process Two Substantial Conformance Reviews City-wide; and
- f. Construct public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for the subject storm water facilities in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by November 4, 2014.
2. This Permit shall expire in five years from the Effective Date of the Settlement Agreement and Release regarding *San Diegans for Open Government, et al. v. City of San Diego*, San Diego Superior Court case no. 37-2011-00101571.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.
8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can

still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

10. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.

11. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in Program Environmental Impact Report (PEIR) No. 42891/SCH No. 2004101032, shall be noted on the maintenance plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

12. The Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in PEIR No. 42891/SCH No. 2004101032, satisfactory to the Development Services Department and the City Engineer. Prior to the issuance of the "Notice to Proceed" with maintenance, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Biological Resources; Historical Resources; Water Quality; Land Use Policies and Paleontological Resources.

13. The Permittee shall comply with Exhibit "A", the Master Storm Water System Maintenance Program satisfactory to the Development Services Department.

14. Prior to the Development Services Department approval of any work, other than emergency actions, the Permittee shall submit an application for a Substantial Conformance Review Process Two to the Development Services Department for proposed site specific work consistent with Exhibit "A", the Master Storm Water System Maintenance Program. Concurrent processing or proof of outside review by the California Coastal Commission is required on all Substantial Conformance Reviews within the Coastal zone.

ADDITIONAL REQUIREMENTS:

15. The Permittee shall comply with the Special Conditions 9.a, 9.c, 9.d, 9.e, 9.f, 10 and 11 as referenced in California Coastal Commission's Coastal Development Permit No. A-6-NOC-11-086 (Exhibit "B") in the entire Master Storm Water System Maintenance Program, except: (a) submission to and approval from the Executive Director of Coastal Commission shall not be required outside the coastal zone; (b) for impacts outside the coastal zone, mitigation under the Master Storm Water System Maintenance Program will be initiated within one year of the maintenance project instead of the nine months required by the Coastal Development Permit; and (c) impacts outside the coastal zone need not be mitigated inside the Coastal Zone.

16. Impacts to biological resources shall be mitigated through new enhancement, creation, or mitigation credit acquisition, except for the Tijuana River Valley (Master Storm Water System Maintenance Program Maps 138a, 138b, 138, 139), and Sorrento Valley (Master Storm Water System Maintenance Program Maps 7, 8, 9, 10, 11, 12). For all other channels, new mitigation shall be performed the first time channel maintenance is implemented under the Master Storm Water System Maintenance Program but need not be repeated for subsequent maintenance of the same project footprint so long as performance criteria continue to be met pursuant to condition 17 below, and no new impacts will result from subsequent maintenance activities.

17. The Permittee shall confirm, as part of a Substantial Conformance Review, that performance criteria continue to be met for any past mitigation upon which the Permittee has relied.

18. The Permittee shall conduct photo documentation of each segment before and after maintenance, to be modeled after the State Water Resources Control Board Standard Operating Procedures 4.2.1.4: Stream Photo Documentation Procedure. Photo documentation must include GPS coordinates for each photo points referenced. Pre-maintenance photos must be taken no more than 30 days before maintenance and post-maintenance photos must be taken no more than 30 days after maintenance is complete.

19. The Permittee shall select and implement one of the following four options for each area to be maintained:

- (a) For every segment for which at least 100 linear feet of vegetation is removed (except for removal of invasive species, e.g., *Arundo*), and for every 100 additional linear feet thereafter, the City ensures landscape retrofits are implemented at one residential property, within the Watershed Management Area (WMA) of the segment with one of the following options: 1) Install a rain barrel or other rainwater harvesting device at least 50 gallons in size; 2) Redirect at least 100 square feet of rooftop surface area currently directed to the street to onsite landscaping (i.e., redirect rain gutter downspouts); 3) Replace at least 400 square feet of natural grass turf, or 100% of front yard turf if it is less than 400 square feet in size, with plants that have low watering requirements; 4) Replace non-weather based irrigation controller; or 5) Replace existing in-ground and operable overhead spray irrigation servicing at least 200 square feet of landscape area to drip, micro-spray, in-line tubing, or other low-volume micro-irrigation components; or

- (b) Except for the three areas approved in State Coastal Development Permit No. A-6-NOC-11-086 for which the City may satisfy this condition by implementing the additional street sweeping approved by the Coastal Commission, the Permittee shall increase street sweeping frequency by prioritizing high traffic commercial routes adjacent to maintained channel with vacuum-assisted sweeper for every 400 linear feet of vegetation that is removed (except for removal of invasive species, e.g., Arundo) within a drainage area. Sweeping shall be conducted in median areas that are not subject to regular sweeping routes, and shall occur at a frequency of at least once per quarter for one calendar year after maintenance; or
- (c) For every 200 linear feet of vegetation (except for removal of invasive species, e.g., Arundo) removed per fiscal year per Watershed Management Area (WMA), the Permittee shall construct and maintain in perpetuity one of the following within the WMA: 1) install 100 square feet biofiltration system; 2) replace 100 square feet of impermeable pavement with permeable surfaces; 3) Install 100 square feet vegetated swale; or 4) restore 100 square feet of wetlands (such as stabilizing eroded drainage and planting with native riparian vegetation); or
- (d) Permittee shall increase frequency of catch basin inspection and as-needed cleaning for one year after maintenance. For every segment that is cleared, the Permittee shall conduct an inspection and cleaning (if necessary) of every catch basin with 100 feet of the maintained segment, and conduct additional inspections and cleaning (if necessary) every three (3) months.

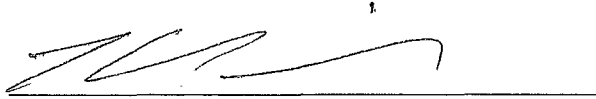
INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code §66020.

APPROVED by the City Council of the City of San Diego on AUG 28 2013.

Site Development Permit No. 714233:
Date of Approval: August 28, 2013

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

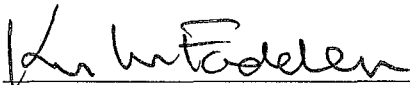


Helene Deisher
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

City of San Diego, Transportation & Storm Water Department
Owner/Permittee

By 

NAME: Kris McFadden

TITLE: Deputy Director-Transportation & Storm Water

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

0-20291

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San Diego

On 09-18-13 before me, Linda D. Irvin, Notary

personally appeared Helene Deisher

Here Insert Name and Title of the Officer

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Linda D. Irvin
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

☐ Corporate Officer — Title(s): _____ ☐ Corporate Officer — Title(s): _____

☐ Individual ☐ Individual

☐ Partner — ☐ Limited ☐ General ☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact ☐ Attorney in Fact

☐ Trustee ☐ Trustee

☐ Guardian or Conservator ☐ Guardian or Conservator

☐ Other: _____ ☐ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

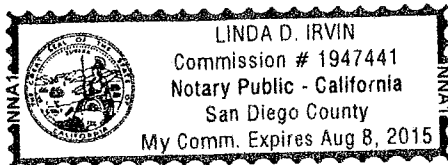
CIVIL CODE § 1189

State of California

County of San Diego

On 09-18-13 before me, Linda D. Irvin, Notary

personally appeared Kris McFadden



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Linda D. Irvin

Place Notary Seal Above

OPTIONAL

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Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

☐ Corporate Officer — Title(s): _____ ☐ Corporate Officer — Title(s): _____

☐ Individual ☐ Individual

☐ Partner — ☐ Limited ☐ General ☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact ☐ Attorney in Fact

☐ Trustee ☐ Trustee

☐ Guardian or Conservator ☐ Guardian or Conservator

☐ Other: _____ ☐ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

CALIFORNIA COASTAL COMMISSION

San Diego Coast Area Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
(619) 767-2370
www.coastal.ca.gov



Page: 1

Date: November 29, 2012

Permit Application No.: **A-6-NOC-11-086****COASTAL DEVELOPMENT PERMIT**

On **November 15, 2012**, the California Coastal Commission granted to:

City of San Diego

this permit subject to the attached Standard and Special Conditions, for development consisting of

A 5 year master coastal development permit for clearing of sediment and vegetation and maintenance of storm water facilities to provide adequate flood control

more specifically described in the application filed in the Commission offices.

The development is within the coastal zone at

Various drainages within Coastal Zone to include portions of Sorrento, Soledad and Los Penasquitos Creeks; Flinkote, Mission Bay High School and Pacific Beach Drive/Olney Street Channels; and, the Tijuana River, San Diego, San Diego County.

Issued on behalf of the California Coastal Commission by

CHARLES LESTER
Executive Director

By: **Lee McEachern**
District Regulatory Supervisor

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part that: "A Public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

12/20/12
Date

Lee McEachern
Signature of Permittee

COASTAL DEVELOPMENT PERMIT

Date: November 29, 2012

Permit Application No.: A-6-NOC-11-086

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STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. **Duration of Master Permit.** The Master Permit is valid for a period of five years from the date of Commission action. Future channel maintenance beyond this date will require an amendment to this coastal development permit or a new coastal development permit. Any modification of the project within the five year period, including, but not limited to, changes in channel size or location, timing of work, or staging areas will require an amendment to this permit unless the Executive Director determines that no amendment is legally required.
2. **Substantial Conformance Review.** Channel maintenance activities will be determined by the City on an annual basis. Annual maintenance activities will be approved through the City's Substantial Conformance Review (SCR) process as detailed in the City's Master Storm Water System Maintenance Program dated October 2011 (**ref. Exhibit #4**), except as revised below:

Section 6.2 of the City's Substantial Conformance Review Process titled "State and Federal Agencies" shall be modified to include the following:

Concurrent with the City's SCR process and prior to commencement of work, the City shall submit an annual work plan and supporting documents for priority channels requiring maintenance activities for the upcoming year to the Executive Director of the Coastal Commission for review and written approval. The Executive Director shall review the submitted information to determine whether the proposed maintenance activities are consistent with the Master Maintenance Program and the specific terms of this permit. If any proposed activities are determined by the Executive Director to not be consistent with

COASTAL DEVELOPMENT PERMIT

Date: November 29, 2012

Permit Application No.: A-6-NOC-11-086

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the Master Maintenance Program and terms of this permit, those specific activities shall not be permitted for that year unless reviewed and approved under a separate coastal development permit. The Executive Director shall notify the City of any proposed activities that do not comply with the terms of this permit within 60 days of submittal by the City of the annual work plan. No work may occur during the Executive Director's review period until the 60 day time period has passed.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised Substantial Conformance Review Program that incorporates the above revisions.

3. **Other Permits.** PRIOR TO THE COMMENCEMENT OF DREDGING, the applicant shall submit copies of all other required state or federal discretionary permits (i.e., U.S. Fish and Wildlife Service, Army Corps of Engineers, California Department of Fish and Game, Regional Water Quality Control Board, etc.) for the proposed project to the Executive Director within 30 days of approval of such permits. Any mitigation measures or other changes for the project required through said permits shall be reported to the Executive Director and shall become part of the project. No changes to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
4. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site(s) may be subject to hazards from flooding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

Prior to issuance of the Coastal Development Permit, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

5. **Timing of Construction.** To avoid potential impacts to coastal California gnatcatcher, least Bell's vireo, and other sensitive bird species, during their nesting season, maintenance activities within vegetated channels will not be permitted between the dates of February 15th and September 15th of any year; unless written permission from the California Department of Fish and Game and US Fish and Wildlife Service is provided to the Executive Director for review and written approval.
6. **Construction BMPs.** PRIOR TO THE COMMENCEMENT OF FLOOD CONTROL MAINTENANCE ACTIVITIES, a Construction Runoff and Pollution Control Plan (CRPCP) shall be submitted to the Executive Director for review and written approval, to address the control of construction-phase erosion, sedimentation, and polluted runoff. The CRPCP shall demonstrate and comply with the following construction-related requirements:

COASTAL DEVELOPMENT PERMIT

Date: November 29, 2012

Permit Application No.: A-6-NOC-11-086

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- a. Prior to the commencement of construction, the limits of the work areas and staging areas shall be delineated in cooperation with a qualified biologist, limiting the potential area affected by construction and ensuring that all agricultural lands, wetlands, and other environmentally sensitive habitats adjacent to construction areas are avoided during construction. All vehicles and equipment shall be restricted to these pre-established work areas and haul routes and to established or designated staging areas. Clearing and grading shall be limited to the minimal footprint necessary and for the shortest time necessary to avoid impacts to adjacent ESHA, riparian habitat and coastal waters;
- b. Best Management Practices (BMPs) shall be designed to control erosion from the disturbed area and prevent sediment and potential pollutants from entering coastal waters and/or native habitat plant communities during channel maintenance activities. The BMPs shall be implemented prior to or concurrent with construction and maintained throughout the project;
- c. In-stream erosion and turbidity control measures shall be implemented during channel dredging activities;
- d. Any newly exposed slopes shall be stabilized to minimize erosion and sediment from runoff waters during maintenance activities using mulch, contour grading and/or other established methods where feasible and appropriate;
- e. Temporary stockpiles of excavated sediment/vegetation should be protected with geofabric or other appropriate cover to prevent dispersal of the stockpile materials. Permanent stockpiling of excavated material on site shall not be allowed. Vegetation and sediment shall be removed from the site(s) on a regular basis during construction to prevent the accumulation of sediment and debris on the worksite. Excavated sediment and vegetation shall be stockpiled at designated temporary areas on the project site(s) and be removed to a permitted disposal site within three months, unless otherwise extended, in writing, by the Executive Director;
- f. During construction, all trash shall be properly contained in a receptacle with a cover over the top to prevent dispersal of trash, removed from the work site, and disposed of on a regular basis (at a minimum of once per week). Any debris discharged into coastal waters during implementation of the approved development shall be recovered immediately and disposed of consistent with the requirements of this coastal development permit and other relevant state and/or federal regulatory controls;
- g. Equipment staging and materials stockpiling areas shall be limited to the locations and sizes specified in the approved final CRPCP. Construction vehicles shall be restricted to designated haul routes. Construction equipment and materials shall be stored only in designated staging and stockpiling areas as depicted on the final plans approved for the project;
- h. Any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas. Mechanized heavy equipment and other vehicles used during the construction process shall not be refueled or washed within 100 feet of coastal waters; and
- i. Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered

COASTAL DEVELOPMENT PERMIT

Date: November 29, 2012

Permit Application No.: A-6-NOC-11-086

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first-response, professional hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be immediately, upon discovery, contained and cleaned up consistent with relevant state and/or federal regulations.

7. **Water Quality Mitigation Measures.** The applicant shall comply with and implement the water quality improvement measures and timeframes identified in the report entitled "Supplemental Information –Water Quality, Appeal No. A-6-NOC-11-086, City of San Diego, Coastal Development Permit, Master Storm Water System Maintenance Program, dated October 2, 2012 " (ref. **Exhibit #5**)
8. **Other Special Conditions from City of San Diego.** Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act. In addition, except as revised herein, the City shall comply with the requirements of the Final Recirculated Master Storm Water System Maintenance Program PEIR Mitigation Monitoring and Reporting Program for the project.
9. **Final Wetlands Mitigation Plan.** PRIOR TO THE COMMENCEMENT OF FLOOD CONTROL MAINTENANCE ACTIVITIES, the applicant shall submit for the review and written approval of the Executive Director, a final mitigation plan, developed in consultation with Department of Fish and Game and the U.S. Fish and Wildlife Service and designed by a qualified wetland biologist. Said plan shall be in substantial conformance with the mitigation plan submitted with this application and shall be revised to include the following:
 - a. Preparation of a detailed site plan of the impact area(s), clearly delineating all areas and types of impact (both permanent and temporary), and identification of the exact acreage of each impact so identified. In addition, a detailed site plan of the mitigation site shall also be included. The final design and construction methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards. Mitigation for impacts to wetlands shall result in a no-net-loss of function and values and be in-kind habitat to the fullest extent possible and at the appropriate ratios listed below in section d of this special condition. All wetland mitigation shall occur within nine months of impact and either be located on-site or within the same watershed, but in all cases mitigation must occur within the Coastal Zone. Mitigation shall not occur on sites subject to enforcement action where unpermitted development in wetlands has taken place as those sites are subject to restoration and not mitigation;
 - b. For those sites where impacts occur as a result of channel clearing, but mitigation has previously been provided, no additional mitigation is required, except in circumstances where the vegetation to be impacted is currently being utilized by sensitive bird and animal species and said species were not identified as using the areas when previously impacted and mitigation was completed. In such a circumstance, additional mitigation shall be required and shall be developed in consultation with the California Department of Fish and Game and/or U.S. Fish and Wildlife Service.
 - c. Preparation of a baseline ecological assessment of the impact area(s) and any proposed mitigation sites prior to initiation of any activities. Such assessment shall be completed by a qualified biologist and at a minimum shall include quantified estimates of the biological resources and habitat types at each site, description of the functions of these resources and habitats and the associated values. Results of the ecological assessment of the wetland impact area shall form the basis of the goals, objectives, and performance standards for the mitigation project;

COASTAL DEVELOPMENT PERMIT

Date: November 29, 2012

Permit Application No.: A-6-NOC-11-086

Page 6 of 8

- d. The mitigation plan shall include clearly defined goals, objectives, and performance standards for the mitigation project and include final design and construction methods that will be used to ensure the mitigation sites achieve the defined goals, objectives, and performance standards. Each performance standard shall state in quantifiable terms the level and/or extent of the attribute necessary to reach the goals and objectives. Sustainability of the attributes should be a part of every performance standard. Success criteria shall require, and final performance monitoring shall ensure that the mitigation program provides, coverage commensurate with standards identified in the monitoring program (**see Special Condition #10**);
- e. All wetland impacts shall be mitigated at a ratio of 1:1 for temporary impacts, 2:1 for Natural flood channels, 3:1 for impacts to Riparian habitat, and 4:1 for impacts to Freshwater Marsh and Disturbed wetland (removal of giant reed (arundo) and other exotic, invasive and non-native vegetation is not considered an impact to wetlands requiring mitigation);
- f. A minimum 100 ft. buffer, developed in consultation with the Department of Fish and Game and the U.S. Fish and Wildlife Service, shall be provided from all newly created wetland/riparian habitat on the off-site mitigation site(s) unless 100 ft. is not available;

The permittee shall undertake mitigation in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. Final Monitoring Program. PRIOR TO THE COMMENCEMENT OF FLOOD CONTROL MAINTENANCE ACTIVITIES, the applicant shall submit for review and written approval of the Executive Director, in consultation with the Department of Fish and Game, a final detailed monitoring program designed by a qualified wetland biologist/restoration specialist. Said monitoring program shall be in substantial conformance with the Conceptual Wetland Restoration Plan by Helix Environmental Planning, Inc., dated May 2011, and the approved Mitigation Plan required in Special Condition #9 above, but shall be revised to include the following:

- a. Submittal, upon completion of the mitigation site, of "as built" plans. Description of an as built assessment to be initiated within 60 days after completion of the mitigation project. This report shall describe the results of the as-built assessment including a description of how the as-built project differs, if at all, from the originally planned project.
- b. A description of all attributes of the mitigation habitat to be monitored along with the methods and frequency of monitoring. This description shall include a rationale for the types of data collected and how those data will be used. The description shall also clearly state how the monitoring data will contribute to the evaluation of project performance.
- c. A description of provisions for augmentation, maintenance, and remediation of the mitigation project to ensure each mitigation project attains its respective performance standards, throughout the monitoring period or in perpetuity as appropriate.
- d. Annual reports on the monitoring program shall be submitted to the Executive Director for approval for a period of no less than five years for freshwater and brackish water herbaceous communities and riparian scrub communities and 10 years (at a reduced

COASTAL DEVELOPMENT PERMIT

Date: November 29, 2012

Permit Application No.: A-6-NOC-11-086

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intensity) for tree-based communities. Each report shall include copies of all previous reports as appendices. Each annual report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the mitigation project in relation to the performance standards described in Special Condition #9. In addition, biodiversity and cover requirements should be specific to the species and vegetation layers (e.g., in the herbaceous layer, there shall be at least "X" species of plants present from list A, each with no less than "Y"% cover).

- e. Inclusion of a protocol for creation of a comprehensive monitoring report prepared in conjunction with a qualified wetland biologist/restoration specialist at the end of the five or ten year period shall be submitted to the Executive Director for review and approval. This comprehensive report shall consider all of the monitoring data collected over the monitoring period in evaluating the mitigation project performance. Final monitoring for success shall take place no sooner than 3 years after the cessation of all remediation and maintenance activities (including irrigation) other than weeding and trash removal in order to provide evidence that the restoration is self-sufficient. If the report indicates that the mitigation has been, in part, or in whole, unsuccessful, the applicant shall be required to submit a revised or supplemental mitigation program to compensate for those portions of the original program which were not successful. The revised mitigation program, if necessary, shall be processed as an amendment to this coastal development permit.

The permittee shall undertake monitoring in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. **Mitigation for Upland Impacts.** PRIOR TO COMMENCEMENT OF FLOOD CONTROL MAINTENANCE ACTIVITIES, the applicant shall submit to the Executive Director for review and written approval, a final detailed coastal sage scrub mitigation plan. Said plan shall be developed in consultation with the U.S. Fish and Wildlife Service and the California Department of Fish and Game, and shall include, at a minimum, the following:

- a. Preparation of a detailed site plan delineating all areas and types of impact to upland habitat species (both permanent and temporary) and the exact acreage of each impact;
- b. All direct impacts to Coastal sage scrub habitat shall be mitigated at a ratio of not less than 1:1 for impacts located outside the City's Multiple Species Conservation Program Multi-Habitat Planning Area (MHPA) and 2:1 for impacts located inside the City's Multiple Species Conservation Program Multi-Habitat Planning Area (MHPA); and
- c. Except as revised herein, mitigation for upland impacts shall be consistent with those identified in the Final Recirculated Master Storm Water System Maintenance Program PEIR Mitigation Monitoring and Reporting Program approved for the project and consist of either payment in the City's Habitat Acquisition Fund, acquisition and preservation, or purchase of mitigation credits. Mitigation for upland habitat impacts must occur within the Coastal Zone.

COASTAL DEVELOPMENT PERMIT

Date: November 29, 2012

Permit Application No.: A-6-NOC-11-086

Page 8 of 8

The permittee shall undertake development in accordance with the approved mitigation plan. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

February 11, 2013

Certified Mail – Return Receipt Requested

Article Number: 7011 0470 0002 8961 7074

Mr. Kris McFadden
City of San Diego
9370 Chesapeake Drive, Suite 100
San Diego, CA 92123

In reply refer to / attn:
745397:jebsen

**Subject: Action on Request for Amendment to Clean Water Act Section
401 Water Quality Certification for Tijuana River Valley Channel
Maintenance Project, 09C-077**

Mr. McFadden:

You will find enclosed the Amendment to Clean Water Act Section 401 Water Quality Certification No. 09C-077 for Tijuana River Valley Channel Maintenance Project (Project). The Amendment shows changes in redline/strikeout format to indicate added and removed language. Water Quality Certification No. 09C-077 with Attachment 1 has been enclosed for your reference.

On November 1, 2012, the City of San Diego requested an amendment to Water Quality Certification No. 09C-077 in order to update the CEQA Findings for the Project. On December 20, 2012, additional information was provided. The California Regional Water Quality Control Board, San Diego Region has amended the CEQA Findings in accordance with the request.

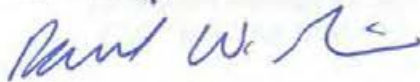
Any petition for reconsideration of this amended Certification must be filed with the State Water Resources Control Board (State Water Board) within 30 days of certification action (23 CCR § 3867). If a petition is not filed with the State Water Board within 30 days, the City of San Diego will have accepted the changes to Certification No. 09C-077 and must comply with all the certification conditions. Failure to comply with all conditions of this certification may result in enforcement actions against the City of San Diego.



February 11, 2013

In the subject line of any response, please include the reference number 745397:jebsen.
For questions or comments, please contact Ms. Jody Ebsen by phone at 858-636-3146, or
by email at jebsen@waterboards.ca.gov.

Respectfully,



DAVID W. GIBSON
Executive Officer
Regional Water Quality Control Board

DWG:dtb:esb:jme

Enclosures:

2013 Amendment to Clean Water Act Section 401 Water Quality Certification
No. 09C-077.

Clean Water Action Section 401 Water Quality Certification No. 09C-077 for the
Tijuana River Valley Channel Maintenance Project.

Cc (via email)

Anne Jarque
City of San Diego
AJarque@sandiego.gov

Robert R. Smith
U.S. Army Corps of Engineers, Regulatory Branch
Robert.R.Smith@usace.army.mil

State Water Resources Control Board, Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

U.S. Environmental Protection Agency, Region 9
Wetlands Regulatory Office
R9-WTR8-Mailbox@epa.gov

David Zoutendyk
U.S. Department of the Interior
Fish and Wildlife Service
david_zoutendyk@fws.gov

Tech Staff Info & Use	
Place ID	745397
File No.	09C-077
WDID	9000001976
Reg. Measure ID	371693
Party ID	5020071

California Regional Water Quality Control Board, San Diego Region

2013 Amendment to Clean Water Act Section 401
Water Quality Certification No. 09C-077

PROJECT: Tijuana River Valley Channel Maintenance,
Water Quality Certification 09C-077,
WDID Number 9000001976

APPLICANT: Kris McFadden
City of San Diego
9370 Chesapeake Drive, Suite 100
San Diego, CA 92123

CIWQS
Reg. Meas. ID: 371693
Place ID: 745397
Party ID: 5020071

The following changes have been made to Clean Water Act Section 401 Water Quality Certification No. 09C-077, Tijuana River Valley Channel Maintenance Project. Changes below are show in redline/strikeout format to indicate added and removed language.

VII. CEQA FINDINGS:

- A. The City of San Diego is the lead agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)), and filed a Notice of Determination on October 28~~5~~, 2011, for an Environmental Impact Report Mitigated Negative Declaration dated October 4, 2011~~July 18, 2011~~ (SCH No. 20041010322011071061) under CEQA Guidelines Title 14, California Code of Regulations. The City of San Diego has determined the project will ~~not~~ have a significant effects on the environment, and mitigation measures, findings and a statement of overriding considerations were made as conditions of the project.
- B. The San Diego Water Board has reviewed the lead agency's Environmental Impact Report Mitigated Negative Declaration and also finds that the project as proposed will ~~not~~ have a significant effect on the environment with and has conditioned mitigation measures accordingly and therefore determines that issuance of this Certification is consistent with the Notice of Determination Mitigated Negative Declaration.

February 11, 2013

VIII. PUBLIC NOTIFICATION OF PROJECT APPLICATION:

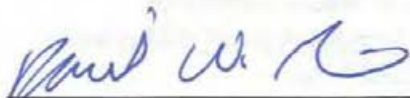
On ~~September 7, 2011~~ November 6, 2012, receipt of the amendment request to the project application was posted on the San Diego Water Board web site to serve as appropriate notification to the public (23 CCR .§ 3858). No public comments were received on this project.

Attachment 1 Project Information

California
Environmental Quality
Act (CEQA)
Compliance: Notice of Determination on October 28~~5~~, 2011, for an
Environmental Impact Report ~~Mitigated Negative Declaration~~
dated October 4, 2011 ~~July 18, 2011~~, SCH No.
2004101032 ~~20011071061~~, City of San Diego.

Public Notice: On ~~September 7, 2011~~ November 6, 2012 receipt of the
amendment request to the project application was posted on
the San Diego Water Board web site to serve as appropriate
notification to the public. No public comments were received
on this project.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of the 2013 Amendment to Certification No. 09C-077 issued on February 11, 2013.



David W. Gibson
Executive Officer
Regional Water Quality Control Board

2-11-2013

Date



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

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Edmund G. Brown Jr.
Governor

April 17, 2012

In reply refer to:
745397:jebsen

Mr. Kris McFadden
City of San Diego
9370 Chesapeake Drive, Suite 100
San Diego, CA 92123

Dear Mr. McFadden:

**SUBJECT: Action on Request for Amendment to Clean Water Act Section
401 Water Quality Certification for Tijuana River Valley Channel
Maintenance Project, 09C-077**

Enclosed find amended Clean Water Act Section 401 Water Quality Certification (Certification) with acknowledgment of enrollment under State Water Resources Control Board Order No. 2003-017-DWQ for Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have received State Water Quality Certification for the Tijuana River Valley Channel Maintenance Project 09C-077. A description of the project can be found in the project information sheet and on location and site maps compiled by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), which are included as Attachments 1 through 5.

The 2012 amendment request is to perform annual channel maintenance along the Tijuana River and Smuggler's Gulch for 5 consecutive years. Included in the amendment request were CEQA documents with a Mitigated Negative Declaration. The Certification amendment reflects the new information provided in the supplemental documents and changes have been made to multiple sections in the Certification. In order to ensure clarity and maintain consistency, the amended Certification has been re-formatted to current San Diego Water Board standards. This amendment supercedes previous amendments. During the January 18, 2012 meeting, the City of San Diego requested that the mitigation proposal also cover work done in the 2010-2011 rainy season, and that has been included in this amendment.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification.

California Environmental Protection Agency

Kris McFadden
City of San Diego
401 Water Quality Certification 09C-077

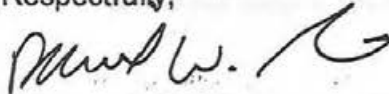
- 2 -

April 17, 2012

Failure to comply with all conditions of this Certification may subject you to enforcement actions by the San Diego Water Board including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability, referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

In the subject line of any response, please include the requested **"In reply refer to:"** information located in the heading of this letter. If you have any questions regarding this notification, please contact Ms. Jody Ebsen directly at 858-636-3146 or by email via jebsen@waterboards.ca.gov.

Respectfully,



DAVID W. GIBSON
Executive Officer
San Diego Regional Water Quality Control Board

Enclosure: Clean Water Act Section 401 Water Quality Certification No. 09C-077 Tijuana River Valley Channel Maintenance Project, with 5 attachments

cc: Refer to Attachment 2 of Certification for Distribution List.

CIWQS Place ID	745397
WDID	9-000001976
Reg. Measure No.	371693
Party ID	5020071



California Regional Water Quality Control Board

San Diego Region



Matthew Rodriguez
Secretary for
Environmental Protection

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Governor

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Action on Request for
Clean Water Act Section 401 Water Quality Certification
and Waste Discharge Requirements
for Discharge of Dredged and/or Fill Materials

PROJECT: Tijuana River Valley Channel Maintenance,
Water Quality Certification 09C-077,
WDID Number 9000001976

APPLICANT: Kris McFadden
City of San Diego
9370 Chesapeake Drive, Suite 100
San Diego, CA 92123

CIWQS
Reg. Meas. ID: 371693
Place ID: 745397
Party ID: 5020071

ACTION:

<input type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input checked="" type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004 DWQ

PROJECT DESCRIPTION

The City of San Diego has proposed annual maintenance dredging along the Tijuana River, located just north of the International Border in the Tijuana River Valley. The proposed project is annual excavation of approximately 10,000-30,000 cubic yards of sediment and trash debris to restore storm water conveyance capacities of the channels, and reduce the chance of flooding to the surrounding properties. The targeted dredging areas are 5,400 linear feet of the Tijuana River Pilot Channel (Pilot Channel), 100 feet east to 5,300 feet west of Hollister Bridge, and 3,040 linear feet of Smuggler's Gulch. The dredging in the Pilot Channel will occur along a 23 feet wide corridor centered on the channel, approximately 5 feet deep with a 15 feet wide channel bottom. Grading within the 23 feet wide corridor may be necessary to reconstruct and compact channel banks. Dredging of Smuggler's Gulch will occur along a footprint approximately 20 feet wide, and include cleaning of existing culverts under Monument Road and Disney Crossing. Maintenance will also be done on an existing gabion rock

California Environmental Protection Agency

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mattress at the confluence of Smuggler's Gulch and the Pilot Channel, necessary access routes, and two staging areas. Total permanent impacts are 4.61 acres of waters of the U.S. and/or State.

In October 2009 the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) received an application for emergency channel maintenance and Water Quality Certification 09C-077 (Certification) was issued. This allowed a one-time maintenance dredge to occur along the Pilot Channel and Smuggler's Gulch. The impacts to 4.84 acres of vegetated and unvegetated waters of the U.S. and/or State were mitigated by the eradication of exotic invasive species within the project footprint. A February 2010 amendment request was granted that extended the end of the maintenance period until April 15, 2010.

In September 2010 the San Diego Water Board granted a second amendment request to the Certification. It allowed for 3 years of annual maintenance dredge to be done along the same stream reaches. The overall impacts were to 3.54 acres of vegetated and unvegetated waters of the U.S. and/or State. The impacts to 3.54 acres of vegetated and unvegetated waters of the U.S. and/or State were to be mitigated by the eradication of invasive species within the project footprint, and by eradication of exotic invasive species on 3.54 acres adjacent to the project footprint.

In December 2011 the San Diego Water Board granted a third amendment request to the Certification. It allowed for 5 years of annual maintenance dredge to be done. The overall impacts were to 4.31 acres of vegetated and unvegetated waters of the U.S. and/or State. Mitigation for the impacts to 4.31 acres was to be done by the eradication of invasive species within the project footprint, and by eradication of exotic invasive species on 4.31 acres adjacent to the project footprint. The City of San Diego provided a Mitigated Negative Declaration dated July 18, 2011 (State Clearing House No. 2011071061) to support an amendment request for 5 years of channel maintenance. A Notice of Determination was filed on October 25, 2011, in compliance with the California Environmental Quality Act. Mitigation requirements from the 2010 Certification were included in addition to the mitigation proposed for the 5 year channel maintenance plan. In order to ensure clarity and maintain consistency, the Certification amended in December 2011 was re-formatted to current San Diego Water Board standards. Issuance of the Certification incorporated all previous changes and amendment requests.

This 2012 amendment will allow the same type of impacts described in the previously amended versions of the Certification but it corrects the areal extent of the impacts to 4.61 acres and adjusts the mitigation performed adjacent to the footprint of exotic invasive species eradication to 4.61 acres. The permanent eradication of exotic invasive species is required to be maintained in perpetuity. Additionally, the separate mitigation requirements from the 2010 amendment were removed.

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I. STANDARD CONDITIONS

The following three standard conditions apply to all Certification actions, except as noted under Condition 3 for denials.

- A. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code (CWC) and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
- B. This Certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- C. The validity of any non-denial Certification action must be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

II. ADDITIONAL GENERAL CONDITIONS

- A. Water Quality Certification No. 09C-077 (Certification) allows for 5 consecutive years of annual channel maintenance and must be completed within the 5 year time frame from the date of Certification issuance.
- B. The City of San Diego must comply with the requirements of State Water Resources Control Board Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Discharges of Dredged or Fill Material That Have Received State Water Quality Certification*. These General Waste Discharge Requirements are accessible at:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf.
- C. The City of San Diego must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the San Diego Water Board, to support this Certification and all subsequent submittals required as part of this Certification and as described in Attachment 1. The conditions within this Certification must supersede conflicting provisions within such plans submitted prior to the Certification action.

Any modifications thereto, would require notification to the San Diego Water Board and reevaluation for individual Waste Discharge Requirements and/or Certification amendment

- D. During construction, City of San Diego must maintain a copy of this Certification at the project site so as to be available at all times to site personnel and agencies.
- E. The City of San Diego must permit the San Diego Water Board or its authorized representative at all times, upon presentation of credentials:
 - 1. Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - 2. Access to copy any records required to be kept under the terms and conditions of this Certification.
 - 3. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
 - 4. Sampling of any discharge or surface water covered by this Order.
- F. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
- G. In response to a suspected violation of any condition of this Certification, the San Diego Water Board may pursuant to CWC sections 13267 and 13383, require the holder of any permit or license subject to this Certification to investigate, monitor and report information on the violation. The burden, including costs, of preparing the reports must bear a reasonable relationship to the need for and the benefits to be obtained from the reports.
- H. In response to any violation of the conditions of this Certification, or if the results of the project have unintended impacts to water quality, the San Diego Water Board may modify the conditions of this Certification as appropriate to ensure compliance.
- I. The issuance of this Certification only applies to annual channel maintenance work done within 5 consecutive years of issuance date as

proposed in the 401 application and the engineering plans, specifications and technical reports submitted to the San Diego Water Board, to support this Certification and all subsequent submittals required as part of this Certification and as described in Attachment 1. Additional work beyond this scope for annual channel maintenance is **not** authorized by this Certification.

III. ADDITIONAL CONDITIONS: CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. Prior to the start of the project, and annually thereafter, City of San Diego must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response, and Best Management Practices (BMPs) implementation and maintenance.
- B. The City of San Diego must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the U.S. and/or State.
- C. The City of San Diego must enroll in and comply with the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, NPDES No. CAS000002, *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*.
- D. The treatment, storage, and disposal of wastewater during the life of the project must be done in accordance with waste discharge requirements established by the San Diego Water Board pursuant to CWC § 13260.
- E. Discharges of concentrated flow during construction or after completion must not cause downstream erosion or damage to properties or stream habitat.
- F. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the U.S. and/or State or placed in locations that may be subjected to storm flows. Pollutants discharged to areas within a stream diversion area must be removed at the end of each work day or sooner if rain is predicted.
- G. All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. Diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters.

Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.

- H. Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the U.S. and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.
- I. Removal of vegetation must occur by hand, mechanically, or using U.S. Environmental Protection Agency approved herbicides deployed with applicable BMPs to prevent impacts to beneficial uses of waters of the U.S. and/or State. Use of aquatic pesticides must be done in accordance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, and any subsequent reissuance as applicable. Removal of vegetation must occur outside of the avian nesting season (March 15-August 31).
- J. Removal and disposal of exotic invasive species shall be done in a manner that prevents the spread of exotic invasive species to other areas.
- K. All of the yearly maintenance actions must be completed by March 14 of each year.
- L. The dredged sediment must be temporarily stockpiled at two separate staging areas as described in the Mitigated Negative Declaration for the *Tijuana River Pilot and Smuggler's Gulch Channel Maintenance*. (City of San Diego, July 18, 2011).
- M. Management of dredged sediment stockpiles temporarily stored at the staging area must comply with R9-2007-0104, Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharge within the San Diego Region, Conditional Waiver 8.

IV. ADDITIONAL CONDITIONS: COMPENSATORY MITIGATION

- A. This amendment allows for up to 4.61 acres of permanent impacts to waters of the U.S. and/or State. These impacts are to 2.82 acres of vegetated and 1.79 acres of unvegetated waters of the U.S. and/or State as described in *Errata Biological Resource Technical Report and Conceptual Wetlands Mitigation Plan, Tijuana River Valley Channel Maintenance Project No. 230815*, Dudek, July 2011. Mitigation must be achieved with successful permanent eradication of exotic invasive

- species. All exotic invasive species within the 4.61 acres project foot print, and 4.61 acres of exotic invasive species adjacent to the project foot print must be eradicated, and eradication must be maintained in perpetuity.
- B. The City of San Diego must include protocols described in the *Conceptual Wetlands Mitigation and Monitoring Plan* (August 2010, Dudek) and the *Project Proposal: Control of Invasives along and near the Pilot Channel, Tijuana River 2/23/11*, Southwest Wetlands Interpretive Association. The 5th year success criteria are the complete eradication of the targeted invasive species in the acreage amounts as specified above. Thereafter, the eradication of the exotic invasive species must be maintained in perpetuity.
- C. The construction of proposed mitigation must be concurrent with project grading and completed no later than 9 months following the initial discharge of dredge or fill material into waters of the U.S. and/or State.
- D. The City of San Diego must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the U.S. and/or State. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species. The City of San Diego must implement all necessary BMPs to control erosion and runoff from areas associated with this project.
- E. Mitigation shall be considered acceptable once it has met the success criteria of permanent eradication of exotic invasive species.
- F. The San Diego Water Board acceptance of the final mitigation plan must not be construed as approval of the mitigation site or plan for use by other current or future projects that are planning to use additional acreage at the site for mitigation.
- G. Any maintenance activities that do not contribute to the success of the mitigation site and enhancement of beneficial uses and ecological functions and services are prohibited. Maintenance activities are limited to the removal of trash and debris, removal of exotic plant species, replacement of dead native plant species and remedial measures deemed necessary for the success of the restoration program.
- H. For the purpose of determining mitigation credit for the removal of exotic/invasive plant species, only the actual area occupied by exotic/invasive plant species must be quantified to comply with mitigation requirements.

- I. For purposes of this Certification, establishment is defined as the creation of vegetated or unvegetated waters of the U.S. and/or State where the resource has never previously existed (e.g. conversion of nonnative grassland to a freshwater marsh). Restoration is divided into two activities, re-establishment and rehabilitation. Re-establishment is defined as the return of natural/historic functions to a site where vegetated or unvegetated waters of the U.S. and/or State previously existed (e.g., removal of fill material to restore a drainage). Rehabilitation is defined as the improvement of the general suite of functions of degraded vegetated or unvegetated waters of the U.S. and/or State (e.g., removal of a heavy infestation or monoculture of exotic plant species from jurisdictional areas and replacing with native species). Enhancement is defined as the improvement to one or two functions of existing vegetated or unvegetated waters of the U.S. and/or State (e.g., removal of small patches of exotic plant species from an area containing predominantly natural plant species). Preservation is defined as the acquisition and legal protection from future impacts in perpetuity of existing vegetated or unvegetated waters of the U.S. and/or State (e.g., conservation easement).

V. NOTIFICATION REQUIREMENTS

- A. The City of San Diego must report to the San Diego Water Board any noncompliance which may endanger human health or the environment. Any information shall be provided orally within 24 hours from the time City of San Diego becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time City of San Diego becomes aware of the circumstances. The written submission shall contain a written description of the incident and its cause, the period of the noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The San Diego Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours.
- B. This Certification is not transferable in its entirety or in part to any person except after notice to the San Diego Water Board in accordance with the following terms:
 1. **Transfer of Property Ownership.** The City of San Diego must notify the San Diego Water Board of any change in ownership of the project area. Notification of change in ownership must include, but not be limited to, a statement that City of San Diego has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands and accepts the certification

requirements and the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification to the Executive Officer of the San Diego Water Board **within 10 days of the transfer of ownership.**

2. **Transfer of Mitigation Responsibility.** Any notification of transfer of responsibilities to satisfy the mitigation requirements set forth in this Certification must include a signed statement from an authorized representative of the new party (transferee) demonstrating acceptance and understanding of the responsibility to comply with and fully satisfy the mitigation conditions and agreement that failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the San Diego Water Board under CWC section 13385, subdivision (a). Notification of transfer of responsibilities meeting the above conditions must be provided to the San Diego Water Board **within 10 days of the transfer date.**
- C. The City of San Diego must notify the San Diego Water Board in writing at least **5 days** prior to the actual commencement of dredge, fill, and discharge activities.
 - D. The City of San Diego must notify the San Diego Water Board in writing at least **5 days** prior to the actual commencement of mitigation installation, and completion of mitigation installation.

VI. REPORTING REQUIREMENTS:

- A. The City of San Diego must submit annual progress reports describing status of compliance with all requirements of this Certification to the San Diego Water Board prior to **August 1** of each year following the issuance of this Certification until the project has reached completion. The City of San Diego must submit a Project Annual Report to the San Diego Water Board **prior to August 1 following completion of the project.** The reports must include the following:
 1. Date of construction initiation.
 2. Projected date of construction completion.
 3. Status of BMPs for the project.
 4. As-built drawings that show all areas where dredging has been completed from the previous year's work, no larger than 11"X17".

- B. The City of San Diego must submit a report (including topography maps) to the San Diego Water Board within 60 days of completion of approved mitigation project, describing as-built status of the mitigation project.
- C. The City of San Diego must develop and implement a five-year Receiving Waters Monitoring Plan in the Tijuana River Watershed to evaluate potential project impacts from pollutants/stressors to the Tijuana River. The Receiving Waters Monitoring Plan must be developed and submitted to the San Diego Water Board for review and comment **prior to construction commencement**. The Receiving Waters Monitoring Plan must assess conditions before, during, and after impacts have occurred by measuring changes in benthic, macroinvertebrate community, and water quality, and provide a functional assessment of the health of wetland and riparian habitats in Tijuana River.

To establish a baseline, the 5 year receiving water monitoring must begin prior to the start of project construction, and the data and analysis must be submitted with the Annual Progress Reports pursuant to Section VI of this Certification.

1. Benthic Macroinvertebrate Community Analysis

Bioassessment monitoring must be performed using the professional level non-point source protocol of the California Stream Bioassessment procedure¹ to assess effects of the project on the biological integrity of receiving waters. At a minimum, bioassessment monitoring must be performed at three sites (assessment stations) on the Tijuana River (as flow permits) once per year, during the established "index period" for the Tijuana River Watershed. The first assessment station is the reference station, which must be located upstream of the discharge from the project site on the Tijuana River in a reference area; the second assessment station must be located immediately upstream of the discharge from the project site on the Tijuana River, the third assessment station must be located immediately downstream of the discharge from the project site on the Tijuana River. The reference station upstream of the project discharge must be located and sampled concurrently with second and third assessment stations. The results of the Benthic Macroinvertebrate Community Analysis must be submitted each year **with the Annual Progress Report**.

¹ Copies of the California Stream Bioassessment Procedure can be obtained at <http://www.dfg.ca.gov/cabw/cabwhome.html>. Additional Information on Stream bioassessment may be obtained at http://www.waterboards.ca.gov/rwqcb9/water_issues/programs/bioassessment/index.shtml

2. Water Quality Assessment

The City of San Diego must perform water quality sampling and analysis for alkalinity, ammonia as N ($\text{NH}_3\text{-N}$), chloride (Cl^-), nitrate-nitrogen as N ($\text{NO}_3\text{-N}$), nitrite-nitrogen as N ($\text{NO}_2\text{-N}$), total Kjeldahl nitrogen (TKN), ortho-phosphate phosphorus (OPO_4 as P), total phosphorus (TPO_4), total suspended solids (TSS), chlorophyll *a*, pH, temperature, turbidity, specific conductance, and dissolved oxygen. At a minimum, sampling must be conducted once each year, concurrent with C.1.above. The results of the water quality assessment must be submitted each year **with the Annual Progress Report**.

3. California Rapid Assessment Method

The City of San Diego must conduct a quantitative function-based assessment of the health of wetland and riparian habitats in the Tijuana River using the California Rapid Assessment Method (CRAM)² at the three assessment stations described above. The results of the CRAM assessment must be submitted each year **with the Annual Progress Reports**.

- D. Where procedures are not otherwise specified for the Receiving Water Quality Monitoring Plan, sampling, analysis, and quality assurance/quality control must be conducted in accordance with the Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Program Plan (QAPrP)³ for the State of California's Surface Water Ambient Monitoring Program, adopted by the State Water Resources Control Board.
- E. The San Diego Water Board Executive Officer may make revisions to the Receiving Water monitoring program at any time during the 5 year monitoring term, and may include a reduction or increase in the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.
- F. Mitigation monitoring reports must be submitted annually until mitigation has been deemed successful. Annual monitoring reports must be submitted **prior to December 1 of each year**. Monitoring reports must include, but not be limited to, the following information:
1. Names, qualifications, and affiliations of the persons contributing to the report;

² Information on CRAM is available at the California Rapid Assessment Method homepage at <http://www.cramwetlands.org/>

³ The Quality Assurance Program Plan is available on the State Water Board's SWAMP website at http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/qapp/qaprp082209.pdf

2. Date of initiation of mitigation installation and date mitigation installation was completed;
 3. Mitigation as-builts, including topography maps and planting locations;
 4. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
 5. Topographic complexity characteristics at each mitigation site;
 6. Upstream and downstream habitat and hydrologic connectivity;
 7. Source of hydrology;
 8. Width of native vegetation buffer around the entire mitigation site;
 9. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
 10. Stream Photodocumentation, including all areas of permanent and temporary impact, prior to and after project construction, and mitigation areas, including all areas of permanent and temporary impact, prior to and after project construction. Photo documentation must be conducted in accordance with guidelines posted at http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf. In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced; and
 11. A Survey report documenting boundaries of the mitigation area, including Geographic Information System (GIS) shape files (polygons) of the impact and mitigation areas (Two GPS readings (points) must be taken on each line of the polygon and the polygon must have a minimum of 10 points). GIS metadata must also be submitted.
- G. The submittal of information under this Certification is required pursuant to CWC sections 13267 and 13283. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit required information pursuant to CWC sections 13268 or 13385.
- H. All reports and information submitted to the San Diego Water Board must be submitted in both hardcopy and electronic format. The preferred electronic format for each report submission is one file in PDF format that is also Optical Character Recognition (OCR) capable.

- I. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:
 1. For a corporation, by a responsible corporate officer of at least the level of vice president.
 2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
 3. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
 4. A duly authorized representative may sign applications, reports, or information if:
 - a. The authorization is made in writing by a person described above.
 - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
 - c. The written authorization is submitted to the San Diego Water Board Executive Officer.

- J. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

- K. The City of San Diego must submit reports required under this Certification, or other information required by the San Diego Water Board, to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification; Project No. 09C-077
9174 Sky Park Court, Suite 100
San Diego, California 92123

VII. CEQA FINDINGS:

- A. The City of San Diego is the lead agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)), and filed a Notice of Determination on October 25, 2011, for a Mitigated Negative Declaration dated July 18, 2011 (SCH No. 2011071061) under CEQA Guidelines Title 14, California Code of Regulations. The City of San Diego has determined the project will not have a significant effect on the environment and mitigation measures were made a condition of the project.
- B. The San Diego Water Board has reviewed the lead agency's Mitigated Negative Declaration and also finds that the project as proposed will not have a significant effect on the environment with conditioned mitigation measures and therefore determines that issuance of this Certification is consistent with the Mitigated Negative Declaration.

VIII. PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On September 7, 2011, receipt of the amendment request to the project application was posted on the San Diego Water Board web site to serve as appropriate notification to the public (23 CCR .§ 3858). No public comments were received on this project.

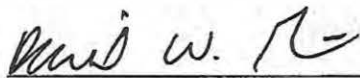
IX. SAN DIEGO WATER BOARD CONTACT PERSON:

Jody Ebsen
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
858-636-3146
jebsen@waterboards.ca.gov

X. WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the Tijuana River Valley Channel Maintenance Project (Project No. 09C-077) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "*Statewide General Waste Discharge Requirements for Dredged or Fill Discharges That Have Received State Water Quality Certification (General WDRs)*," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017-DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the San Diego Water Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Water Quality Control Plan for the San Diego Basin Region (9) (Basin Plan).



DAVID W. GIBSON
Executive Officer
Regional Water Quality Control Board

17 April 2012
Date

- Attachments:
1. Project Information
 2. Distribution List
 3. Location Map
 4. Site Map/
 5. Mitigation Map

**ATTACHMENT 1
PROJECT INFORMATION**

Applicant: City of San Diego
Attention: Kris McFadden
9370 Chesapeake Drive, Suite 100
San Diego 92123
Telephone: 858-541-4325
Facsimile: 858-541-4350
Email: kmcfadden@sandiego.gov

Applicant Representative(s): Dudek
Attention: Vipul Joshi
605 Third Street Encinitas, CA 92024
Telephone: 760-479-4284
Facsimile: 760-632-0164
Email: vjoshi@dudek.com

Project Name: Tijuana River Valley Channel Maintenance

Project Location: 2310 Hollister Street, San Diego California 92154, in the Tijuana River Valley
Latitude: 32° 33' 05.05" N Longitude: 117° 05' 02.47" W

Type of Project: Channel Maintenance Dredging

Need for Project: Provide regular maintenance dredging in the Tijuana River to reduce the chance of flooding in the Tijuana River Valley by removing sediment and debris.

Project Description: The City of San Diego has proposed annual maintenance dredging along the Tijuana River, located just north of the International Border in the Tijuana River Valley. The proposed project is annual excavation of approximately 10,000-30,000 cubic yards of sediment and trash debris to restore storm water conveyance capacities of the channels, and reduce the chance of flooding to the surrounding properties. The targeted dredging areas are 5,400 linear feet of the Tijuana River Pilot Channel (Pilot Channel), 100 feet east to 5,300 feet west of Hollister Bridge, and 3,040 linear feet of Smuggler's Gulch. The dredging in the Pilot Channel will occur along a 23 feet wide corridor centered on the channel, approximately 5 feet deep with a 15 feet wide channel bottom. Grading within the 23 feet wide corridor may be necessary to reconstruct and compact channel banks. Dredging of Smuggler's Gulch will occur along a

footprint approximately 20 feet wide, and include cleaning of existing culverts under Monument Road and Disney Crossing. Maintenance will also be done on an existing gabion rock mattress at the confluence of Smuggler's Gulch and the Pilot Channel, necessary access routes, and two staging areas. Total permanent impacts are 4.61 acres of waters of the U.S. and/or State.

In October 2009 the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) received an application for emergency channel maintenance and Water Quality Certification 09C-077 (Certification) was issued. This allowed a one-time maintenance dredge to occur along the Pilot Channel and Smuggler's Gulch. The impacts to 4.84 acres of vegetated and unvegetated waters of the U.S. and/or State were mitigated by the eradication of exotic invasive species within the project footprint. A February 2010 amendment request was granted that extended the end of the maintenance period until April 15, 2010.

In September 2010 the San Diego Water Board granted a second amendment request to the Certification. It allowed for 3 years of annual maintenance dredge to be done along the same stream reaches. The overall impacts were to 3.54 acres of vegetated and unvegetated waters of the U.S. and/or State. The impacts to 3.54 acres of vegetated and unvegetated waters of the U.S. and/or State were to be mitigated by the eradication of invasive species within the project footprint, and by eradication of exotic invasive species on 3.54 acres adjacent to the project footprint.

In December 2011 the San Diego Water Board granted a third amendment request to the Certification. It allowed for 5 years of annual maintenance dredge to be done. The overall impacts were to 4.31 acres of vegetated and unvegetated waters of the U.S. and/or State. Mitigation for the impacts to 4.31 acres was to be done by the eradication of invasive species within the project footprint, and by eradication of exotic invasive species on 4.31 acres adjacent to the project footprint. The City of San Diego provided a Mitigated Negative Declaration dated July 18, 2011 (State Clearing House No. 2011071061) to support an amendment request for 5 years of channel maintenance. A Notice of Determination was filed on October 25, 2011, in compliance with the California Environmental Quality Act. Mitigation

requirements from the 2010 Certification were included in addition to the mitigation proposed for the 5 year channel maintenance plan. In order to ensure clarity and maintain consistency, the Certification amended in December 2011 was re-formatted to current San Diego Water Board standards. Issuance of the Certification incorporated all previous changes and amendment requests.

This 2012 amendment will allow the same type of impacts described in the previously amended versions of the Certification but it corrects the areal extent of the impacts to 4.61 acres and adjusts the mitigation performed adjacent to the footprint of exotic invasive species eradication to 4.61 acres. The permanent eradication of exotic invasive species is required to be maintained in perpetuity. Additionally, the separate mitigation requirements from the 2010 amendment were removed.

Federal Agency/Permit:	U.S. Army Corps of Engineers §404, Individual Permit, Robert R. Smith.
Other Required Regulatory Approvals:	California Department of Fish and Game, Streambed Alteration Agreement, Kelly Fisher. Coastal Development Permit No. 852981 and Site Development Permit No. 852978, City of San Diego.
California Environmental Quality Act (CEQA) Compliance:	Notice of Determination on October 25, 2011, for a Mitigated Negative Declaration dated July 18, 2011, SCH No. 20011071061, City of San Diego.
Receiving Water:	Tijuana River in the Tijuana Hydrologic Unit, Tijuana Valley Hydrologic Area, San Ysidro Hydrologic Sub-Area (911.11)
Affected Waters of the U.S. and/or State	Total permanent impacts to 4.61 acres comprised of 2.82 acres of vegetated waters of the U.S. and/or State. and 1.79 acres of unvegetated waters of the U.S. and/or State.
Dredge Volume:	Approximately 10,000-30,000 cubic yards of sediment will be removed from the channels annually.
Compensatory Mitigation:	This amendment allows for up to 4.61 acres of permanent impacts to waters of the U.S. and/or State. These impacts are to 2.82 acres of vegetated and 1.79 acres of unvegetated waters of the U.S. and/or State as described in <i>Errata</i>

Biological Resource Technical Report and Conceptual Wetlands Mitigation Plan, Tijuana River Valley Channel Maintenance Project No. 230815, Dudek, July 2011.

Mitigation must be achieved with successful permanent eradication of exotic invasive species. All exotic invasive species within the 4.61 acres project foot print, and 4.61 acres of exotic invasive species adjacent to the project foot print must be eradicated, and eradication must be maintained in perpetuity.

Mitigation Location: 2310 Hollister Street, San Diego California 92154, in the Tijuana River Valley.
Latitude: 32° 33' 05.05" N Longitude: 117° 05' 02.47" W

Related Projects Implemented/to be Implemented by the Applicant(s): Channel maintenance along the Tijuana Pilot Channel and Smuggler's Gulch was performed in 2009 and 2010. Completion of mitigation for the 2010-2011 rainy season will be done to eradicate exotic invasive species on areas adjacent to the project footprint. The City of San Diego is currently developing a programmatic channel maintenance plan for all of their storm water channels which will require permits from the resources agencies.

Best Management Practices (BMPs): Implementation of BMPs includes having a designated monitoring person on site to ensure proper application of BMPs on a daily basis. The City of San Diego's Water Quality Plan dated October 1, 2009 describes proposed BMPs for erosion controls, sediment controls, materials management and good housekeeping measures. BMPs for stockpiles temporarily stored at the staging areas must comply with R9-2007-0104 Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharge within the San Diego Region.

Public Notice: On September 7, 2011 receipt of the amendment request to the project application was posted on the San Diego Water Board web site to serve as appropriate notification to the public. No public comments were received on this project.

Fees: Total Due: \$ 20,419.00
Total Paid: \$ 640.00 (check No. 1011760)
\$16,380.00 (check No. 1014366)
\$ 640.00 (check No. 110546)
\$ 2,759.00 (check No. 1157059)

CIWQS: Regulatory Measure ID: 371693

Place ID: 745397

Party ID: 5020071

**ATTACHMENT 2
DISTRIBUTION LIST**

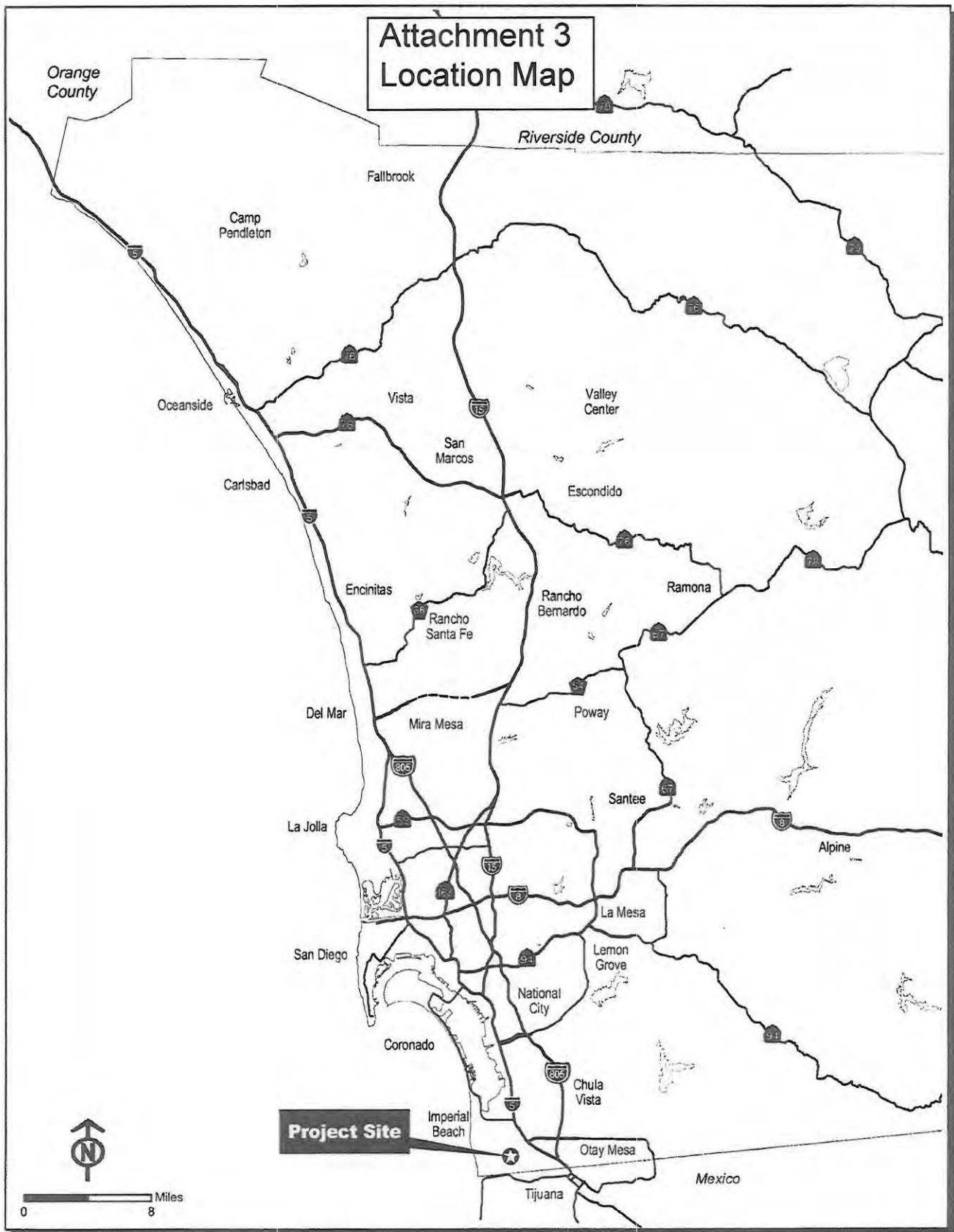
Cc via email:

Robert R. Smith
U.S. Army Corps of Engineers, Regulatory Branch
Robert.R.Smith@usace.army.mil

State Water Resources Control Board, Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

U.S. Environmental Protection Agency, Region 9
Wetlands Regulatory Office
R9-WTR8-Mailbox@epa.gov

David Zoutendyk
U.S. Department of the Interior
Fish and Wildlife Service
david_zoutendyk@fws.gov



Tijuana River Valley Emergency Maintenance Project
Regional Map

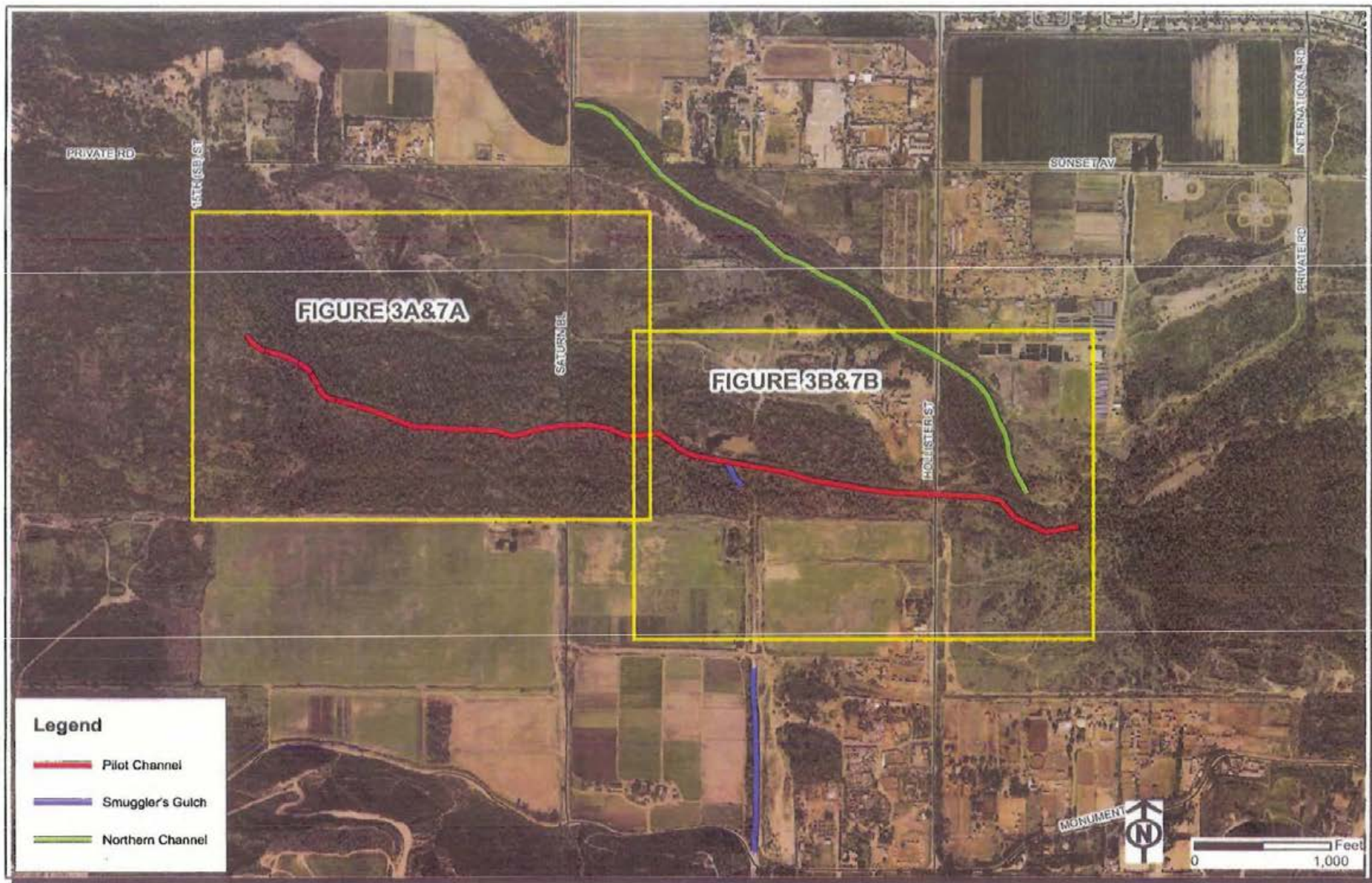
**FIGURE
1**

Attachment 4 Site Map



* Final staging areas for temporary storage of dredged stockpiles is documented in the *Tijuana River Valley Emergency Channel Maintenance Project Description*, City of San Diego, October 1, 2009.

Figure 3. Components of the Tijuana River Pilot Channel Maintenance Dredging Project.



BASE MAP SOURCE: DigitalGlobe, January 2008

Tijuana River Valley Emergency Maintenance Project
Pilot Channel Index Map

FIGURE

3

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
SOUTH COAST REGION
3883 RUFFIN ROAD
SAN DIEGO, CALIFORNIA 92123



STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2011-0271-R5
TIJUANA RIVER

CITY OF SAN DIEGO
TIJUANA RIVER VALLEY CHANNEL MAINTENANCE PROJECT

RECEIVED
JAN 29 2013
DEPT OF FISH & GAME
SOUTH COAST REGION

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the City of San Diego, Transportation and Storm Water Department, as represented by Kris McFadden (Permittee).

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on August 26, 2011, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located within the Tijuana River in the Pilot Channel that was constructed in 1993 under Streambed Alteration Agreement #5-683-93, beginning 100 feet east of the Hollister Street bridge and ending 5,300 feet west of the bridge (Pilot Channel) and Smuggler's Gulch Channel beginning immediately north of Monument Road spanning to the Disney Crossing and continuing north to the confluence with the Pilot Channel (Smuggler's Gulch), in the City of San Diego, County of San Diego, State of California; Latitude 32° 33' 11", Longitude 117° 05' 35"; Section 4, Township 19 South, Range 2 West, U.S. Geological Survey (USGS) map Imperial Beach quadrangle, SBM; Assessors Parcel Numbers 663-011-01/02/03.

PROJECT DESCRIPTION

The project is limited to those activities described in the Permittee's Notification of Lake or Streambed Alteration for the Tijuana River Valley Channel Maintenance Project, as amended with additional information and technical appendices received December 24, 2013. Project activities include the annual excavation of approximately 10,000 – 30,000 cubic yards of material within the Pilot Channel and Smuggler's Gulch, reconstruction of a failed portion of the bank of the Pilot Channel, use of three equipment turnarounds, maintenance of an access ramp within Smuggler's Gulch, maintenance and repair of a gabion rock mattress at the confluence of the Pilot Channel and Smuggler's Gulch, use and maintenance of several access routes, and use of two staging areas.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: REPTILES - common side-blotched lizard (*Uta stansburiana*), western fence lizard (*Sceloporus occidentalis*), common kingsnake (*Lampropeltis getula*); BIRDS - great blue heron (*Ardea herodias*), great egret (*Ardea alba*), snowy egret (*Egretta thula*), black-crowned night heron (*Nycticorax nycticorax*), mallard (*Anas platyrhynchos*), red-shouldered hawk (*Buteo lineatus*), northern harrier (*Circus cyaneus*), American kestrel (*Falco sparverius*), light-footed clapper rail (*Rallus longirostris levipes*), common moorhen (*Gallinula chloropus*), killdeer (*Charadrius vociferous*), mourning dove (*Zenaida macroura*), Anna's hummingbird (*Calypte anna*), ash-throated flycatcher (*Myiarchus cinerascens*), Pacific-slope flycatcher (*Empidonax difficilis*), black phoebe (*Sayornis nigricans*), Cassin's kingbird (*Tyrannus vociferans*), cliff swallow (*Petrochelidon pyrrhonota*), barn swallow (*Hirundo rustica*), common raven (*Corvus corax*), American crow (*Corvus brachyrhynchos*), magpie jay (*Calocitta formosa*), bushtit (*Psaltirparus minimus*), house wren (*Troglodytes aedon*), Swainson's thrush (*Catharus ustulatus*), wrentit (*Chamaea fasciata*), phainopepla (*Phainopepla nitens*), least Bell's vireo (*Vireo bellii pusillus*), yellow warbler (*Dendroica petechia*), common yellowthroat (*Geothlypis trichas*), yellow-breasted chat (*Icteria virens*), song sparrow (*Melospiza melodia*), spotted towhee (*Pipilo maculatus*), California towhee (*Pipilo crissalis*), blue grosbeak (*Passerina caerulea*), black-headed grosbeak (*Pheucticus melanocephalus*), red-winged blackbird (*Agelaius phoeniceus*), house finch (*Carpodacus mexicanus*), lesser goldfinch (*Carduelis psaltria*), American goldfinch (*Carduelis tristis*); MAMMALS - brush rabbit (*Sylvilagus bachmani*), California ground squirrel (*Spermophilus beecheyi*), Botta's pocket gopher (*Thomomys bottae*), woodrat (*Neotoma* sp.), coyote (*Canis latrans*), raccoon (*Procyon lotor*), mule deer (*Odocoileus hemionus*); riparian vegetation which provides habitat for those species, and all other aquatic and wildlife resources in the project vicinity.

The adverse effects the project could have on the fish or wildlife resources identified above include: loss of natural bed, loss of bank stability during construction, change in composition of channel materials, increased turbidity, increased sedimentation, short-term release of contaminants, loss or decline of riparian habitats, colonization by exotic plant species, loss or decline of instream channel habitat, loss or decline of natural bed

substrate, direct impacts from dredging on benthic organisms, disruption to nesting birds and other wildlife, direct take of terrestrial species, diversion of flow from or around activity site, and impacts to 4.31 acres of streambed, including 0.03 acre disturbed wetland, 0.05 acre arundo, 0.04 acre disturbed mulefat scrub, 3.92 acre open channel, 0.01 acre southern willow scrub, and 0.26 acre disturbed southern willow scrub.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Notification Prior to Work. The Permittee shall notify CDFW, in writing, at least five days prior to initiation of construction (project) activities and at least five days prior to completion of construction (project) activities, each time project activities occur. Notification shall be sent to CDFW's South Coast Office at the address above, ATTN: Streambed Alteration Program – SAA # 1600-2011-0271-R5.
- 1.6 Payment of Outstanding Fees. The Permittee shall submit a fee for each individual maintenance project to CDFW prior to initiation of such project. The fee shall be based on CDFW's Agreement for Routine Maintenance fees as described in the California Code of Regulations, Title 14, Section 699.5. CDFW acknowledges receipt of the Routine Maintenance base fee of \$1,345.25 as well as an additional \$1,344.25 to be applied toward the fees for individual maintenance projects.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 **Nesting Birds.** To protect nesting birds, no project activities shall occur from January 15 through September 15 annually, except that project activities may occur from January 15 through March 15 if nesting bird surveys are completed by a qualified biologist within one week prior to initiation of activities in that area, and no nesting birds are present within a 200' radius (500' for threatened and endangered species, and all raptors, including both diurnal and nocturnal species). This Agreement does not allow the Permittee, any employees, or agents to destroy or disturb any active bird nest (Section 3503 Fish and Game Code) or any raptor nest (Section 3503.5) at any time of the year.
- 2.2 **Light-footed Clapper Rail.** Focused surveys for light-footed clapper rail shall be conducted by a qualified avian biologist (someone with at least three years of experience) within 72 hours prior to the initiation of annual maintenance activities. If light-footed clapper rail are detected (during focused surveys or during daily pre-construction surveys), maintenance activities within that portion of the project shall halt immediately and the Permittee shall consult with CDFW for guidance on resuming project activities in a manner that avoids potential impacts to that species.
- 2.3 **Protected Species.** This Agreement does not authorize take, incidental or otherwise, of any protected species. For the purpose of this Agreement, "protected species" means the following: a species fully protected under state law; a species listed under the California Endangered Species Act (Fish & G. Code § 2050 et seq.) and/or Endangered Species Act (16 U.S.C. § 1531 et seq.); a species identified by CDFW as a species of special concern; or any other species for which take is prohibited under state or federal law. No direct or indirect impacts shall occur to any protected species, except as may be authorized by a Natural Community Conservation Plan or one or more individual permits that authorize such impacts.
- 2.4 **Survey Completed by Qualified Biologist.** The Permittee shall have a qualified biologist survey the proposed work area to verify the presence or absence of protected species. The results of these surveys shall be provided to CDFW, along with copies of all field notes, prior to the initiation of work. The surveys shall be conducted pursuant to protocol survey guidelines established by the United States Fish and Wildlife Service (USFWS) or, if no protocol exists, the survey technique shall be approved by CDFW in writing. The biologist shall have all required permits.
- 2.5 **Protected Species Plan.** If a protected species is found in the proposed work area, or is in a location which could be directly or indirectly affected by the work

proposed, the Permittee shall submit a plan to CDFW for review and approval prior to the initiation of work to ensure impacts to the species are avoided. The Permittee shall have a qualified biologist onsite daily to ensure that no impacts occur to protected species.

- 2.6 Notification to the California Natural Diversity Database. If any special status species are observed in project surveys, Permittee or designated representative shall submit Natural Diversity Data Base (NDDDB) forms to the NDDDB for all survey data within five (5) working days of the sightings, and provide to CDFW's Regional office copies of the NDDDB forms and survey maps.
- 2.7 Leave Wildlife Unharmd. If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed.
- 2.8 On-site Biologist with Stopwork Authorization. Permittee shall have a qualified biologist on site daily during project activity to ensure that Agreement conditions are being met and minimize impacts to fish and wildlife habitat. The biologist shall be authorized to stop construction if necessary to protect fish and wildlife resources. If any protected species are found the biologist shall inform CDFW. If there is a threat of harm to any protected species or other aquatic wildlife the biologist shall halt construction and notify CDFW. Consultation with CDFW is required before re-commencing work.
- 2.9 Delineate Work Area. Work area boundaries shall be delineated by flagging, erecting temporary fencing, or otherwise clearly marking to minimize surface and vegetation disturbance. All temporary fencing and flagging shall be removed at the conclusion of project activities.
- 2.10 Vegetation Removal. Disturbance or removal of vegetation shall be kept to the minimum necessary to complete project related activities. Except for trees marked for removal on plans submitted to and approved by CDFW, no native trees with a trunk diameter at breast height (DBH) in excess of four (4) inches shall be removed or damaged without prior consultation and approval of a CDFW representative. Vegetation marked for protection may only be trimmed with hand tools to the extent necessary to gain access to the work sites.
- 2.11 Herbicide Use in Conformance with Applicable Laws. Nothing in this Agreement represents a pesticide use recommendation that allows for an action that conflicts with pesticide use regulations. All herbicide use conditions for mixing, application and clean-up shall conform to all applicable federal, State, and local regulations. Any application of herbicide shall be done by a licensed or certified applicator in accordance with all applicable, federal, state, and local laws.
- 2.12 Herbicides Approved for Use Near Water. Any herbicide used where there is the possibility that the herbicide could come into direct contact with water shall be

approved for use in an aquatic environment. Great care shall be taken to avoid contact with any native vegetation, and herbicide shall only be applied on calm days to prevent airborne transfer of the herbicide.

- 2.13 Selective Trimming of Native Species. A small amount of selective trimming of native species (e.g. willow, oak and sycamore) may occur to prevent overspray of herbicide from reaching these branches, but only as provided within the conditions of this Agreement. Native vegetation may only be trimmed; individual plants shall not be removed. Material in excess of three (3) inches in diameter shall require specific notice to and consultation with CDFW. If trimming is necessary, a qualified biological monitor shall be present and/or shall examine the site and mark native vegetation that is to be trimmed with flagging to ensure impacts are within the conditions of this Agreement.
- 2.14 Herbicide Mixing Sites. Herbicide mixing sites shall only be located in areas devoid of vegetation, and where there is no potential of a spill reaching a vegetated area or a stream, for example avoid mixing at a storm water-inlet.
- 2.15 Remove Cleared Material from Stream. All trimmed or cleared material/vegetation shall be removed from the area and deposited where it cannot re-enter the stream.
- 2.16 Spoil sites. Spoil sites shall not be located within a stream, where spoils may be washed back into a stream, or where it may cover aquatic or riparian vegetation.
- 2.17 Movement of Rock, Gravel and Other Materials. Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed or banks of the stream except as addressed in this Agreement.
- 2.18 Authorized Structures. This Agreement does not authorize the construction of any temporary or permanent dam, structure, flow restriction or fill except as described in the Permittee's notification.
- 2.19 Minimize Turbidity and Siltation. Permittee shall take precautions to minimize turbidity/siltation during construction and post-construction periods. Precautions shall include, but are not limited to: pre-construction planning to identify site specific turbidity and siltation minimization measures and best management erosion control practices; best management erosion control practices during project activity; and settling, filtering, or otherwise treating silty and turbid water prior to discharge into a stream or storm drain.
- 2.20 Diversion Plan. If flowing water is present or reasonably anticipated, the Permittee shall submit for approval a detailed water diversion/dewatering plan to CDFW. CDFW will review the proposed water diversion method, to approve the plan or provide the requirements for that approval. The Permittee may not commence the dewatering of the stream or diversion of water without the explicit approval from CDFW.

- 2.21 Weather Restrictions. The Permittee shall monitor the five day weather forecast. If any precipitation is forecasted, work activities shall involve the securing of the site so as no materials may enter or be washed into the stream. The site shall be completely secured one day prior to precipitation, unless prior written approval has been provided by CDFW. During period of precipitation, no construction activities may occur; activities involving the preventing of materials from entering the stream or being washed downstream may be conducted. In the event that one inch of precipitation is accumulated within the watershed, no activities shall occur on site for two weeks, or until the flows have receded and the moisture content of the soils has stabilized.
- 2.22 Minimize Vehicle Parking. Vehicles may enter and exit the Work Area as necessary for project activities, but may not be parked overnight within ten (10) feet of the drip line of any trees; nor shall vehicles be parked where mechanical fluid leaks may potentially enter the waters of the state.
- 2.23 Equipment and Vehicle Spills and Contaminants. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. The Permittee shall maintain all vehicles and equipment in proper working condition to minimize fugitive emissions and accidental spills from motor oil, antifreeze, hydraulic fluid, grease, or other fluids or hazardous materials. All fuel or hazardous waste leaks, spills, or releases shall be stopped or repaired immediately and cleaned up at the time of occurrence. The Permittee shall be responsible for spill material removal and disposal to an approved offsite landfill and spill reporting to the permitting agencies. Service construction equipment shall be stored at designated areas only. Service/maintenance vehicles shall carry appropriate equipment and materials to isolate and remediate leaks or spills. A spill containment kit shall be available onsite for all fueling, maintenance, and construction activities.
- 2.24 Drip Pans. Stationary equipment such as cranes, motors, pumps, generators, and welders located within or adjacent to the stream shall be positioned over drip pans.
- 2.25 No Equipment Maintenance in Stream. No equipment maintenance shall be done within or near any stream/lake where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- 2.26 Keep Polluted Water from Entering Stream. Water containing mud, silt, or other pollutants from aggregate washing or other activities shall not be allowed to enter a flowing stream or placed in locations that may be subject to high storm flows.
- 2.27 Keep Pollutants Out of Stream. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products, or any other substances/materials associated with any project-related activity shall be allowed to contaminate the soil

and/or enter into or be placed where they may be washed by rainfall or runoff into a stream or lake. Any of these substances/materials, placed within or where they may enter a stream or lake, by the Permittee or any party working under contract, or with the permission of the Permittee, shall be removed immediately upon observation of their presence. When operations are completed, any excess materials or debris shall be removed from the work area.

2.28 150-Foot High Water Mark. No rubbish shall be deposited within 150 feet of the high water mark of any stream.

2.29 Location of Storage/Staging Areas. Staging/storage areas for equipment and materials shall be located outside of the stream.

3. Compensatory Measures

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

3.1 The Pilot Channel was originally constructed in 1993 under Streambed Alteration Agreement #5-683-93. That Agreement required the creation of 9.9 acres of vireo quality habitat, which was constructed in 1995 and completed five years of monitoring in 2000 and is located south of the Pilot Channel on City of San Diego-owned parcel number 663-011-03. To meet mitigation requirements of the Army Corps of Engineers (ACOE) for the ongoing project activities, the Permittee will be removing exotic vegetation both within the project footprint and in areas adjacent to the channel, for a total of approximately 8.62 acres, as described in the *Final Wetlands Mitigation and Monitoring Plan for the Tijuana River Valley Channel Maintenance Project*, prepared by Dudek and dated January, 2013.

3.2 Mitigation For Unauthorized Impacts. The Permittee shall mitigate at a minimum 5:1 ratio for impacts beyond those authorized in this Agreement. In the event that additional mitigation is required, the type of mitigation shall be determined by CDFW and may include creation, restoration, enhancement and/or preservation.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

4.1 Notification Number. All reports shall contain the Streambed Alteration Notification Number 1600-2011-0271-R5

4.2 Mitigation As-built Report. Permittee shall provide CDFW with a copy of the as-built drawing of all mitigation areas, as described in section 6.0 of the *Conceptual Wetlands Mitigation and Monitoring Plan for the Tijuana River Valley Channel Maintenance Project*, prepared by Dudek and dated August, 2010, at the time it is provided to the ACOE.

- 4.3 Annual Mitigation Monitoring Report. Permittee shall provide CDFW with a copy of the annual reports, as described in section 6.0 of the *Conceptual Wetlands Mitigation and Monitoring Plan for the Tijuana River Valley Channel Maintenance Project*, prepared by Dudek and dated August, 2010, at the time each is provided to the ACOE.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Kris McFadden
City of San Diego
Transportation and Storm Water Department
9370 Chesapeake Drive, Suite 100
San Diego, California 92123

To CDFW:

Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, California 92123
Attn: Lake and Streambed Alteration Program
Notification #1600-2011-0271-R5

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on November 30, 2016, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's

behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR CITY OF SAN DIEGO

Kris McFadden

1/29/13

Date

Name: Kris McFadden

Title: Deputy Director

FOR DEPARTMENT OF FISH AND WILDLIFE

Marilyn J. Fluharty

Date

Acting Environmental Program Manager

Prepared November 17, 2011 and revised January 28, 2013 by Kelly Fisher,
Environmental Scientist



DEPARTMENT OF THE ARMY

Los Angeles District, Corps of Engineers
Regulatory Division, Carlsbad Field Office
6010 Hidden Valley Rd., Suite 105
Carlsbad, CA 92011

October 31, 2012

REPLY TO

ATTENTION OF

Office of the Chief
Regulatory Division

Kris McFadden
City of San Diego, Storm Water Department
9370 Chesapeake Drive
MS 1900
San Diego, California 92123

Dear Mr. McFadden:

Enclosed you will find a signed copy of your Department of the Army Permit (File No. SPL-2009-00719-RRS). Please retain this copy for your files.

Thank you for participating in our regulatory program. If you have any questions, please contact Robert Smith of my staff at 760-602-4831 or via e-mail at Robert.R.Smith@usace.army.mil.

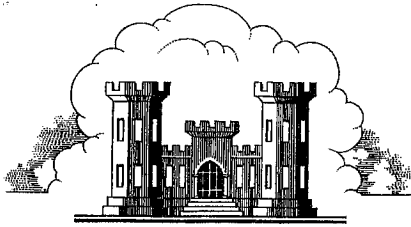
Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at:
<http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Smith", is written over a horizontal line.

Robert Smith
Senior Project Manager
Regulatory Division

Enclosure(s)



LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY PERMIT

Permittee: City of San Diego, Storm Water Department (City); Kris McFadden

Permit Number: Tijuana River Valley Pilot Channel and Smugglers Gulch Channel Maintenance Project (TJRV Channel Maintenance Project); SPL-2009-00719-RRS

Issuing Office: Los Angeles District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Location: Project is located within the Tijuana River Valley and within both the Tijuana River (100 ft. east of the Hollister Bridge and 5,300 ft. west of the bridge) and the tributary Smugglers Gulch channel to the Tijuana River within the City of San Diego, San Diego County, California.

Project Description:

The City of San Diego (City) Transportation & Storm Water Department is authorized to perform maintenance dredging in accordance with the Tijuana River Valley Pilot Channel and Smuggler's Gulch Channel Maintenance Project (TJRV Channel Maintenance Project) in the Tijuana River Valley, San Diego, CA. The proposed project includes the annual excavation of approximately 10,000-30,000 cubic-yards of material from both the Tijuana River Pilot and Smuggler Gulch channels in accordance with terms and conditions of this permit which also includes three turnarounds and two staging areas B and D. All dredged or excavated material and invasive plant removal shall be disposed of in a Corps approved upland site and not discharged within waters of the U.S. without proper Corps authorization.

The TJRV Channel Maintenance Project, per attached drawings, includes 2.878 acres of authorized permanent channel dredging and excavation impacts to waters of the U.S. (vegetated waters and wetlands) within the Tijuana River Pilot Channel area (Tijuana Pilot Channel (2.826 acres) and three turnarounds (.052 acre)) and 1.306 acres of impacts to waters of the U.S. in the Smuggler's Gulch channel (vegetated waters) which includes culvert cleaning at Monument Rd. and at the Disney Crossing. Additional maintenance is authorized for the 5,000 square ft. (0.115 acre) gabion structure at the confluence of Smugglers Gulch and the Tijuana River Pilot Channel including replacement periodically with projected impacts of waters of the U.S. acres assuming one total replacement every five years once constructed.

Authorities for this Permit:

☒ To construct structures and/or conduct work in or affecting "navigable waters of the United States" pursuant to Section 10 of the Rivers and Harbors Act of 1899 (if project impacts navigable waters of the U.S.),

☒ To permanently discharge fill onto 4.31 acre(s) of waters of the U.S. pursuant to Section 404 of the Clean Water Act of 1972,

☐ To transport dredged or fill material by vessel or other vehicle for the purpose of dumping the material into ocean waters pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972,

Specifically, you are authorized to:

Perform maintenance dredging of the Pilot Channel and Smuggler's Gulch in the Tijuana River Valley with disposal of the material to an approved upland site. The authorized TJRV Channel Maintenance project includes the annual excavation of approximately 10,000-30,000 cubic-yards of material (i.e., sediment and trash debris) and includes the following project components:

1. Pilot Channel: An existing channel (previously permitted and constructed in 1993) will be reconstructed and maintained through implementation of the project. The project will include clearing and/or dredging within a 23-foot-wide corridor centered on the channel (approximately 5 feet deep with a 15-foot-wide channel bottom). The portion of the Pilot Channel that is within the project extends in an east-to-west direction beginning 100 feet east of the Hollister Street bridge and ending 5,300 feet west of the bridge, for a total of 5,400 linear feet (2.85 acres, including a portion of the gabion mattress area). Grading to reconstruct the channel banks with compacted soil material may occur as needed within the 23-foot-wide corridor.

Three equipment turnarounds (extending beyond the 23-foot-wide Pilot Channel maintenance corridor an additional 25 feet in width for a length of approximately 30 feet along the channel; .017 acre each; total 0.052 acre) are sited immediately adjacent to the Pilot Channel and will be utilized during the Pilot Channel maintenance. Two of the turnarounds are located west of the Pilot Channel confluence with Smuggler's Gulch and were constructed in 2009; the third turnaround is located east of this confluence and has yet to be constructed. All three turnarounds are necessary for equipment movements within the confined channel work area. The turnarounds will remain at the same exact location in perpetuity of the project.

2. Smuggler's Gulch: Smuggler's Gulch is an existing historical agricultural ditch with manufactured berms and a channel bottom that is mostly un-vegetated or vegetated with only herbaceous species. The project includes maintenance of portions of the channel located immediately north of Monument Road spanning the Disney Crossing and continuing north to the confluence with the Pilot Channel. These two sections of Smuggler's Gulch total approximately 3,040 linear feet. The dredging will be limited to a footprint approximately 20 feet wide and will consist of dry excavation only (1.39 acre, including a portion of the gabion mattress). Also incorporated with the Smuggler's Gulch component is the cleaning of existing culverts under Monument Road and at the Disney Crossing. No permanent structures will be built in the channel.

At the confluence of Smuggler's Gulch and the Pilot Channel, the City maintains an existing gabion structure (previously permitted and constructed in 1998) located where Smuggler's Gulch widens to meet the Pilot Channel, an area of approximately 5,000 square feet. Maintenance may consist of excavating around the gabion to expose the structure and repairing the gabion as-needed. The structure may need to be replaced periodically due to deterioration.

3. Staging Areas and Access Routes: Two upland staging areas will be used throughout the project for equipment and material staging. Dredge/excavation spoils will be stored and transferred to and from established best management practice (BMP) areas within the staging areas. Manual and mechanical separation of the spoil material may also occur to sort sediment, vegetation, trash, and tires. Staging Area B is east of and adjacent to Smuggler's Gulch. There is a permanent earthen berm between this area and Smuggler's Gulch protecting it from flooding. Permanent gated access to the staging area is from Monument Road. This area was initially used in 2001 and has been used since during each maintenance event both by the City and County of San Diego. No excavation or grading would be necessary in this area. The upland impacts associated with Staging Area B are 4.68 acres.

Staging Area D is located east of the Pilot Channel and Smuggler's Gulch and adjacent to the South Bay International Wastewater Treatment Plant south of Monument Road. This area is not near enough to the channel maintenance areas to function as the single staging area for the project but will be used in conjunction with Staging Area B for staging equipment and spoil materials. No excavation or grading would be necessary in this area. The upland impacts to Staging Area D are 10.59 acres.

Two public roadways will be used during maintenance activities, Monument Road and Hollister Street. Monument Road is south of the site, spanning between two staging areas, and is used for hauling excavated materials from Staging Area B to Staging Area D. Hollister Street is located east of the site and is used for transit between Staging Area B to the off-road access route in the Tijuana River Valley Regional Park (TJRVRP). Throughout the project, there shall be no construction-related road closures and both roads will remain open during construction activities. No impacts to jurisdictional waters will occur through the use of the Monument Road and Hollister Street access routes.

Three off-road access routes will be used during construction. One route runs west from Hollister Street to the TJRVRP entrance and then runs south to the confluence of the Pilot Channel and Smuggler's Gulch. The portion of this access route that runs from the Pilot Channel north to the TJRVRP is subject to erosion and sediment/trash deposition during heavy storms and, therefore, may require excavation in order to be used by equipment.

The second off-road route runs parallel to Smuggler's Gulch north of Staging Area B and allows access into Smuggler's Gulch channel via an access ramp on the east bank, immediately downstream of the Disney Crossing. The access ramp was constructed in 2009 and is a maintained feature of the project that allows construction equipment access to the channels during dredging while avoiding having the majority of the construction access occur north of the project site. This design feature was developed in 2009 per the direction of the ACOE. This access ramp is approximately 15 feet wide by 75 feet long and was constructed using on-site earth materials (i.e., excavation and re-contouring of the existing bank of the Smuggler's Gulch) within an area of disturbed, non-native vegetation (no impacts to jurisdictional waters). The third off-road route is parallel with Hollister Street to the east and allows access to the portion of the Pilot Channel east of the Hollister Street bridge. The route is approximately 15 feet wide and is an existing dirt road except for an approximately 45-foot-long section on the south bank of the Pilot Channel where existing jurisdictional waters would be impacted to allow access to the area (0.016 acre).

Permit Conditions:**General Conditions:**

1. The time limit for completing the authorized activity ends on October 30, 2017. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached. Permit remains valid as long as permittee is diligent in ensuring that the Section 401 water quality certification and Federal Coastal Zone Management Act Federal Consistency Determination remain valid for this Corps permit authorization.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. A conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

Special Conditions:

1. The Permittee shall mitigate for permanent/temporary impacts to acre(s) of waters of the U.S., through rehabilitation/enhancement of 8.62 acres acre(s) of waters of the U.S. within a 96-acre area adjacent to the Tijuana River Pilot channel as described in a Final Wetlands Mitigation and

Monitoring Plan to be submitted and approved by the Corps and the resource agencies and based on the "Conceptual Wetlands Mitigation and Monitoring Plan " (dated August 10, 2010, and prepared by Dudek). The Permittee shall complete site preparation and planting and initiate monitoring as described in the final, approved mitigation plan concurrently with impacts to waters of the U.S./within 9 months of discharging any fill material in waters of the U.S. According to the final, approved mitigation plan, responsible parties would be as follows: a) Implementation: City, b) Performance: City; c) Long-term management: City and County of San Diego. The Permittee retains ultimate legal responsibility for meeting the requirements of the final, approved mitigation plan. Detailed mitigation objectives, performance standards, and monitoring requirements are to be described in the above final, approved mitigation plan. Any requirements for long-term management provisions are also described in the above final, approved mitigation plan, as well as in the special condition below. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 1 will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers Regulatory Division.

GIS DATA: Within 60 days following project completion, you shall provide to this office GIS data (polygons only) depicting the boundaries of all compensatory mitigation sites, as authorized in the above, final mitigation plan. All GIS data and associated metadata shall be provided on a digital medium (CD or DVD) or via file transfer protocol (FTP), preferably using the Environmental Systems Research Institute (ESRI) shapefile format. GIS data for mitigation sites shall conform to the data dictionary, as specified in the current Map and Drawing Standards for the Los Angeles District Regulatory Division, and shall include a text file of metadata, including datum, projection, and mapper contact information. Within 60 days following completion of compensatory mitigation construction activities, if any deviations have occurred, you shall submit as-built GIS data (polygons only) accompanied by a narrative description listing and explaining each deviation.

2. Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division written restoration and enhancement plans showing all work and structures in waters of the U.S. All plans shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated September 21, 2009 (http://www.spl.usace.army.mil/regulatory/pn/SPL-RG_map-drawing-standard_final_w-fig.pdf). All plan sheets shall be signed, dated, and submitted on paper no larger than 11x 17 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final detailed grading/construction plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans. No dredged or excavated material shall be disposed in waters of the U.S. without prior Corps authorization. If the dredged material is stockpiled and screened and transported to the beach the Corps may allow discharge of the material if it meets compliance with the requirements of the Inland Testing Manual (ITM) or other valid Corps Opportunistic Beach Nourishment permits.

3. The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter preserved waters of the U.S. and riparian wetland/habitat areas shown on attached drawings. Adverse impacts to waters of the U.S. beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.

Within 60 calendar days of completion of authorized work in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a post-project implementation memorandum including the following information (also see special condition 12):

- A) Date(s) work within waters of the U.S. was initiated and completed;
- B) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions taken or proposed to achieve compliance);
- C) Color photographs (including map of photopoints) taken at the project site before and after construction for those aspects directly associated with permanent impacts to waters of the U.S. such that the extent of authorized impacts can be verified;
- D) One copy of "as built" drawings or plans for the entire project. Electronic submittal (Adobe PDF format) is preferred. All sheets must be signed, dated, and to-scale. If submitting paper copies, sheets must be no larger than 11 x 17 inches; and
- E) Signed Certification of Compliance (attached as part of this permit package).

4. Within 60 calendar days of complete installation of all mitigation, the Permittee shall submit to the Corps Regulatory Division a memorandum including the following information (also see special condition 12):

- A) Date(s) all mitigation was completed and monitoring was initiated;
- B) Schedule for future mitigation monitoring and reporting pursuant to final, Corps-approved mitigation plan;
- C) Color photographs (including map of photopoints) taken at each mitigation site before and after invasive plant removal such that correct removal per final, Corps-approved mitigation plan can be verified;
- D) One copy of "as built" drawings for the entire project, including all mitigation sites. Electronic submittal (Adobe PDF format) is preferred. All sheets must be signed, dated, and to-scale. If submitting paper copies, sheets must be no larger than 11 x 17 inches; and
- E) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions taken or proposed to achieve compliance).

5. If temporary impacts occur then the permittee shall ensure all sites within waters of the U.S. subject to authorized, temporary impacts are restored to pre-project alignments, elevation contours, and conditions, including re-vegetation with appropriate native plant species after completion of construction in the area, as described in the final, Corps-approved mitigation plan: "Conceptual Wetlands Mitigation and Monitoring Plan" (dated August 2010, and prepared by Dudek). At a minimum, the acreage of waters of the U.S. and aquatic resource functions of each site shall equal or exceed pre-project acreage of waters of the U.S. and aquatic resource functions by the end of the monitoring period as specified in the plan. Functions for the above impact areas shall be assessed annually using CRAM, RSRA, or a similar Corps-approved functional/condition assessment method as described in the above-mentioned mitigation plan. The Permittee's responsibility to complete the required restoration as set forth in this special condition shall not be considered fulfilled until the permittee has met or exceeded all final performance standards for each impact area and has obtained written confirmation from the Corps verifying successful restoration. Note: if not done previously as part of the permit application evaluation process, then prior to initiating construction in sites within waters of the U.S. subject to authorized, temporary impacts, the permittee shall conduct a functional/condition assessment to establish pre-project (baseline) functions at each impact site.

6. Avoiding Native Vegetation: Authorized maintenance areas shall follow the path of clearing/excavation in the general area of prior construction/maintenance to the maximum extent practicable so as to avoid mature riparian habitat including mulefat, willows, cottonwood, blue elderberry, and other native vegetation. During vegetation clearing, the clearing path shall be clearly marked by stakes and brightly colored flagging material. A biological monitor shall be present during any vegetation removal activities.

7. Preconstruction Presence/Absence Surveys: In the Pilot channel, a qualified biologist with a minimum 3 years of experience relevant to detecting clapper rail (project biologist) shall conduct at least one pre-construction presence/absence survey within 72 hours of the start of construction. The results of the first survey will be provided to the Corps at least 24 hours prior to the start of maintenance activities. The clapper rail biologist shall immediately notify the ACOE if a clapper rail is detected.

8. Avoidance of the Breeding Season: All project activities within jurisdictional areas shall be conducted between September 15 and March 15 only.

9. Continuing Monitoring: A qualified biological monitor that can recognize clapper rails and their vocalizations shall be present during all the project maintenance activity within the channels, enforce the limits of maintenance and ensure that no harm to clapper rails occurs. Before each workday in the Pilot Channel begins, the biological monitor shall walk upstream to downstream on either side of the channel to evaluate if clapper rails have entered the project area. If a clapper rail is detected, the limits of impact are exceeded, and or take to the clapper

rail occurs, the biological monitor shall stop work and contact the Corps/USFWS immediately. Work may not resume until approved by the Corps.

10. The biological monitor shall submit weekly letter reports to the ACOE, and RWQCB during both pre-construction and start of construction surveys and during channel maintenance activities. Raw field notes shall be available upon request. The weekly reports shall include text and photos of the following: document that authorized impacts were not exceeded; outline daily clapper rail survey results; describe location and type of maintenance activities; and identify equipment used.

11. Temporary impacts to waters of the United States (WOUS), including jurisdictional wetlands and non-wetland waters, shall be mitigated through the restoration of all temporary impact areas to pre-construction contours. All disturbed areas shall be revegetated with pre-existing and/or native wetland vegetation.

12. The permittee shall submit to the Corps within (60) days of completion of waters/wetlands impacts authorized by this IP a report that will include as-built construction drawings with an overlay of waters/wetlands that were impacted and those that were preserved, dated and labeled photographs of waters/wetland areas that are impacted and those to be preserved, and a summary of all project activities which documents that authorized waters/wetlands impacts were not exceeded, and compliance with all permit conditions.

13. The permittee shall ensure that substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, are prevented from contaminating the soil and/or entering WOUS and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.

14. The permittee shall remove and dispose of exotic invasive species in a manner that prevents the spread of exotic invasive species to other areas.

15. The permittee shall ensure the dredged sediment will be temporarily stockpiled at separate staging areas as described in the *Tijuana River Valley Emergency Channel Maintenance Project Description*, (City of San Diego, October 1, 2009).

16. No debris, sand, silt, trash, concrete or washings thereof, oil or other petroleum products or washings thereof, or other foreign materials shall be allowed to enter or be placed where it may be washed by rainfall or runoff waters into WOUS. Upon project completion, any and all excess construction materials, debris, and/or other excess project materials shall be removed to an appropriate upland disposal site (not WOUS, including jurisdictional wetlands).

17. The permittee shall install silt fences to trap eroded sediments on-site and to divert runoff around disturbed soils within the staging areas. Silt fences shall also be placed along the tops and toes of slopes of access roads, as necessary, to prevent silt from discharging into WOUS.

18. The permittee shall regularly apply water to construction areas to control dust in order to minimize impacts to WOUS adjacent to construction areas. Other conditions permittee shall abide by to mitigate staging and construction operations to adjacent property owners (APOs) near Staging Area B include: 1) the existing stockpile onsite be removed as soon as possible, 2) new stockpiles be eliminated or moved at least 100 ft. or better placed and covered as practicable, 3) BMPs are in place and monitored for air, dust control, fueling, vibration, trash control, and noise impacts to avoid impacts to adjacent properties to the maximum extent practicable, and 4) assist Corps review of need for Staging Area B; and review of other staging replacement sites such as Staging Area A previously used in past maintenance. Permittee shall be notified when APOs submit concerns to Permittee and the Corps shall coordinate with APOs and permittee as appropriate.

19. The permittee shall ensure that equipment necessary to extinguish small brush fires (from sparking vehicles, etc.) is present on-site during all phases of project activities, along with trained personnel for use of such equipment.

Endangered Species Act:

1. This Corps permit does not authorize you to take any threatened or endangered species, in particular the Federally-listed as endangered least Bell's vireo (*Vireo bellii pusillus*, vireo) or adversely modify its designated critical habitat and the light-footed clapper rail (*Rallus longirostris levipes*). In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service Biological Opinion FWS-SDG-08B0600-10F0001 (BO) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The U.S. Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

Cultural Resources:

1. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff within 24 hours (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

Section 401 Water Quality Certification:

1. Permittee shall implement and abide by the Section 401 water quality certification dated April 17, 2012 (Cert No. 09C-077) with all subsequent approved amendments as approved by the California Regional Water Quality Control Board – San Diego Region and the Corps.

Coastal Zone Management Act Federal Coastal Consistency Determination:

1. Permittee shall implement and abide by the approved City's Coastal Development Permit/Federal Consistency Determination per the California Coastal Commission's letter dated January 4, 2012 and email from Mark Delaplaine of the California Coastal Commission dated January 10, 2012 with any subsequent amendments or approvals issued and approved by the California Coastal Commission and the Corps.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

(x) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403). (May be in effect if permittee allows for discharge of material at Corps approved beach nourishment site).

(x) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

- b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures

Provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

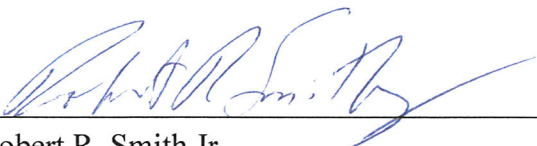


Kris McFadden
Deputy Director
Transportation & Storm Water Department

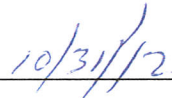


Date

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



Robert R. Smith Jr.
Senior Project Manager, South Coast Branch
Regulatory Division

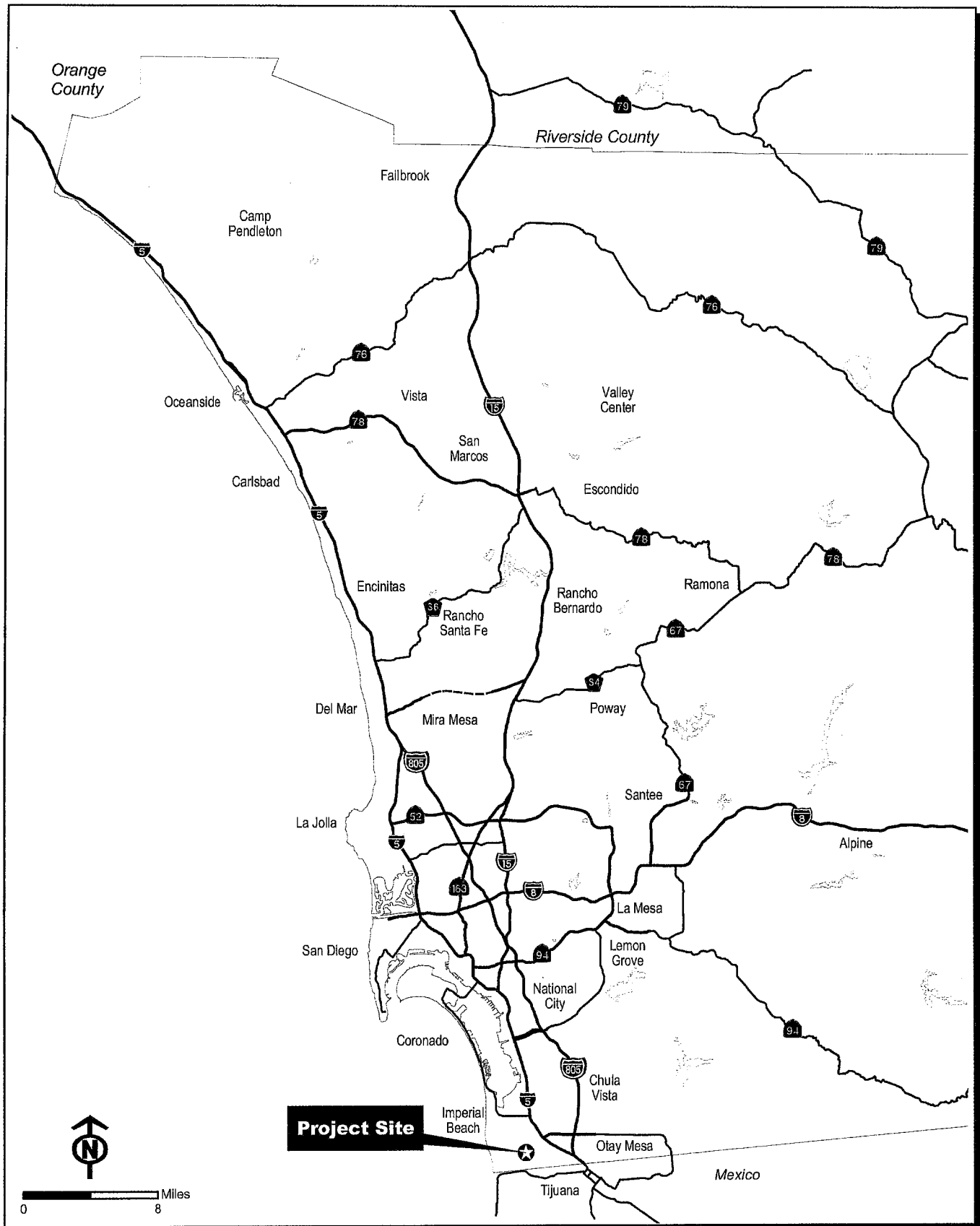


Date

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

Transferee

Date

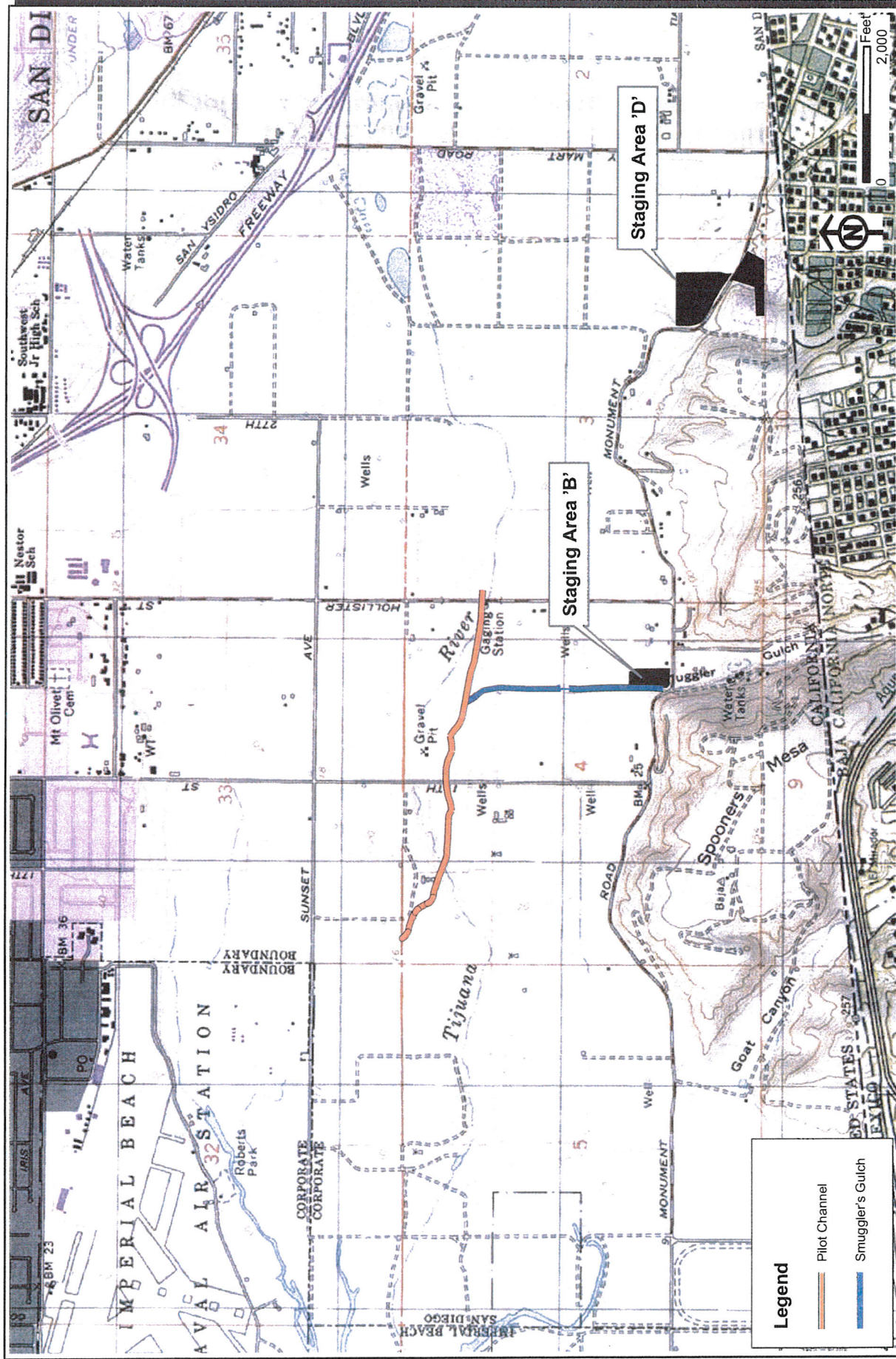


Tijuana River Valley Maintenance Project
 Conceptual Wetlands Mitigation and Monitoring Plan
Regional Map

FIGURE
 1

**Conceptual Wetlands Mitigation and Monitoring Plan for the
Tijuana River Valley Maintenance Project**

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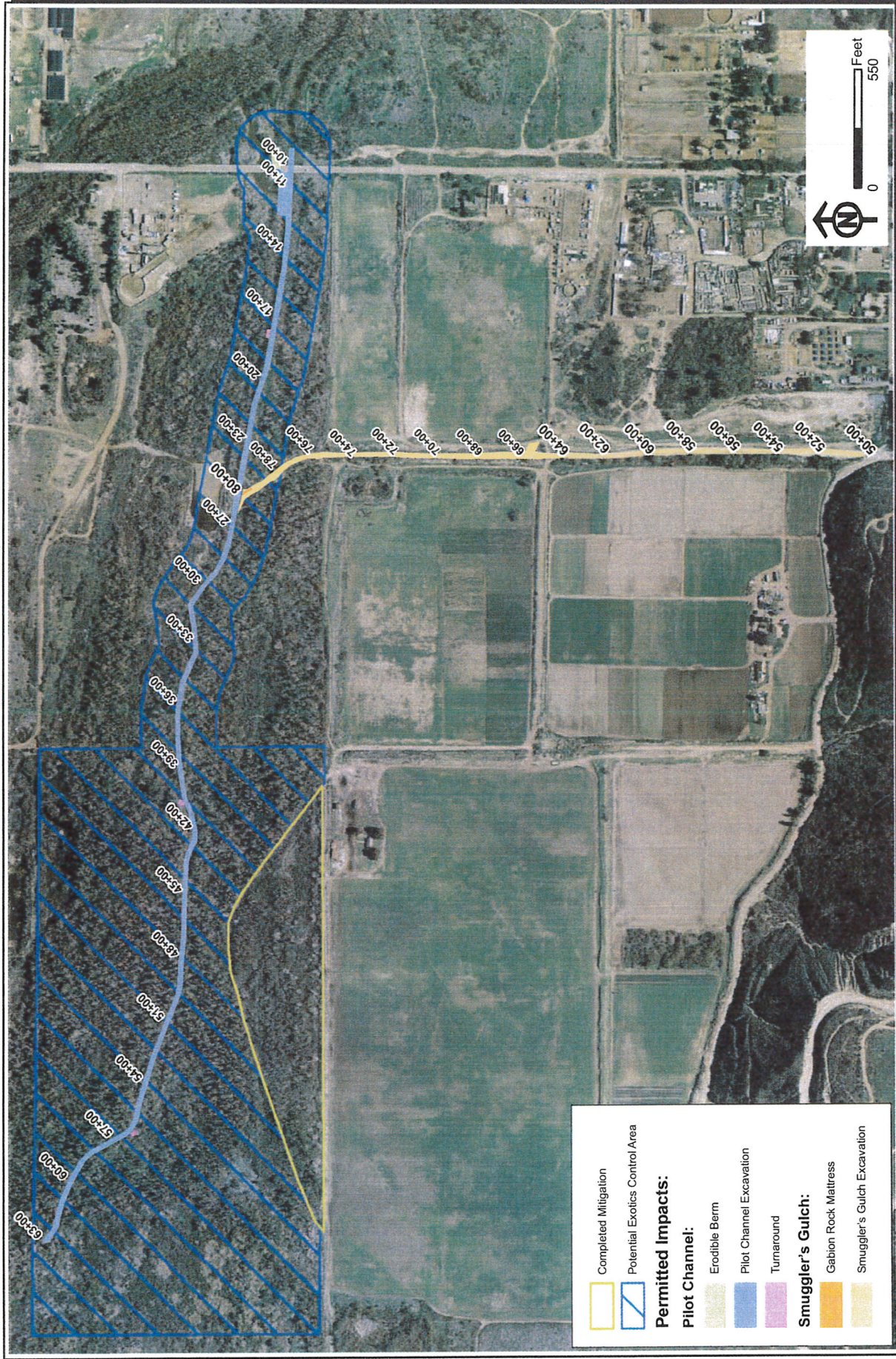


BASE MAP SOURCE: USGS 7.5 Minute Series, Imperial Beach Quadrangle

Tijuana River Valley Maintenance Project
 Conceptual Wetlands Mitigation and Monitoring Plan
 Vicinity Map

**Conceptual Wetlands Mitigation and Monitoring Plan for the
Tijuana River Valley Maintenance Project**

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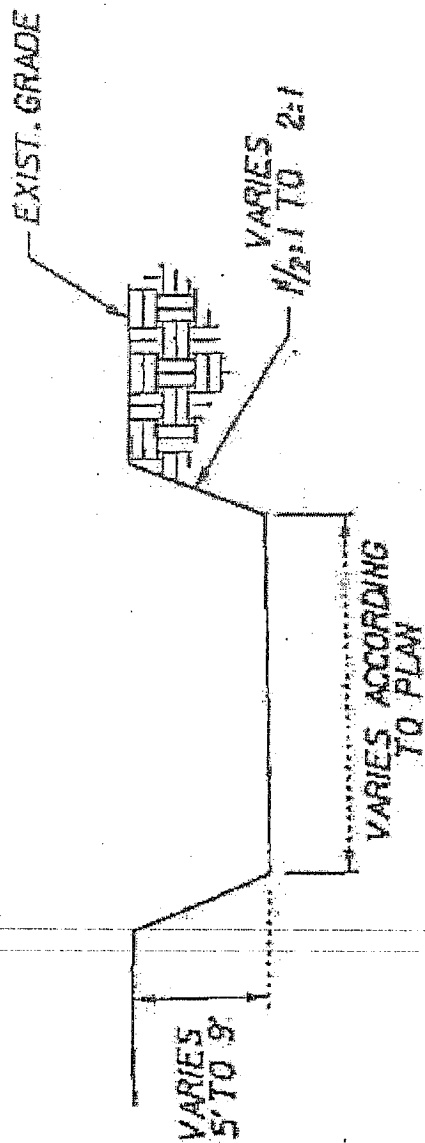


BASE MAP SOURCE: DigitalGlobe, January 2008

FIGURE 3a
Tijuana River Valley Maintenance Project
Conceptual Wetlands Mitigation and Monitoring Plan
Impacts and Mitigation Map

**Conceptual Wetlands Mitigation and Monitoring Plan for the
Tijuana River Valley Maintenance Project**

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PILOT CHANNEL & SMUGGLER'S GULCH

TYPICAL CHANNEL CROSS SECTION

BASE MAP SOURCE: USGS 7.5 Minute Series, Imperial Beach Quadrangle

Tijuana River Valley Channel Maintenance Project
Typical Channel Cross Section

FIGURE
3b



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011



In Reply Refer To:
FWS-SDG-08B0600-10F0001

AUG 24 2012

Colonel R. Mark Toy
District Commander
U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch – San Diego Field Office
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

Attention: Robert Smith, Regulatory Branch – San Diego Field Office

Subject: Formal Section 7 Consultation on the Tijuana River Valley Channel Maintenance Project, San Diego County, California (Corps File No. SPL-2009-00719-RRS)

Dear Colonel Toy:

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion on the proposed issuance of a U.S. Army Corps of Engineers (Corps) permit under section 404 of the Clean Water Act to the City of San Diego (City) to conduct channel maintenance activities in the Tijuana River Valley, San Diego County, California and its effects on the federally endangered least Bell's vireo (*Vireo bellii pusillus*, vireo) and its designated critical habitat, in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). Your request for formal consultation was received on October 27, 2010.

The light-footed clapper rail (*Rallus longirostris levipes*, clapper rail) occurs in the Tijuana River Valley and the species may occur in the Pilot Channel of the Tijuana River that will be dredged/ excavated by the project. The City will implement significant conservation measures (see Enclosure) as part of the project to avoid and minimize potential impacts to the clapper rail. The City will perform all channel maintenance during the non-breeding season to ensure that the project will not affect clapper rail breeding. To ensure that any effects of channel maintenance on individual clapper rail are reduced to the level of insignificance, a biologist will conduct surveys prior to and during channel maintenance to determine if clapper rails are present. In addition, fences will be installed at the downstream and upstream extent of the work area, perpendicular to the channel and up the channel banks, to preclude clapper rails from entering channel maintenance areas. If clapper rails are observed within the channel maintenance areas, the biologist will direct clearing activities to ensure that no clapper rails are injured or killed by such activities. This includes passively flushing clapper rails out of the way of mechanized equipment and in the direction of adjacent avoided areas (e.g., slowly walking through river habitat to effect dispersal to adjacent habitat). This low-level flushing activity during the non-

breeding season is considered an avoidance and minimization measure that has an insignificant effect on individual clapper rails and does not rise to the level of take as defined by the Act.

Based on the site and species information, and the City's commitment to implement the conservation measures described above and in the Enclosure, the Service has determined that the proposed channel maintenance project is not likely to adversely affect the clapper rail. Therefore, the clapper rail is not addressed in this biological opinion.

This biological opinion is based on the information provided in the: *Draft biological resources technical report Tijuana River Valley emergency maintenance project* (Dudek 2009); Corps public notice dated August 26, 2010; *Conceptual wetlands mitigation and monitoring plan for the Tijuana River Valley channel maintenance project* (Dudek 2010); August 23, 2011, letter from Dudek regarding updated project information; *Errata biological resource technical report and conceptual wetlands mitigation plan Tijuana River Valley channel maintenance Project No. 230815* (Dudek 2011); previous biological opinions 1-6-93-F-35 and 1-6-98-F-16, and the informal consultation dated September 29, 2003, on the Tijuana River Valley channel maintenance; site visits; and other information contained in our office files. The complete project file for this consultation is maintained at the Service's Carlsbad Fish and Wildlife Office (CFWO). This consultation supersedes the previously mentioned biological and informal opinions.

CONSULTATION HISTORY

On October 1, 1993, the CFWO issued biological opinion 1-6-93-F-35 (amended on October 22, 1993) to evaluate impacts to the vireo from dredging/excavation of 2.67 acres of riparian woodland for the Pilot Channel, including two equipment turnaround areas, and construction of a "soil plug" to prevent low flows from entering the Northern Channel of the Tijuana River. However, post-construction surveys revealed that a total to 3.3 acres of riparian woodland was impacted by the dredging/excavation of the Pilot Channel. The biological opinion also addressed annual maintenance of the Pilot Channel. A total of 11.02 acres of vireo quality riparian habitat was created at the City's Tijuana River mitigation site adjacent to the Pilot Channel, 9.9 acres of which was used to offset project impacts.

On January 21, 1998, the CFWO issued biological opinion 1-6-98-F-16 (amended on January 27, 1998) to evaluate impacts to the vireo from dredging/excavation of 5,000 square feet (0.11 acre) of riparian woodland in the Pilot Channel immediately east of Hollister Bridge and at the confluence of the Pilot Channel and Smuggler's Gulch (including installation of a rock gabion). A total of 10,000 square feet (0.23 acre) of vireo quality habitat was to be created on San Diego County land north of the Pilot Channel to offset project impacts.

On September 29, 2003, the CFWO completed informal consultation with the Corps to evaluate impacts to vireo, flycatcher, gnatcatcher, and clapper rail from annual maintenance of the Pilot Channel, Smuggler's Gulch, and the Northern Channel of the Tijuana River. This consultation included conservation measures to avoid adverse effects to listed species and critical habitat.

Although the biological opinion 1-6-93-F-35 and informal consultation completed in 2003 considered impacts in the Pilot Channel and Smuggler's Gulch to be permanent and allowed for annual maintenance, the City did not renew their Corps permit, which subsequently expired.

On September 25, 2009, the City applied to the Corps for an emergency permit to perform maintenance in the Pilot Channel and Smuggler's Gulch. On October 5, 2009, the Corps issued an emergency permit for the project. In an October 14, 2009, email, the CFWO acknowledged Corps issuance of an emergency permit. The CFWO, Corps, and City also developed measures to minimize potential impacts to the clapper rail during the emergency work.

On February 2, 2010, the City requested an extension of the emergency permit to March 15, and on February 19, 2010, requested the extension be revised to allow work to continue through April 15. The CFWO concurred with the extensions in an email dated April 9, 2010, with the condition that the City monitor for vireo and clapper rail and stop work if either species were detected in the project area. On April 12, 2010, the City informed the CFWO and Corps that vireo had been detected in the project area and that work was stopped.

On July 8, 2010, we met with the Corps and City to discuss permitting of the project. On September 30, 2010, the CFWO sent an email to the Corps stating that a new biological opinion should be done that would update and supersede the previous biological opinions and informal consultation. On October 27, 2010, we received an email and letter of the same date from the Corps requesting initiation of formal consultation for the project. That same day, the CFWO provided the Corps a draft project description for comment. On November 4, 2010, the Corps sent an email to the CFWO with the City's comments on the draft project description. On November 16, 2010, the CFWO sent an email to the Corps with a revised project description based on the City's comments. That same day, a temporary restraining order enjoining the project was issued by the Superior Court of the State of California in response to lawsuit regarding the review of the project under the California Environmental Quality Act (CEQA).

On December 9, 2010, the CFWO sent an email to the Corps requesting documentation of completion of the 0.23-acre of vireo quality habitat that was to be created on San Diego County land to offset impacts evaluated in the biological opinion 1-6-98-F-16. On January 4, 2011, we received an email from the City's consultant, Dudek, stating that excess credit at the Tijuana River mitigation site would be used to offset impacts evaluated in the biological opinion 1-6-98-F-16 rather than mitigating on County land.

We continued working on the consultation until April 2011 when it became clear that the project would be delayed and possibly changed during the additional CEQA review required by the lawsuit settlement. In a letter dated August 23, 2011, the City's consultant, Dudek, provided a revised project description including: an extension of the Smuggler's Gulch portion of the project from 2,900 feet to 3,040 feet; the addition of a third access route and the reduction of the proposed staging areas; and the deletion of the previously proposed repair of a breach in the berm along the northern side of the Pilot Channel.

On November 23, 2011, the project was again delayed due to an appeal of the coastal development permit and the CEQA project review. Despite these legal challenges, the Corps requested the Service to complete a draft biological opinion for the proposed project.

On June 28, 2012, the CFWO sent an email to the Corps and City with a revised project description based on the information provided by Dudek on August 23, 2011. On July 18, 2012, the City responded with comments. Further discussions between the CFWO, Corps, and City addressed any outstanding issues. On August 15, 2012, we provided a draft biological opinion to the Corps and City for review and comment.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

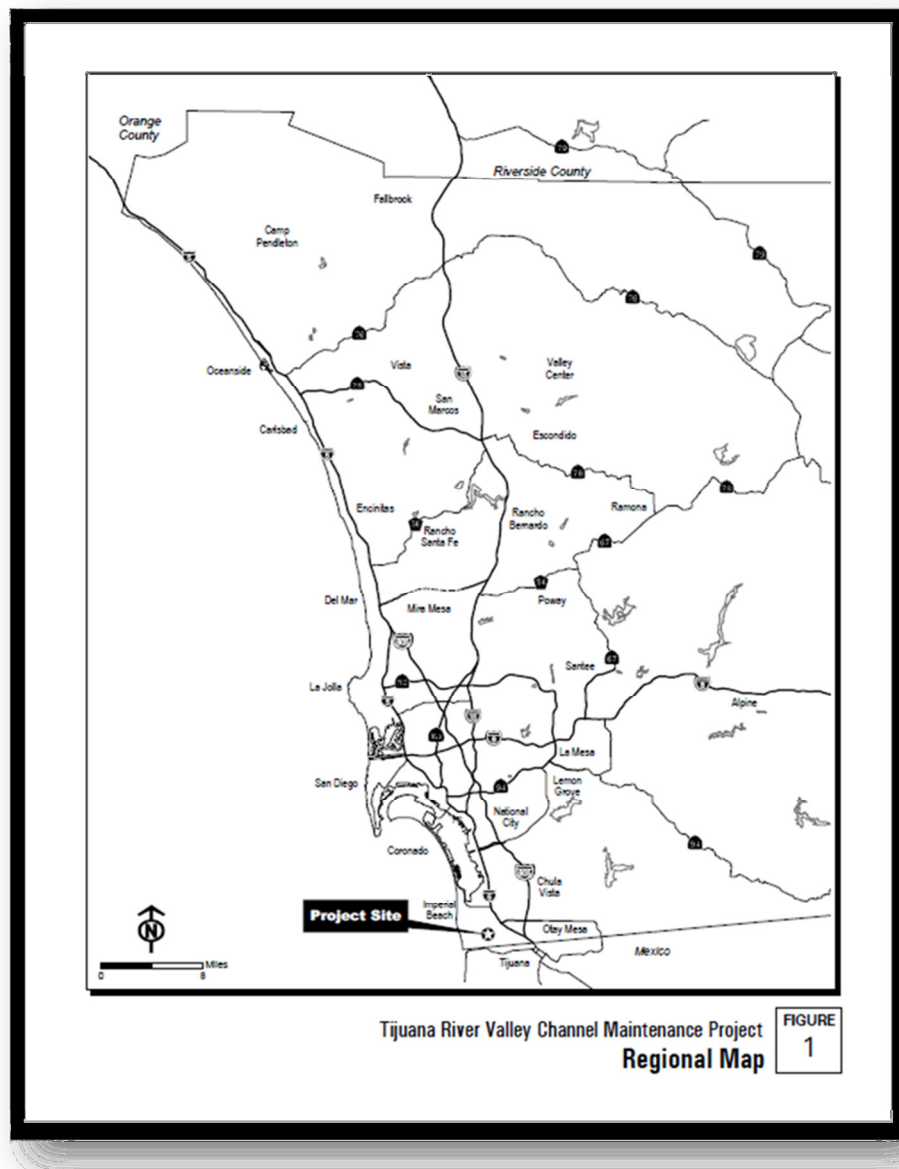
The proposed action is the issuance of a Corps permit to the City under section 404 of the Clean Water Act to impact 4.31 acres of waters of the U.S. for the Tijuana River Valley channel maintenance project (Figures 1 and 2). The project consists of the following four components:

Pilot Channel

The Pilot Channel was originally constructed in 1993 and addressed in biological opinion 1-6-93-F-35 with a 5-foot depth, 23-foot wide top width, 15-foot wide bottom width, and 5,400-foot length extending west from the Hollister Street Bridge and two 20- by 40-foot turn around areas. However, post construction surveys revealed that a 5,870-foot long channel was dredged/ excavated, including 100-feet east of Hollister Street Bridge.

The proposed project will allow annual dredging/excavation of the Pilot Channel starting 100 feet east of the Hollister Street Bridge to 5,300 feet west of the bridge (5,400 linear feet total) to the same dimensions originally constructed in 1993 (2.85 acres) (Figure 2). Grading to reconstruct the channel banks with compacted soil material may occur as needed within the 23 foot-wide channel. A section of the channel bank, immediately west of the Hollister Street Bridge, is breached and allowing flows from the Pilot Channel to enter the Northern Channel of the Tijuana River. Although repair of this breach was discussed in the mitigated negative declaration and a biological resource technical report errata (Dudek 2011), the City conducted a further evaluation of the breach and determined that a repair will not be conducted at this time. The decision was based on the limited capabilities of City work crews especially with regards to standing water conditions in this area, the unknown topography of the channel and breach in this location, and the San Diego County Water Authority's proposal to repair the breach in a manner that will block up to approximately the 5-year storm event from entering the Northern Channel at this location.

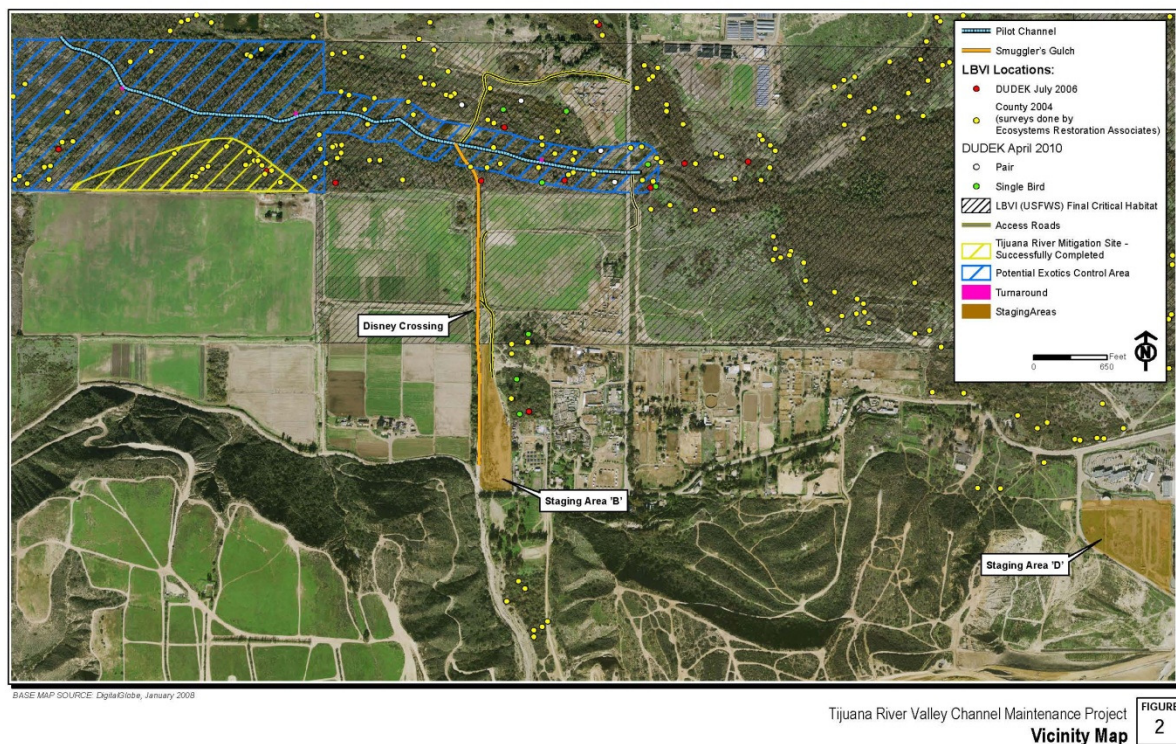
Three 25- by 30-foot (0.017 acre each, 0.052 acre total) equipment turnaround areas outside the Pilot Channel will be used during Pilot Channel maintenance (Figure 2). Two of the turnarounds will be located west of the Pilot Channel confluence with Smuggler's Gulch and were



constructed under the Corps emergency permit in 2009, while the third turnaround will be located east of this confluence and has yet to be constructed. All three turnarounds are necessary for equipment movements within the confined channel work area. The turnarounds will remain at the same exact location in for future channel maintenance. With the turnarounds, a total of approximately 2.9 acres will be impacted by the Pilot Channel dredging/excavation.

Smuggler's Gulch

Smuggler's Gulch channel is an existing 20-foot wide agricultural channel with manufactured berms and a channel bottom that is mostly unvegetated or vegetated with only herbaceous



species. The project includes annual dredging/excavation of the channel starting immediately north of Monument Road and continuing 3,040 linear feet north to the confluence with the Pilot Channel (1.39 acres) (Figure 2). Cleaning of existing culverts under Monument Road and at the Disney Crossing is also included in the Smuggler's Gulch part of the project. The City will also maintain an existing 5,000-square foot gabion structure at the confluence of Smuggler's Gulch and the Pilot Channel that was originally constructed in 1998 and addressed within biological opinion 1-6-98-F-16. Maintenance may consist of excavating around the gabion to expose the structure and repair the gabion. The structure may need to be replaced periodically due to deterioration.

Staging Areas

Two areas (B and D) will be used throughout the project for staging equipment and material. Dredge/excavation spoils will be stored or transferred to and from established best management practice (BMP) areas within the staging areas (Figure 2). Manual and mechanical separation of the spoil material may also occur to sort sediment, vegetation and trash.

Staging Area B consists of 4.68 acres of disturbed habitat east of and adjacent to Smuggler's Gulch. A permanent earthen berm between this area and Smuggler's Gulch protect this staging area from flooding. Permanent gated access to the staging area is from Monument Road. This area was initially used in 2001 and has been used since during each maintenance event. No excavation or grading will be necessary in this area.

Staging Area D consists of 10.59 acres of disturbed habitat east of and adjacent to the South Bay International Wastewater Treatment Plant. This area is not near enough to the channel maintenance areas to function as the single staging area for the project but will be used in conjunction with Staging Area B. No excavation or grading will be necessary in this area.

Off-road Access Routes

Three off-road access routes will be used during construction (Figure 2). One route runs west from Hollister Street to the Tijuana River Valley Regional Park entrance and then runs south to the confluence of the Pilot Channel and Smuggler's Gulch. The portion of this access route that runs from the Pilot Channel north to the regional park is subject to erosion and sediment/trash deposition during heavy storms and, therefore, may require excavation to be used by equipment. The second off-road route runs parallel with Hollister Street to the east and allows access to the portion of the Pilot Channel east of the Hollister Street Bridge. The route is approximately 15-foot wide and is an existing dirt road except for an approximately 45-foot-long section on the south bank of the Pilot Channel where existing wetlands vegetation will be impacted to allow access to the area (0.02 acre). The third off-road route runs parallel to Smuggler's Gulch north of Staging Area B and allows access into the Smuggler's Gulch channel via an access ramp on the east bank, immediately downstream of the Disney Crossing. This approximately 15-foot wide by 75-foot-long access ramp was constructed in 2009 using onsite earth materials (i.e., excavation and re-contouring of the existing bank of the Smuggler's Gulch) within an area of disturbed, nonnative vegetation.

The project is expected to begin in October 2012 and will be implemented as needed annually for the duration of a 5-year Corps permit. To help offset project impacts, approximately 8.62 acres of riparian wetland will be enhanced by removing nonnative plants from a 96-acre area surrounding the Pilot Channel (Figure 2).

Action Area

According to 50 CFR § 402.02 pursuant to section 7 of the Act, the "action area" means all areas to be affected directly or indirectly by the Federal action. Areas directly impacted include all areas within the project footprint, including construction vehicle access routes, staging areas, and grading areas. Habitat immediately adjacent to the project footprint may be indirectly impacted or degraded by construction activities or later in time. For this project, we have defined the action area to include the project footprint and the surrounding habitat within about 500 feet, which may be exposed to project-related effects such as increased noise, light, dust levels and human activity during project construction and short-term maintenance/monitoring (i.e., 5 years or until success criteria are met) of wetlands enhancement and nonnative plant removal along the Pilot Channel (Figure 2). Subsequent analyses of the environmental baseline, effects of the action, and levels of incidental take are based upon the action area. The action area is also the area in which baseline conditions and cumulative effects are analyzed.

Conservation Measures

The City has agreed to implement the following conservation measures as part of the proposed action to avoid, minimize, and offset potential adverse effects of the action on vireo and its designated critical habitat:

- CM-1. Impacts to approximately 2.92 acres of riparian/wetland within designated critical habitat for the vireo will be offset by: enhancing 8.62 acres of wetlands within a 96-acre area in and along the Pilot Channel over a 5-year period; and using the remaining 0.11 acre of wetland creation from the City's Tijuana River mitigation site that was completed under biological opinion FWS-1-6-93-F-35.
- CM-2. The City will temporarily fence (with silt barriers) the limits of project construction staging areas and access routes and mark (e.g., flag) the limits of dredging/excavation to prevent additional impacts and the spread of silt from the construction zone into adjacent avoided habitats. Fencing/marking will be installed in a manner that does not impact avoided habitats. The City will submit to the Agencies for approval, at least 2 days prior to initiating project impacts, photographs that show the fenced/ marked limits of impact. If work occurs beyond the fenced/ marked limits of impact, all work will cease until the problem has been remedied to the satisfaction of the Agencies. Any riparian/wetland or upland habitat impacts that occur beyond the approved fenced will be offset at a as determined by the Agencies. Temporary construction fencing/marking will be removed upon project completion.
- CM-3. The City will staff a biologist knowledgeable of vireo biology and ecology who will be responsible for overseeing compliance with conservation measures for the vireo and its designated critical habitat. This biologist will be approved by the Agencies. The City will submit the biologist's name, address, telephone number, and work schedule on the project to the Agencies at least 30 days prior to initiating project impacts. The biologist will perform the following duties:
 - a) Be on site during work to ensure compliance with all conservation measures;
 - b) Oversee installation of and inspect the fencing and erosion control measures within project footprint a minimum of once per week and daily during all rain events to ensure that any breaks in the fence or erosion control measures are repaired immediately;
 - c) Monitor the work area to ensure that work activities do not generate excessive amounts of dust;
 - d) Train all contractors and construction personnel on the biological resources associated with this project and ensure that training is implemented by construction personnel. At a minimum, training will include: 1) the purpose for

resource protection; 2) a description of the vireo and its critical habitat; 3) the conservation measures given in the biological opinion that should be implemented during project construction to avoid and/or minimize impacts to the vireo and its critical habitat, including strictly limiting activities, vehicles, equipment, and construction materials to the fenced project footprint to avoid sensitive resource areas in the field (i.e., avoided areas delineated on maps or on the project site by fencing); 4) environmentally responsible construction practices in CM-6; 5) the protocol to resolve conflicts that may arise at any time during the construction process; 6) the general provisions of the Act, the need to adhere to the provisions of the Act, and the penalties associated with violating the Act;

- e) Halt work, if necessary, for any project activities that are not in compliance with the conservation measures committed to as part of the project and specified in this biological opinion and conditions of the Corps permit. The biologist will report any non-compliance issues to the Agencies within 24 hours of its occurrence and confer with the Agencies to ensure the proper implementation of species and habitat protection measures
 - f) Submit weekly compliance reports (including photographs of impact areas) to the Agencies to show that authorized impacts were not exceeded and general compliance with all conservation measures. A separate report will be prepared and submitted to the Agencies immediately if an impact occurs outside of the approved project limits;
 - g) Submit a final report to the Agencies within 60 days of project completion that includes as-built construction drawings with an overlay of areas that were impacted or preserved and other relevant information documenting that authorized impacts were not exceeded. This report will document general compliance with the project as described in this biological opinion and the conservation measures.
- CM-4. Channel dredging/excavation and other project construction will occur between September 16 and March 14 to avoid the vireo nesting season. If channel dredging/excavation or other project construction is necessary during the vireo breeding season, construction noise levels at the edge of occupied vireo nests will be kept below 60 decibel (dBA) L_{eq} (measures as equivalent sound level) from 5 a.m. to 11 a.m. during the nesting period between March 15 and September 15. For the balance of the day, during the nesting period, the noise levels will not exceed 60 dBA, averaged over 1-hour period on an A weighted dBA (i.e., 1 hour L_{eq} /dBA) at occupied vireo nest locations. Large construction equipment will be staged so as not to exceed the noise threshold identified above.
- CM-5. If channel dredging/excavation or other project construction is necessary during the vireo breeding season, the approved biologist will also perform the following duties:

- a) Perform a minimum of three focused vireo surveys on separate days to determine the presence of vireo nest building activities, egg incubation activities, or brood rearing activities within 500 feet of project construction proposed within the vireo breeding season. The surveys will begin a maximum of 7 days prior to project construction, and a survey will be conducted the day immediately prior to the initiation of work. Additional surveys will be done once a week during project construction in the breeding season. These additional surveys may be suspended as approved by the Agencies. The City will notify the Agencies at least 7 days prior to the initiation of surveys and within 24 hours of locating any vireo;
- b) If an active vireo nest is found within 500 feet of project construction, the biologist will inform the project engineer and/construction manager to postpone project construction within 500 feet of the nest and contact the Agencies to discuss: 1) the best approach to avoid/minimize impacts to nesting birds (e.g., sound walls, noise monitoring); and 2) a nest monitoring program acceptable to the Agencies. Subsequent to these discussions, project construction may be initiated subject to implementation of the agreed upon avoidance/minimization approach and nest monitoring program. Nest monitoring will occur according to a schedule approved by the Agencies. The biologist will determine whether bird activity is being disrupted. If the biologist determines that bird activity is being disrupted, the City will stop construction work and coordinate with the Agencies to review the avoidance/minimization approach. Upon agreement as to the necessary revisions to the avoidance/minimization approach, work may resume subject to the revisions and continued nest monitoring. Nest monitoring will continue until fledglings have dispersed, as approved by the Agencies;
- c) Submit weekly observation reports (including photographs of impact areas) via regular mail or email to the Agencies during project construction within 500 feet of avoided critical habitat. The weekly reports will document that authorized impacts were not exceeded and general compliance with all conditions. The reports will also outline the duration of vireo monitoring, the location of construction activities, the type of construction that occurred, and equipment used. These reports will specify numbers, locations, and sex of vireos (if present), observed vireo behavior (especially in relation to construction activities), and remedial measures employed to avoid, minimize, and mitigate impacts to vireos. Raw field notes should be available upon request by the Agencies; and
- d) Submit a final report to the Agencies within 120 days of project completion that includes: 1) as-built construction drawings with an overlay of habitat that was impacted and avoided; 2) photographs of habitat areas that were avoided; and 3) other relevant summary information documenting that authorized impacts were not exceeded and that general compliance with all conditions of this biological opinion was achieved.

CM-6. The City will ensure that the following environmentally responsible practices are implemented during project construction:

- a) Contractors and construction personnel will strictly limit their activities, vehicles, equipment, and construction materials to the fenced project footprint;
- b) The project site will be kept as clean of debris as possible. All food related trash items will be enclosed in sealed containers and regularly removed from the site;
- c) Pets of project personnel will not be allowed on the project site;
- d) All equipment maintenance, staging, and dispensing of fuel, oil, coolant, or any other such activities will occur in designated areas outside of waters of the United States within the fenced project impact limits. These designated areas will be located in previously compacted and disturbed areas to the maximum extent practicable in such a manner as to prevent any runoff from entering waters of the United States and will be shown on the construction plans. Fueling of equipment will take place within existing paved areas greater than 100 feet from waters of the United States. Contractor equipment will be checked for leaks prior to operation and repaired as necessary. "No-fueling zones" will be designated on construction plans; and
- e) Impacts from fugitive dust will be avoided and minimized through watering and other appropriate measures; and
- f) No work will occur at night.

CM-7. The City will submit final wetland enhancement plans to the Agencies for approval within 30 days of initiating project impacts. These plans will be based on the conceptual plan for the project (Dudek 2010) and will be approved by the Agencies before the onset of project impacts. In addition to the information contained in the conceptual plan, the final plans will include the following information and conditions:

- a) Wetland enhancement will begin concurrently with project impacts and will be done from September 16 to March 14 to avoid the vireo nesting season;
- b) A qualitative and quantitative vegetation monitoring plan with a map of proposed sampling locations. Photo points will be used for qualitative monitoring and stratified-random sampling will be used for all quantitative monitoring;
- c) Five years of success criteria for enhancement areas;
- d) Annual enhancement maintenance and monitoring reports will be submitted to the Agencies no later than December 1 of each year;

- e) Nonnative plant removal outside the Pilot Channel will be overseen by a biologist approved by the Agencies to ensure that native vegetation is not impacted.

STATUS OF THE SPECIES

Listing Status

The vireo was listed as endangered on May 2, 1986 (51 FR 16474). Vireo critical habitat was designated on February 2, 1994 (Service 1994) and it encompasses about 38,000 acres of land at 10 locations in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, and San Diego counties. The proposed project occurs within Unit 10 of designated critical habitat, which is approximately 10,879 acres in size and includes a substantial portion of Tijuana River Valley (Figure 2). The designated critical habitat within Unit 10 provides shelter and offers foraging and resting opportunities for nesting and migrant birds during the breeding season and may also provide demographic benefits such as serving as a regional population source. The Service determined that the physical and biological habitat features (i.e., primary constituent elements or PCEs) that support feeding, nesting, roosting, and sheltering are essential to the conservation of the vireo. These habitat features include riparian woodland vegetation that generally contains canopy and shrub layers and includes some associated upland habitats.

Vireos meet their survival and reproductive needs (food, cover, nest sites, nestling and fledgling protection) within the riparian zone in most areas. In some areas they also forage in adjacent upland habitats. PCEs for Unit 10 specifically include riverine and floodplain habitats (particularly willow-dominated riparian woodland with dense understory vegetation maintained, in part, in a non-climax stage by periodic floods or other agents) and adjacent coastal sage scrub, chaparral, or other upland plant communities.

A draft recovery plan was published in March 1998 (Service 1998). While a final plan has not been issued, we completed a 5-year review for vireo in September 2006 in which we concluded that, due to new information on the species and an improved understanding of ongoing recovery actions to reduce threats, the recovery goals and strategies should be modified and refined. In addition, we recommended that the vireo should be downlisted from endangered status to threatened status because of a 10-fold increase in population size since its listing in 1986, expansion of locations with breeding vireo throughout southern California, and conservation and management of suitable breeding habitat throughout its range (Service 2006).

The vireo historically occupied willow riparian habitats from Tehama County in northern California, southward to northwestern Baja California, Mexico, and as far east as Owens Valley, Death Valley, and the Mojave River (Grinnell and Miller 1944, Service 1998). Although the population has grown 10-fold since the listing, greater than 99 percent still remain in southern California (Service 2006). For detailed information on vireo biology, ecology, range-wide status, threats, and conservation needs, please refer to the draft recovery plan for the vireo (Service 1998) at: http://ecos.fws.gov/docs/recovery_plan/980506.pdf and 5-year review for the species (Service 2006) at http://ecos.fws.gov/docs/five_year_review/doc781.pdf.

ENVIRONMENTAL BASELINE

Regulations implementing the Act (50 CFR § 402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area that have undergone section 7 consultation, and the impacts of State and private actions which are contemporaneous with the consultation in progress.

Site Characteristics and Surrounding Land Uses

The Pilot Channel supported 2.67 acres of riparian woodland when it was originally dredged/ excavated in 1993. Subsequent maintenance dredging/excavation in 1999, 2001, 2002, and 2003 also removed all vegetation from the Pilot Channel. At the time the Corps emergency permit was issued in 2009, the Pilot Channel primarily supported giant reed (1.08 acre) and disturbed wetland/mulefat scrub/southern willow scrub (1.47 acres) and some mulefat/southern willow scrub (0.20 acre) that had grown since the last dredging/excavation in 2003 (Table 1). All but the eastern most 600 feet of the Pilot Channel was dredged/excavated in 2009-2010 under the emergency permit and is now open channel (2.54 acres) with some vegetated areas (0.38 acre) (Table 1). The Hollister Street Bridge crosses the Pilot Channel approximately 100 feet from the eastern project limit. The 500-foot-long section of the Pilot Channel west of the Hollister Street Bridge not reached under the emergency permit supports disturbed southern willow scrub (0.26 acre), while the 100-foot portion east of Hollister Street Bridge is open channel (0.05 acre).

Smuggler's Gulch has manufactured berms and is mostly open channel (1.38 acres) with only a small area of mulefat scrub at its confluence with the Pilot Channel (0.01 acre) (Table 1), which was dredged/excavated in 2003, 2005 and 2008. Staging Area B is east of and adjacent to Smuggler's Gulch and is largely disturbed, while Staging Area D is located east and adjacent to the South Bay International Wastewater Treatment Plant south of Monument Road and is mostly disturbed.

The entire project site is located within the 100-year floodplain of the Tijuana River, and all but Staging Area D is also within the Multiple Habitat Planning Area (MHPA), or preserve, established by the City's Subarea Plan under the broader Multiple Species Conservation Program (City of San Diego 1997). Land uses surrounding the project site are generally agriculture, equestrian (i.e., horse stables), and open space, including conserved areas in the MHPA.

Status of Least Bell's Vireo and its Designated Critical Habitat within the Action Area

In 1993 prior to construction, the Pilot Channel impact footprint supported portions of 2 vireo breeding territories, and the area immediately adjacent to the Pilot Channel supported 7 additional vireo breeding territories as described in biological opinion 1-6-93-F-35. Protocol surveys of the Tijuana River Valley in 2004 (Ecosystems Restoration Associates 2004) found several vireo pairs in the Tijuana River surrounding the Pilot Channel area (Figure 2). Protocol

Table 1	Project Vegetation Types/Impacts					
Vegetation Types	Pilot Channel-2009¹	Pilot Channel-Current¹	Smuggler's Gulch-2009 and Current²	Staging Area B-Current	Staging Area D-Current	Enhancement Area-Current
Giant Reed	1.08	0.05				
Disturbed Wetland	0.11	0.03				
Mulefat Scrub	0.04					
Disturbed Mulefat Scrub	0.57	0.03	0.01			
Open Channel	0.16	2.54	0.82			
Southern Willow Scrub	0.17	0.01				96.00
Disturbed Southern Willow Scrub	0.79	0.26				
Subtotal	2.92	2.92	0.83			96.00
Open Channel			0.56			
Disturbed				4.68	10.59	
Subtotal			0.56			
Total	2.92	2.92	1.39	4.68	10.59	96.00

¹ Pilot Channel impacts include Pilot Channel dredging/maintenance, three equipment turnarounds, and access immediately east of Hollister Street on the southern bank of the Pilot Channel.

² Smuggler's Gulch impacts include Smuggler's Gulch channel dredging/maintenance, maintenance of gabion structure, and access ramp immediately downstream of the Disney Crossing on the eastern bank of Smuggler's Gulch channel.

surveys in 2006 (Dudek 2006) in association with the San Diego County Water Authority's Tijuana River Wetland Mitigation project (08B0061-08F0732-R002) found three vireo pairs in the Tijuana River immediately to the west of the Pilot Channel/Smuggler's Gulch confluence (Figure 2). However, the observed use areas of these vireo pairs did not extend into the Pilot Channel. No protocol surveys were done prior to the emergency clearing of the Pilot Channel in 2009-2010. However, a 1-day construction monitoring survey for the emergency clearing detected 4 vireo pairs and 5 individuals in the riparian vegetation around the Pilot Channel between its confluence with Smuggler's Gulch and the eastern limit of the project (pers. comm. Joshi, 2010) (Figure 3). A vireo pair was observed south of and immediately adjacent to the Pilot Channel. The territory of this vireo pair likely extends into the portion of the Pilot Channel that maintains suitable habitat because the area was not dredged/excavated in 2009-2010 under the emergency permit.



The environmental baseline will change during the 5-year duration of the Corps permit for the project, depending on how often the maintenance occurs. If cleared annually, the Pilot Channel is not expected to support vegetation suitable for vireo. If maintenance is delayed over 3 years, vireo habitat may develop in some portions of the 2.9-acre area of the Pilot Channel. However, based on the vegetation in the Pilot Channel prior to the 2009-2010 emergency clearing that had developed since the last clearing in 2003, a large portion of the Pilot Channel likely will remain unvegetated and/or support nonnative plants (e.g., giant reed) even if maintenance is delayed. If maintenance is delayed, the relatively narrow Pilot Channel is expected to support significant portions of no more than 2 vireo territories that may be established in and adjacent to the Pilot Channel similar to those observed in 1993 prior to original construction of the Pilot Channel. Because most of Smuggler's Gulch is unvegetated, except at the confluence with the Pilot Channel, it is not expected to be suitable for vireo during the 5-year duration of the Corps permit.

A total of 99.75 acres of the project site, including the entire Pilot Channel (2.92 acres) and the enhancement area (96 acres), and a portion of Smuggler's Gulch (0.83 acres) is within Unit 10 of designated critical habitat for the vireo (Figure 2; Table 1). Habitat within Unit 10 provides shelter and offers foraging and resting opportunities for both nesting and migrant vireo during the breeding season and may also provide demographic benefits such as serving as a regional population source. Because most of Smuggler's Gulch is unvegetated, it is not expected to support PCEs of critical habitat during the 5-year Corps permit term.

EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated and interdependent with that action, which will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action and are later in time, but are still reasonably certain to occur.

This biological opinion does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR § 402.02. Instead, the Service has relied upon the statute and the August 6, 2004, Ninth Circuit Court of Appeals decision in *Gifford Pinchot Task force v. U.S. Fish and Wildlife Service* (No. 03-35279) to complete our effects analyses for critical habitat.

Direct Effects

The project will periodically remove any vegetation that becomes established within the Pilot Channel and Smuggler's Gulch during the 5-year term of the Corps permit. Because the area typically does not support much vegetation, we do not expect any direct impacts to vireo from clearing of Smuggler's Gulch.

The City intends to perform the first maintenance event in October 2012, and then perform annual maintenance as needed. Because most of the Pilot Channel is open channel (2.54 acres) (Table 1), the first maintenance event will impact approximately 0.38 acre of vegetation, mainly within the 500-foot long section of the channel west of Hollister Street Bridge that was not dredged/excavated in 2009-2010 under the emergency permit.

Vireos typically return to established breeding territories year after year (Greaves and Labinger 1997, Salata 1983). In a study on the San Diego River (Beck 1996), a banded population of vireos generally returned year after year with only minor adjustments in territory location. Assuming a distribution similar to that observed in 2010, we expect clearing in 2012 will impact a portion of the territory of the vireo pair observed south of and adjacent to the uncleared portion of the Pilot Channel west of Hollister Street Bridge in 2010, and this vireo pair will compete for less available habitat upon return to the site after project impacts.

If annual maintenance is done throughout the 5-year permit term, we do not expect any more direct impacts to vireo from vegetation removal in the Pilot Channel. To reiterate, if further maintenance is delayed 3 years or more, up to 2.9 acres of suitable vireo habitat may develop in the Pilot Channel that could support up to 2 pairs of vireo. These vireo pairs will also compete for less available habitat upon return to the site after project impacts.

Any pairs returning to the Pilot Channel area after maintenance events will need to adjust or shift their territory but under increased competition for the remaining suitable habitat. Remaining suitable habitat will be more fragmented and may be subject to higher predation and parasitism rates, and the displaced vireos will be subject to increased competition with other vireos on site compared to the baseline condition. Any vireo pair displaced from their territory may not survive these reduced habitat conditions, or if they do, they are likely to experience impairment of their breeding activities from delays in the initiation or prevention of nest building, resulting in fewer nesting attempts per season, a reduced clutch size per attempt, and an overall reduction in reproductive output.

The project includes several conservation measures to avoid and minimize direct impacts to the vireo individuals. Clearing and grubbing of vireo habitat and project dredging and mechanical clearing will occur outside the vireo breeding season (CM-4) so no adults, eggs, or nests will be impacted. The project footprint will be fenced or flagged (CM-2), and project construction will be overseen by a biologist knowledgeable of vireo ecology and biology (CM-3).

A total of 9.9 acres of the 11.02 acres of vireo quality riparian habitat created at the City's Tijuana River mitigation site was used to offset impacts from the original construction of the Pilot Channel (1-6-93-F-35). The City will use 0.23 acres of the created habitat at the Tijuana River mitigation site to offset these impacts.

Impacts to approximately 2.92 acres of riparian/wetland during the 5-year permit term will be offset by enhancing 8.62 acres of wetlands within a 96-acre area along the Pilot Channel over a 5-year period (Figure 2) (CM-1) and using the remaining 0.11 acre of wetland creation from the

City's Tijuana River mitigation site. Enhancement will include nonnative plant removal according to a plan approved by the Agencies, and the removal sites will be monitored until success criteria are met (CM-7). Thus, while there may be a reduction within the action area in vireo abundance and recruitment over the short-term, sufficient riparian habitat to sustain at least three pairs and likely more will be enhanced over the anticipated 5-year period. In addition, the City's Tijuana River mitigation site now supports several vireos (Figure 2).

While enhancement activities may directly impact the vireo (e.g., inadvertent impacts to native vegetation used by nesting vireo during nonnative plant removal), the project conservation measures will avoid and minimize such impacts to vireo individuals. Nonnative plant removal will occur outside the breeding season (CM-7a) so no adults, eggs, or nests will be impacted. In addition, plant removal will be overseen by a biologist knowledgeable of vireo biology and ecology and approved by the Agencies to ensure that native vegetation is not impacted (CM-7g).

Indirect Effects

Indirect impacts to vireo associated with the implementation of the proposed project could include adverse edge effects. Edge effects generally would occur along the dredging/excavation interface with avoided areas. During construction activities, edge effects may include construction related noise, dust, and light.

Because birds depend on sound for a variety of functions and can be sensitive to noise, noise associated with the project may adversely affect vireo during the breeding season. In particular, "masking" may be detrimental to small perching birds, like the vireo. In essence, "excess sound can interfere with the perception of important, relevant auditory signals" (Miller 1974). Whether a vireo receives potentially vital auditory information depends on such noise parameters as environmental attenuation, signal to noise ratios, and discrimination of the receiver given the background noise. The pertinent biological literature suggests that birds use their sense of hearing to locate their young and mates, to establish and defend territories, and to locate and evade predators (Scherzinger 1970, Shen 1983). The life of a vireo may well depend upon its detection of an alarm call given by another vireo (or other source) that warns of the approach of potential predators.

Noise may also affect the breeding behaviors of affected birds. Dooling (1980) concluded that if "noise masks vireo song for the human (at some given distance) then it probably also significantly masks vireo song for the vireo." Dooling continued that "the human almost certainly does better than the vireo in hearing a signal in noise around 2 to 4 kilohertz (probably about twice as good)." Given Dooling's remarks concerning the relative acuities of human and vireo hearing and the aforementioned dependence of the vireo on their sense of hearing, unabated masking noise could adversely affect vireo pairs or individuals that are present within the action area.

SANDAG and RECON (1988) estimated that noise levels above 60 dBA L_{eq} from March 15 to September 15 may impact vireo reproductive success. While vireos often continue to occupy

areas subject to noise levels above 60 dBA, one study documented significantly reduced reproductive success due to noise impacts (Marine Corps 1995). Studies also observed movement away from construction activities and delayed pairing and initial nest establishment suggesting that excessive noise from construction activities may have resulted in the avoidance of suitable habitat and may have interfered with mating behavior (BonTerra 2000a, b, c, and d).

Above some yet unknown noise threshold, vireos likely abandon otherwise suitable habitat. Greaves (1989) hypothesized that the lack of breeding vireos in apparently suitable habitat is due to human disturbances (e.g., bulldozers, off-highway vehicles, hiker travel). We have used 60 dBA L_{eq} hourly as a practical threshold above which significant impacts to the vireo might occur as described above. Therefore, unabated noise resulting from project construction may interfere with the reception of auditory signals by vireo potentially resulting in increased predation, lowered reproductive success and/or abandonment of otherwise suitable habitat.

Potential noise impacts to vireo and its habitat will be avoided by completing dredging/excavation from September to March to avoid the vireo breeding season (CM-4). If project construction is necessary during the vireo breeding season, minimization measures acceptable to the Agencies will be implemented (i.e., keeping noise levels at the edge of occupied vireo nests below 60 dBA L_{eq} , sound walls)(CM-4 and 5).

Dust generated from dredging/excavation, which may decrease plant vigor within vireo habitat, will be minimized through implementation of dust control measures (CM-3c and CM-6e). In addition, no night construction will occur so no night lighting will be needed (CM-6f).

Enhancement activities may indirectly impact vireos if done during the breeding season (e.g., noise, light, contact with herbicide). To avoid potential impacts, enhancement activities will be done outside the vireo breeding season (CM-7a). Based on the commitment to implement the referenced conservation measures, all indirect effects associated with the City's channel maintenance activities in the Tijuana River Valley will be reduced to a level of insignificance.

Critical Habitat

A total of approximately 99.75 acres of the project site, including the entire Pilot Channel (2.92 acres), the enhancement area (96 acres), and a portion of Smuggler's Gulch (0.83 acre), is within Unit 10 of designated critical habitat for the vireo (Figure 2; Table 1). This acreage represents only approximately 0.009 percent of the designation within Unit 10 and just 0.003 percent of the total designation. However, the Pilot Channel was cleared of vegetation in 1993 and has undergone maintenance since that time, and all but the 500-foot long section of the Pilot Channel west of the Hollister Street Bridge supports PCEs. Smuggler's Gulch is mainly unvegetated and supports little to no PCEs, and this is not expected to change during the 5-year permit term.

Lands within Unit 10 provide shelter and offer foraging and resting opportunities for nesting and migrant vireos during the breeding season and may also provide demographic benefits such as serving as a regional population source (Service 1994). The project site is part of a large block

of intact vireo habitat within Unit 10, and vireos are known to occur within proximity to the project site.

Planned dredging/excavation in October 2012 will impact approximately 0.26 acre of critical habitat with PCEs in the 500-foot long section of the Pilot Channel west of the Hollister Street Bridge. If annual maintenance is done throughout the 5-year permit term, we do not expect PCEs to develop in the Pilot Channel. If further maintenance is delayed 3 years or more, up to 2.9 acres of PCEs (i.e., riparian vegetation) could develop in the Pilot Channel. However, based on the vegetation present prior to the 2009-2010 emergency clearing, a portion of the Pilot Channel likely will remain unvegetated and/or support nonnative plants (e.g., giant reed) even if maintenance is delayed.

Impacts from the original construction of the Pilot Channel were offset by 9.9 acres of wetland creation the City's Tijuana River mitigation site, which is in critical habitat and occupied by vireo. Even though impacts were previously offset, the City assumes that 2.9 acres of PCEs will again be impacted in the Pilot Channel and will offset this impact by: enhancing 8.62 acres of wetlands by removing nonnative plants within a 96-acre area in critical habitat along the Pilot Channel over a 5-year period and using the remaining 0.11 acre of wetland creation from the City's Tijuana River mitigation site. The proposed enhancement is expected to improve the quality and quantity of PCEs in the 96-acre enhancement area relative to the current condition. Thus, the proposed action will not appreciably diminish the primary functions of Unit 10 to support vireo breeding, feeding, and sheltering or otherwise diminish the value of designated critical habitat to support vireo recovery.

Effect on Recovery

Vireos in the action area are considered part of the Tijuana River metapopulation in the draft recovery plan for the vireo (Service 1998). The Tijuana River has historically supported vireo, and the Pilot Channel has supported a portion of 2 vireo territories. While the proposed project will impact a small portion of the riparian habitat used by vireo, the enhancement of 8.62 acres of riparian habitat will offset project impacts and provide additional breeding, feeding, and sheltering habitat. Moreover, impacts from the original construction and a small part of this project have been offset by creation of 10.24 acres of vireo quality riparian habitat at the City's Tijuana River mitigation site. The enhancement site likely will support more vireo than the baseline condition after successful completion of the enhancement, as the Tijuana River mitigation site now supports several vireos (Figure 2). Thus, over the long-term, the project will benefit the Tijuana River metapopulation and the subspecies as a whole and support vireo recovery.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section

because they require separate consultation pursuant to section 7 of the Act. We do not anticipate any activities to occur within the action area that will not have a Federal action associated with it.

CONCLUSION

After reviewing the current status of the vireo, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service's biological opinion that the Tijuana River Valley channel maintenance project, as proposed, is not likely to jeopardize the continued existence of the vireo or result in the destruction or adverse modification of its designated critical habitat. We reached this conclusion by considering the following:

1. The vireo population in the United States has increased 10-fold since the species' listing in 1986, with significant population growth documented in southern California counties (Service 2006);
2. Because dredging/excavation and enhancement will occur outside of the vireo breeding season, no adults, nestlings, or eggs will be killed or injured from removal of habitat;
3. Removal of approximately 8.62 acres of nonnative plants in and adjacent to the Pilot Channel, along with the now completed creation of 10.24 acres of wetland occupied by vireo at the Tijuana River emergency channel mitigation project, is expected to offset the direct loss of habitat associated with the proposed action and benefit the local vireo population in the action area over the long term;
4. The conservation measures are expected to minimize and fully offset vireo impacts and, as a result, the project is not expected to appreciably reduce the numbers, reproduction, or distribution of the vireo in the action area or throughout the species' range; and
5. Impacts to vireo critical habitat within Unit 10 represent only a tiny fraction of the overall designated critical habitat, and nonnative plant removal within the 96-acre enhancement area likely will improve the quality and quantity of PCEs in the action area.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take

that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary and must be undertaken by the Corps and/or the City, as appropriate, for the exemption in section 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity that is covered by this Incidental Take Statement. If the Corps and/or the City 1) fails to assume and implement the terms and conditions or 2) fails to adhere to the terms and conditions of this Incidental Take Statement, the protective coverage of section 7(o)(2) may lapse. To monitor the impact of incidental take, the Corps and/or the City must report the progress of the action and its impact on the species to the Service as specified in the Incidental Take Statement [50 CFR § 402.14(i)(3)].

AMOUNT OR EXTENT OF TAKE

We anticipate that up to 3 pairs of vireos will be taken as a result of construction of the proposed project. Incidental take is expected to be in the form of harm as defined in 50 CFR § 17.3, due to the direct loss of a portion of the riparian habitat used by these vireos during their breeding season. The take threshold will be met if more than 1 pair of vireo is documented within the project footprint prior to project dredging/excavation activities in 2012; if more than 2 pairs of vireos are documented within the project footprint prior to subsequent project dredging/excavation activities during the 5-year Corps permit term; or if more than 2.92 acres of vireo-occupied riparian vegetation is removed as a result of project implementation.

EFFECT OF TAKE

In this biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the vireo.

REASONABLE AND PRUDENT MEASURE

The following reasonable and prudent measure is necessary to monitor and report the take of vireo:

1. The Corps and/or Applicant will monitor and report on compliance with the established take thresholds for vireo prior to and following construction impacting vireo habitat at the Tijuana River Valley channel maintenance project project site.

TERMS AND CONDITIONS

To be exempt from the prohibitions of section 9 of the Act, the City and/or its contractors must comply with the following terms and conditions, which implement the reasonable and prudent measure described above. These terms and conditions are non-discretionary:

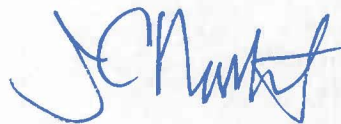
- 1.1 If initial dredging/excavation of the Tijuana River Valley channel maintenance project is not initiated within 1 year of issuance of this biological opinion, the City will submit documentation to the CFWO prior to the initiation of project construction demonstrating that the distribution of vireo has not changed from the baseline condition described in this biological opinion (i.e., protocol surveys to demonstrate that the number and distribution of vireos in the action area has not changed);
- 1.2 If subsequent dredging/excavation is delayed for 3 or more years between dredging/excavation events, the City will submit documentation to the CFWO prior to the initiation of project impacts demonstrating that the distribution of vireo has not changed from the baseline condition described in this biological opinion (i.e., protocol surveys to demonstrate that the number and distribution of vireos in the action area has not changed);
- 1.3 The City will provide reports to the CFWO consistent with CM-5.c and CM-5.d documenting that authorized impacts to the vireo and its habitat were not exceeded.

REINITIATION NOTICE

This concludes formal consultation on the Tijuana River Valley channel maintenance project. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or, (4) a new species is listed or critical habitat designated that may be affected by the action. For example, reinitiation may be required for any changes to the conservation measures proposed by the City where such change or modification causes an effect to vireo that was not considered in the biological opinion. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

If you have any questions about this biological opinion, please contact Patrick Gower of my staff at 760-431-9440, extension 352.

Sincerely,



Jim A. Bartel
Field Supervisor

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Enclosure

The project includes the following conservation measures that the City has committed to implement to avoid and minimize potential adverse effects to the clapper rail. Implementation of these measures will reduce impacts to clapper rail to an insignificant level in which no incidental take is anticipated and supports the Service's "not likely to adversely affect" determination in accordance with the section 7 consultation for the proposed action.

1. Channel dredging/excavation and other project construction will occur between September 16 and March 14 to avoid the clapper rail nesting season.
2. Immediately after each area of the project construction footprint is surveyed by a biologist as required in conservation measure 3.b, a 3 to 5-foot tall exclusionary fence with 2-inch mesh openings will be installed to inhibit entry of clapper rails into the construction footprint and to ensure that impact limits are not exceeded.
3. The City will hire a biologist knowledgeable of clapper rail biology and ecology who will be responsible for overseeing compliance with conservation measures for the clapper rail. The biologist will be approved by the Agencies. The City will submit the biologist's name, address, telephone number, and work schedule on the project to the Agencies at least 30 days prior to initiating project impacts. The biologist will perform the following duties:
 - a) Perform a minimum of three focused pre-construction surveys, on separate days, to determine the presence of clapper rails in the project impact footprint outside the clapper rail breeding season. Surveys will begin a maximum of 7 days prior to performing project construction and one survey will be conducted the day immediately prior to performing project construction. The City will notify the Agencies at least 7 days prior to project construction to allow the Agencies to coordinate with the biologist on the surveys, and within 24 hours of detecting any clapper rails in the project impact footprint;
 - b) Before each workday begins, check to see if clapper rails have entered the project impact footprint. The City will notify the Agencies within 24 hours of detecting any clapper rails in the project impact footprint;
 - c) If any clapper rails are found within the project impact footprint, the biologist will direct construction personnel to begin in an area away from the clapper rails. In addition, the biologist will walk ahead of construction equipment to flush birds towards channel areas to be avoided. It will be the responsibility of the biologist to ensure that clapper rails will not be injured or killed by project construction. The biologist will also record the number and location of clapper rails disturbed by project construction;
 - d) Be on site during work to ensure compliance with all conservation measures;

- e) Oversee installation of and inspect the exclusionary fencing required by CM-2 a minimum of once per day to help ensure any breaks in the fence are repaired immediately;
 - f) Monitor the work area to ensure that work activities do not generate excessive amounts of dust;
 - g) Train all contractors and construction personnel on the biological resources associated with this project and ensure that training is implemented by construction personnel. At a minimum, training will include: 1) the purpose for resource protection; 2) a description of the clapper rail and its habitat; 3) the conservation measures that should be implemented during project construction to avoid and/or minimize impacts to the clapper rail and its habitat, including strictly limiting activities, vehicles, equipment, and construction materials to the fenced project footprint to avoid sensitive resource areas in the field (i.e., avoided areas delineated on maps or on the project site by fencing); 4) environmentally responsible construction practices in Conservation Measure 4; 5) the protocol to resolve conflicts that may arise at any time during the construction process; 6) the general provisions of the Act, the need to adhere to the provisions of the Act, and the penalties associated with violating the Act;
 - h) Halt work, if necessary, for any project activities that are not in compliance with the conservation measures and conditions of the Corps permit. The biologist will report any non-compliance issues to the Agencies within 24 hours of its occurrence and confer with the Agencies to ensure the proper implementation of species and habitat protection measures
 - i) Submit weekly compliance reports (including photographs of impact areas) to the Agencies to show that authorized impacts were not exceeded and general compliance with all conservation measures. A separate report will be prepared and submitted to the Agencies immediately if an impact occurs outside of the approved project limits; and
 - j) Submit a final report to the Agencies within 60 days of project completion that includes: as-built construction drawings with an overlay of areas that were impacted or preserved and other relevant information documenting that authorized impacts were not exceeded and that general compliance with the project as described in this biological opinion, including the conservation measures, was achieved.
4. The City will ensure that the following environmentally responsible practices are implemented during project construction:
- a) Contractors and construction personnel will strictly limit their activities, vehicles, equipment, and construction materials to the fenced project footprint;

- b) The project site will be kept as clean of debris as possible. All food related trash items will be enclosed in sealed containers and regularly removed from the site;
- c) Pets of project personnel will not be allowed on the project site;
- d) All equipment maintenance, staging, and dispensing of fuel, oil, coolant, or any other such activities will occur in designated areas outside of waters of the United States within the fenced project impact limits. These designated areas will be located in previously compacted and disturbed areas to the maximum extent practicable in such a manner as to prevent any runoff from entering waters of the United States, and will be shown on the construction plans. Fueling of equipment will take place within existing paved areas greater than 100 feet from waters of the United States. Contractor equipment will be checked for leaks prior to operation and repaired as necessary. "No-fueling zones" will be designated on construction plans;
- e) Impacts from fugitive dust will be avoided and minimized through watering and other appropriate measures; and
- f) No work will occur at night.