

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

21-805

SAP Number

Regional Parks Department

Department Contract Representative
Telephone Number

Beahta R. Davis
909-387-2340

Contractor

Southwest Resource Management
Association

Contractor Representative
Telephone Number

Paul Rodriguez
951-300-2844

Contract Term

Original Contract Amount

Amendment Amount

Total Contract Amount

Cost Center

\$779,100

6520002702

Briefly describe the general nature of the contract: Agreement for purchase of 2.94 acres of mitigation credits from the Santa Ana River Watershed In-Lieu Fee Program to offset impacts associated with construction of Phase III of Santa Ana River Trail in the amount of \$779,100.

FOR COUNTY USE ONLY

Approved as to Legal Form

Suzanne Bryant, Deputy County Counsel

Date 10-15-2021

Reviewed for Contract Compliance

Michael Jimenez, Deputy Executive Officer

Date

Reviewed/Approved by Department

Beahta R. Davis, Director

Date

10/15/2021

AGREEMENT FOR SALE OF CREDITS FROM THE SANTA RIVER WATERSHED IN-LIEU FEE PROGRAM

This Agreement is entered into this ____ day of _____, 2021 (“Execution Date”) by and between Southwest Resource Management Association (“SRMA”) and San Bernardino County (“Project Proponent”) (collectively the “Parties”), as follows:

RECITALS

- A. SRMA is a cosponsor of the Santa Ana River Watershed In-Lieu Fee Program (the “Program”); and
- B. The Program was approved by the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), and the California Regional Water Quality Control Board, Region 8 (“RWQCB”) (jointly referred to as the Interagency Review Team (the “IRT”)) on July 26, 2012 and is currently in good standing with the IRT; and
- C. SRMA has received approval from the IRT to sell Credits (as further defined herein) from the Program to offset impacts associated with resource-impacting projects; and
- D. Project Proponent is seeking to purchase Compensatory Mitigation Credits (“Credits” also referred to as “Rehabilitation Credit”) from the Program for impacts to the Waters of the U.S. that result from activities of the Project Proponent authorized under sections 401 and 404 of the Clean Water Act (Permits attached hereto as Exhibit “A”).
- E. The Project Proponent is purchasing credits to offset impacts associated with the Project Proponent’s project to construct Phase III of the Santa Ana River Trail (SART) (“Project”), which is a 3.8 mile segment of the SART in San Bernardino County on the south side of the Santa Ana River Channel, between Waterman Avenue in the City of San Bernardino and California Avenue in the City of Redlands (“Impact Location”) which is described in Exhibit “B” attached hereto. The Project Proponent will mitigate the 0.071-acre permanent impact through the purchase of 0.21-acre of rehabilitation credit pursuant to SARWQCP Project No 362017-22 dated March 19, 2018, attached in Exhibit “A”; and
- F. Pursuant to the Project Proponents Permit No. SPL-2017-00262-SLP, dated May 1, 2018 this Project will comply with NWP No 14: Linear Transportation Projects to mitigate for impacts stemming from the Project at the Impact Location, which is described in; and
- G. Pursuant to a California Department of Fish & Wildlife (CDFW) SAA 1600-2017-0073-R6 (Rev 3), CDFW is requiring Project Proponent to purchase 2.94 offsite Rehabilitation Credits for impacts to water of the state at the Impact location caused by the Project and the SAA is attached hereto in Exhibit “A”; and
- H. Project Proponent desires to purchase from SRMA, and SRMA desires to sell and convey to Project Proponent, Credits from the Program and the Parties wish to enter into this Agreement to document the funding by the County for Mitigation of the Project to be paid to the SRMA.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Subject to the terms and conditions herein, SRMA agrees to sell to Project Proponent and Project Proponent agrees to purchase from SRMA 0.21 Rehabilitation ILFP Credits from the Program, as well as sufficient funds to allow for an additional 2.73 acres of CDFW Rehabilitation Credits to be undertaken by SRMA to satisfy SAA 1600-2017-0073-R6 (Rev 3) for the purchase price of SEVEN HUNDRED SEVENTY NINE THOUSAND ONE HUNDRED AND NO/100'S DOLLARS (\$779,100.00). The Project Proponent shall transfer the funds to SRMA either by wire or check. The Parties shall mutually agree to a "Closing Date" by which the Credit sale transaction will be completed, which shall be no later than sixty (60) days from the Execution Date unless otherwise mutually extended by the parties in writing.". On the Closing Date, SRMA shall transfer to Project Proponent evidence that the Credits have been allocated to the Project by Bill of Sale in the form attached as Exhibit C, and Project Proponent shall pay the Purchase Price specified above.

2. In the event Project Proponent has not delivered the Purchase Price to SRMA on or before the Closing Date, this Agreement shall automatically terminate without need for any further action by SRMA and SRMA shall have no further obligations to Project Proponent under this Agreement.

3. The sale and transfer herein is not intended as a sale or transfer to Project Proponent of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

4. Project Proponent shall have no obligation whatsoever by reason of the purchase of the Credits to support, pay, fix, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the mitigation property associated with Credits sold, or the Program.

5. The Credits herein sold and conveyed to Project Proponent shall be non-transferable and non-assignable, and shall be used as compensatory mitigation only in connection with the Project. Any excess Credits shall not be utilized for the benefit of any other project, nor shall they be traded or otherwise retained by SRMA for future use by the Project Proponent or any other person or entity.

6. All representations, warranties, and covenants embodied in this Agreement shall survive the transfer of the Credits hereunder.

7. SRMA shall cooperate and assist Project Proponent by providing documentation required by the IRT, and other regulatory agencies to establish that the Credits may be used to compensate for the Project's impacts described above. SRMA shall provide USACE with a Statement of Sale of Credit in the form of the attached Exhibit D no later than 30 days after the Closing Date of a successful sale.

8. Any notice or other written communication given pursuant to this Agreement shall be delivered to the other Party by first class U.S. mail, certified or registered U.S. mail or facsimile mail with mailed copy as follows:

Project Proponent: San Bernardino County
385 North Arrowhead Avenue Fifth Floor
San Bernardino, CA 92415
Telephone: (909) 387-3841
Facsimile: (909) 387-4554

Copy To: Dawn Martin
Deputy County Counsel
385 North Arrowhead Avenue Fourth Floor
San Bernardino, CA 92415
Telephone: (909) 387-4322
Email: dawn.martin@cc.sbcounty.gov

SRMA: Shelli Lamb, Chief Executive Officer
4500 Glenwood Drive
Riverside, CA 92501-3042
Telephone: (951) 300-2844
Facsimile: (951) 683-3814

Copy To: Shaye Diveley, General Counsel, SRMA
Meyers Nave
555 12th Street, Suite 1500
Oakland, California 94607
Telephone: (510) 808-2000

9. It is agreed that all prior understandings and agreements between the Parties respecting the transactions contemplated by this Agreement are merged in this Agreement, which fully and completely expresses the agreement of the Parties. There are no representations, warranties, or agreements except as specified and expressly set forth herein, in the exhibits annexed hereto, or to be set forth in the instruments or other documents delivered or to be delivered hereunder.

10. Any corporation signing this Agreement, and each agent, officer, director, or employee signing on behalf of such corporation, but in his or her individual capacity, represents and warrants that said Agreement is duly authorized by and binding upon said corporation, duly adopted by its Board of Directors and transcribed in full in the minutes of said corporation. Any individual signing this Agreement on behalf of a partnership or business entity other than a corporation represents that such other entity has power and authority to enter into this Agreement, and by such person's act is bound hereby.

11. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

12. This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument


**SIGNATURE PAGE FOR THE AGREEMENT FOR SALE OF CREDITS FROM THE
SANTA ANA RIVER WATERSHED IN-LIEU FEE PROGRAM TO THE SAN
BERNARDINO COUNTY FLOOD CONTROL DISTRICT**

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first
above written,

SRMA:

By: 
Paul Rodriguez
Chairperson, Board of Directors

PROJECT PROPONENT:

By: 
Curt Hagman, Board Chairman
San Bernardino County Board of
Supervisors

Dated: OCT 26 2021

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF
THE BOARD

By: 
Lynna Monell, Secretary *Clerk of the Board*
Deputy

APPROVED AS TO LEGAL FORM:

Michelle D. Blakemore, County Counsel
Steven D. Neill, Interim County Counsel

for By: 
Dawn Martin
Deputy County Counsel

**SIGNATURE PAGE FOR THE AGREEMENT FOR SALE OF CREDITS FROM THE
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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first
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SRMA:



By: _____
Paul Rodriguez
Chairperson, Board of Directors

PROJECT PROPONENT:

By: _____
Curt Hagman, Board Chairman
San Bernardino County Board of
Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF
THE BOARD

Lynna Monell, Secretary

By: _____
Deputy

APPROVED AS TO LEGAL FORM:

Michelle D. Blakemore, County Counsel

By: _____
Dawn Martin
Deputy County Counsel

EXHIBIT

Exhibit A-1



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

March 19, 2018

Mr. Harold Zamora, P.E.
County of San Bernardino
Department of Public Works, Environmental Management Division
825 East Third Street
San Bernardino, California 92315

hzamora@dpw.sbcounty.gov

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR SANTA ANA RIVER TRAIL PHASE III PROJECT, CITIES OF REDLANDS AND SAN BERNARDINO, SAN BERNARDINO COUNTY (USACE FILE NO. NOT AVAILABLE) (SARWQCB PROJECT NO. 362017-22)

Dear Mr. Zamora:

On April 14, 2017, Regional Water Quality Control Board (Regional Water Board) staff received from the San Bernardino County Department of Public Works (Applicant) an application for Clean Water Act section 401 Water Quality Standards Certification (Certification) for a project to construct Phase III of the Santa Ana River Trail (SART) along the south bank of the Santa Ana River (SAR) in the Cities of San Bernardino and Redlands (Project). The Applicant submitted a filing fee of \$3,062.00 with the Certification application materials, satisfying the Project fee requirement for consideration of a Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (State Water Board) web site, which is based on the iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3) that was in place when the Certification Application was determined to be complete.

This letter responds to your request for Certification that the proposed Project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) (Basin Plan) and subsequent Basin Plan amendments.

Project Description: The proposed project is the installation of a 3.8 mile segment of the SART in San Bernardino County on the south side of the Santa Ana River Channel, between Waterman Avenue in the city of San Bernardino and California Avenue in the City of Redlands. This project is Phase III of the SART that will

WILLIAM RUH, CHAIR | HOPE A. SMYTHE, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

♻️ RECYCLED PAPER

extend a regional pedestrian and bicycle trail that is proposed to extend from the Pacific Ocean to the San Bernardino Mountains.

The SART Phase III Project consists of construction of this portion of the regional trail which will include the trail, bridges, culverts, and access ramps. The construction activities include fill and embankment construction; relocating and/or adjusting surface features to grade; subsurface preparation for paving the trail with concrete, asphalt concrete, Portland cement concrete, and decomposed granite pavement; erosion control measure best management practices (BMPs); reinforced concrete retaining walls; fencing and railing; access gates; protective screens under railroads; construction of storm drain facilities; signage, and pavement striping and markings.

The SART is designed as a 10-foot wide asphalt trail wide and adjacent 4-foot wide unpadded shoulder to accommodate non-motorized transportation modes. The majority of SART Phase III will be constructed along an existing County of San Bernardino Flood Control levee adjacent to the River corridor. In one area of the alignment (approximately 2,500 linear feet), easterly of Waterman Avenue, from the confluence of Mission Zanja Creek east to Orange Show Road, no levee currently exists and, therefore, in this area the trail will be developed on the unimproved southern bank of the riverbed within the County Flood Control right-of-way.

Trail crossings under Waterman Avenue, Orange Show Road, and Tippecanoe Avenue; and the San Bernardino Association of Governments and Metrolink rail line will require impacts to Waters of the United States (WOTUS). At each of crossing, SART will be routed under the roads or railroad. SART in these locations would consist of a ramp leading from the levee, along the bank of the Santa Ana River, and under the road or railroad. On the other side of the road or railroad bridge, another ramp will be constructed from the river bank to the top of the levee. The bikeway underpass is constructed by either creating a roadbed of compacted fill material under the roadway or railroad bridge; or by cutting into the existing rock rip-rap protected river bank wall or a retaining wall. The river bank wall is then finished with grouted rip-rap and concrete.

The construction will take place along the south bank of the Santa Ana River between Waterman Avenue and California Street in the Cities of San Bernardino and Redlands, in the un-sectioned San Bernardino Land Grant area. The Project is located on of the U.S. Geological Survey *San Bernardino South* and *Redlands* 7.5 minute topographic quadrangle maps (34° 4' 12.04" N/-117° 16' 42.84" W).

Receiving waters: Santa Ana River Reach 5, Mission Zanja (tributary to Santa Ana River Reach 5) and unnamed tributaries to Santa Ana River Reach 5. Santa Ana River Reach 5 has the following designated beneficial uses (existing or potential): Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Groundwater Recharge (GWR), Contact Water Recreation (REC1), Non-Contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Rare, Threatened or Endangered Species (RARE).

Fill area:

Permanent Impact to WOTUS	0.071 acre	325 linear feet
Temporary Impact to WOTUS	0.168 acre	383 linear feet

Federal permit: U.S. Army Corps of Engineers (USACE) Nationwide Permit No. 14 – Linear Transportation Projects

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below.

Onsite Water Quality Standards Mitigation Proposed:

- Standard water quality related Best Management Practices (BMPs) will be employed during construction activities.
- WOTUS temporarily disturbed by project activities will be restored as guided by a Regional Water Board-approved Habitat Mitigation and Monitoring Plan (HMMP).

Offsite Water Quality Standards Mitigation Proposed:

- The Project Applicant will mitigate the 0.071-acre permanent impact through the purchase of 0.21-acre of rehabilitation credit in at a Regional Water Board approved mitigation bank or in-lieu fee program.

Should the proposed Project have the potential to impact State- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife (CDFW) will ensure those impacts are mitigated to an acceptable level.

Appropriate BMPs will be implemented to reduce construction-related impacts to waters of the State per the requirements of Regional Water Board Order No. R8-2010-0036 (NPDES Permit No. CAS618036), commonly known as the San Bernardino County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2010-0036 requires the Applicant substantially comply with the requirements of State Water Board General NPDES Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order Number 2012-0006-DWQ.

Pursuant to California Code of Regulations, Title 14, Chapter 3, section 15096, as a Responsible Agency, the Regional Water Board is required to consider an Environmental Impact Report or Mitigated Negative Declaration (MND) prepared by the lead agency to determine whether to approve an application submitted for a project should receive Certification. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project that it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by section 15091 and, if necessary, section 15093 for each and every significant impact of the project.

As required by section 15096, in approving this Certification, the Regional Water Board has considered the MND prepared by the City of San Bernardino and filed with the Clerk of the Board of Supervisors of San Bernardino County on December 16, 2014, and subsequent information provided by the Applicant. More specifically, the Regional Water Board considered those sections of the MND pertaining to impacts to water quality standards. Based on the mitigation proposed in the MND and the Conditions set forth in this Certification, potentially adverse impacts to water quality standards should be reduced to a less than significant level and beneficial uses protected, if all stated mitigation and conditions are performed. Thus, the Regional Water Board independently finds that to avoid or mitigate impacts to water quality to a less than significant level, changes or alterations have been required in the Project.

This Certification is contingent upon the execution of the following conditions:

- 1) **This Order for Certification will remain valid until the USACE 2017 Nationwide permits expire on March 18, 2022, or through an extended period beyond the expiration date that is authorized in writing by the USACE.**
- 2) The Applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 3) The Applicant must ensure that all fees associated with this Project are paid to each respective agency prior to conducting any construction activities at the Project site.

- 4) The proposed mitigation must be implemented in a timely manner. A copy of the receipt from the transfer of funds to the Regional Water Board approved mitigation bank or in-lieu fee program must be provided to the Regional Water Board prior to the discharge of fill to or the dredging or excavation of material from waters of the State of California.
- 5) A copy of this Certification and any subsequent amendments must be maintained onsite for the duration of work as a denoted element of any Project Storm Water Pollution Prevention Plan (SWPPP).
- 6) Prior to construction activities, the Applicant must delineate the work area with brightly colored fencing or other methods to ensure temporary impacts to WOTUS and waters of the State of California do not exceed the limits authorized in this Certification.
- 7) Prior to the initiation of Project activities, the Applicant must submit to the Regional Water Board for approval the HMMP prepared for the temporarily disturbed areas. The HMMP must include the following information:
 - a) a description of the existing physical and biological conditions of the WOTUS within the temporarily disturbed areas, including an evaluation of present and potential beneficial uses;
 - b) a plan of management actions to occur in the mitigation areas, including but not limited to, the removal of nonnative plant species;
 - c) a restoration schedule, including monitoring and maintenance measures;
 - d) the establishment of fixed photographic monitoring locations; and
 - e) mitigation success standards and contingency measures.
- 8) Monitoring and maintenance of the temporarily disturbed areas must be conducted for a minimum of five years, or until the Regional Water Board determines the areas have met the performance criteria of successful restoration as set forth in the Regional Water Board-approved HMMP. After the completion of construction activities, the Applicant must submit an annual monitoring report to the Regional Water Board each year, for a minimum of five years. The first report summarizing annual maintenance activities is due to the Regional Water Board no later than April 1 of the year following the beginning of Project activities. The report must include:
 - a) a summary of the annual restoration activities conducted;
 - b) an analysis of the changes to the vegetative community (including species present, percent cover, and stem density of riparian trees and shrubs); and
 - c) photographs taken at the fixed monitoring locations detailed in the HMMP.

- 9) Effective perimeter control BMPs must be in place at all times to control the discharge of pollutants from the Project site during construction. Construction waste must be contained and protected against wind and exposure to storm water at all times unless being actively handled. Chemical, fuel, and lubricant containers must be kept closed and protected from damage or upset at all times, unless being actively used. Dirt and landscaping material stockpiles must have effective erosion control BMPs in place to prevent their transport in storm water or directly into the channels, and may not be located in any WOTUS. Discharges of wastewater from the site are prohibited.
- 10) The Project proponent must utilize BMPs during Project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the State and of WOTUS.
- 11) Substances resulting from Project-related activities that could be harmful to aquatic life, including but not limited to petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, Portland cement concrete or asphalt concrete, and washings and cuttings thereof, must not be discharged to soils or waters of the State. All waste concrete must be removed from the Project site.
- 12) Motorized equipment must not be maintained or parked within or near any stream crossing, channel, or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow condition. Vehicles must not be driven or equipment operated onsite in waters of the State, except as necessary to complete the proposed Project. Equipment must not be operated in areas of flowing water.
- 13) Construction dewatering discharges, including temporary stream diversions necessary to carry out the Project, are subject to regulation by Regional Water Board Order No. R8-2015-0004, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality. For more information, please review Order No. R8-2015-0004 at https://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2015_orders.html
- 14) This Certification is subject to the acquisition of all local, regional, State, and federal permits and approvals as required by law. Failure to meet any conditions contained herein, or any conditions contained in any other permit or approval for this Project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including revocation of this Certification and imposition of administrative civil or criminal liability.

- 15) The Applicant must ensure written notification to this agency be made prior to conducting any onsite construction activities. Such notifications must be made to Jason Bill at Jason.Bill@waterboards.ca.gov or other Regional Water Board Certification staff.
- 16) The Applicant must submit an Annual Project Status Report each year by January 1. Annual reporting must continue until a Notice of Project Complete Letter is issued to the Applicant. The status report must be sent to Jason Bill at Jason.Bill@waterboards.ca.gov or other Regional Water Board Certification staff.
- 17) When work conducted in accordance with this Certification has been completed, the Applicant must notify Regional Water Board staff, Jason Bill at Jason.Bill@waterboards.ca.gov or other Regional Water Board Certification staff within ten working days. Please cite SARWQCB Project No. 362017-22 as the Project identifier.

Under California Water Code, section 1058, and pursuant to California Code of Regulations, Title 23, Chapter 28, section 3860, the following must be included as Conditions of all Certification actions:

- (a) Every Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the Water Code and Article 6 (commencing with section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to subsection 3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the Applicant.

If the above-stated Conditions are changed, any of the criteria or Conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Water Board may require that the Applicant submit a Report of Waste Discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the Conditions of this Certification, the holder of any permit or license subject to this Certification will be subject to any remedies, penalties, process, or sanctions as provided 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. Violations of the Conditions of this Certification may subject the Applicant to civil liability pursuant to Water Code section 13350 and/or section 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act section 401. I hereby certify that any discharge from the referenced Project 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, and with other applicable requirements of State law.

This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that Have Received State Water Quality Certification," which requires compliance with all Conditions of this Certification. Order No. 2003-0017-DWQ is available at:

http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf.

Should there be any questions, please contact Jason Bill at (951) 782-3295 or Jason.Bill@waterboards.ca.gov, or David Woelfel at (951) 782-7960 or David.Woelfel@waterboards.ca.gov.

Sincerely,



Hope A. Smythe
Executive Officer
Santa Ana Regional Water Quality Control Board

cc:

USACE, Los Angeles Office – Aaron Allen
USACE, Los Angeles Office – Shannon Pankratz
U.S. Environmental Protection Agency, Region 9 - Wetlands Section – Sam Ziegler
CDFW – Jeff Brandt
State Water Board, Office of Chief Counsel – Teresita Sablan
State Water Board, Division of Water Quality – Water Quality Certification Unit
County of San Bernardino – Michael Perry – Michael.Perry@dpw.sbcounty.gov
County of San Bernardino – Lorraine Bueno – Lorraine.Bueno@dpw.sbcounty.gov



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017

May 1, 2018

SUBJECT: Nationwide Permit (NWP) Verification

Darren Meeka
San Bernardino County Department of Public Works
Environmental Management Division
825 East Third Street
San Bernardino, California 92415

Dear Mr. Meeka:

I am responding to your request (Corps File No. SPL-2017-00262-SLP) for a Department of the Army permit for the proposed Santa Ana Trail Phase III Project. The proposed project is located in the city of San Bernardino, San Bernardino County, California (map enclosed).

Because this project would result in a discharge of fill material into waters of the U.S., a Department of the Army permit is required pursuant to Section 404 of the Clean Water Act (33 USC 1344; 33 CFR parts 323 and 330).

I have determined construction of your proposed project, if constructed as described in your application, would comply with NWP No. 14: *Linear Transportation Projects*. Specifically, and as shown in the enclosed Figures 1-4 and Table 1, you are authorized to conduct the following regulated activities:

1. Permanently impact up to 0.0706 acre of non-wetland waters of the U.S. for construction of Phase III of the Santa Ana River Trail (10-foot width with 4-foot wide shoulder), including associated: grading, bank stabilization and protection, maintenance access ramps, storm drain construction and modifications, and box culvert crossings with riprap splash pads;
2. Temporarily impact up to 0.1676 acre of non-wetland waters of the U.S. for construction access, work areas, and grading associated with the Santa Ana Trail Phase III Project.

For this NWP verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the non-discretionary Special Conditions listed below:

1. This Corps permit does not authorize you to take any threatened or endangered species, in particular the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) and the least Bell's vireo (*Vireo bellii pusillus*) or adversely modify its designated critical habitat. 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). Pursuant to the USFWS correspondence dated April 6, 2018, including the required avoidance and minimization measures, the Corps Regulatory Division has determined and the USFWS has concurred that your activity is not likely to adversely affect the above species. Your authorization under this Corps permit is conditional upon your compliance with all of the required avoidance and minimization measures, which are incorporated by reference in this permit. Failure to comply with the required avoidance and minimization measures would constitute non-compliance with your Corps permit. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

2. No later than one month following completion of authorized work in waters of the U.S., 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 to the maximum extent practicable to ensure expeditious resumption of aquatic resource functions. No later than 45 calendar days following completion of authorized work in waters of the U.S., the permittee shall submit a memorandum documenting compliance with this special condition.

3. Within 45 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:

- 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 fills can be verified;
- D) One copy of "as built" drawings 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).

This verification is valid through March 18, 2022. If, on March 18, 2022, you have commenced or are under contract to commence the permitted activity, you will have an additional twelve (12) months to complete the activity under the present NWP terms and conditions. However, if I discover noncompliance or unauthorized activities associated with the permitted activity, I may request the use of discretionary authority in accordance with procedures in 33 CFR part 330.4(e) and 33 CFR part 330.5(c) or (d) to modify, suspend, or revoke this specific verification at an earlier date. Additionally, at the national level, the Chief of Engineers, any time prior to March 18, 2022, may choose to modify, suspend, or revoke the nationwide use of a NWP after following procedures set forth in 33 CFR part 330.5. It is incumbent upon you to

comply with all of the terms and conditions of this NWP verification and to remain informed of any change to the NWPs.

A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in the Regulatory Program. If you have any questions, please contact Shannon Pankratz at (213) 452-3412 or via e-mail at Shannon.L.Pankratz@usace.army.mil. Please help me to evaluate and improve the regulatory experience for others by completing the [customer survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey) form at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

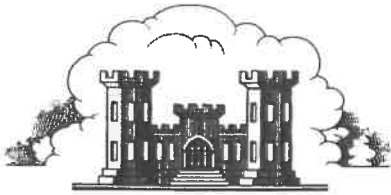
Sincerely,

**ESTES.STEPHE
N.M.13856392
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Digitally signed by
ESTES.STEPHEN.M.1385639275
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ou=DoD, ou=PKI, ou=USA,
cn=ESTES.STEPHEN.M.1385639275
Date: 2018.05.01 13:55:38 -07'00'

Stephen M. Estes
Chief, L.A. & San Bernardino Counties Section
North Coast Branch
Regulatory Division

Enclosures



**LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS**

**CERTIFICATE OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT**

Permit Number: *SPL-2017-00262-SLP*

Name of Permittee: *Darren Meeka, San Bernardino County Department of Public Works*

Date of Issuance: *May 1, 2018*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it by **ONE** of the following methods;

1) Email a digital scan of the signed certificate to Shannon.L.Pankratz@usace.army.mil
OR

2) Mail the signed certificate to
U.S. Army Corps of Engineers
ATTN: Regulatory Division, SPL-2017-00262-SLP
915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017

I hereby certify that the authorized work and any required compensatory mitigation has been completed in accordance with the NWP authorization, including all general, regional, or activity-specific conditions. Furthermore, if credits from a mitigation bank or in-lieu fee program were used to satisfy compensatory mitigation requirements I have attached the documentation required by 33 CFR 332.3(l)(3) to confirm that the appropriate number and resource type of credits have been secured.

Signature of Permittee

Date

Enclosure 1: NATIONWIDE PERMIT NUMBER NWP 14 Linear Transportation Projects.

1. Nationwide Permit NWP 14: *Linear Transportation Projects* Terms:

14. *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project. This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars. Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404) Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

2. General Conditions: The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of

waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate

documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-

Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal

adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not

provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be

provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must

include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

3. Regional Conditions for the Los Angeles District:

1. For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, including designated critical habitat for such species, the permittee shall design all new or substantially reconstructed

linear transportation crossings (e.g. roads, highways, railways, trails, bridges, culverts) to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.

2. Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-54 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).
3. When a pre-construction notification (PCN) is required, the Los Angeles District shall be notified in accordance with General Condition 32 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at: <http://www.spl.usace.army.mil/Missions/Regulatory/PermitProcess.aspx>. In addition, unless specifically waived by the Los Angeles District, the PCN shall include:
 - a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
 - b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings shall follow the Updated Map and Drawing Standards for the South Pacific Division Regulatory Program (Feb 2016), or most recent update (available at the South Pacific Division website at: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>);
 - c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.
 - d. Delineation of aquatic resources in accordance with the current Los Angeles District's Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (available at: <http://www.spl.usace.army.mil/Missions/Regulatory/Jurisdictional-Determination/>).

4. Submission of a PCN pursuant to General Condition 32 and Regional Condition 3 shall be required for specific regulated activities in the following locations:
- a. All perennial waterbodies and special aquatic sites throughout the Los Angeles District as well as intermittent waters within the State of Arizona for any regulated activity that would result in a loss of waters of the United States. The definition of “loss of waters of the United States” for this regional condition is the same as the definition used for the Nationwide Permit Program.
 - b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council, and that would result in an adverse effect to EFH, in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. EFH Assessment Guidance and other supporting information can be found at:
http://www.westcoast.fisheries.noaa.gov/habitat/fish_habitat/efh_consultations_go.html.
 - c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
 - d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.
 - e. The Murrieta and Temecula Creek watersheds in Riverside County, California for any regulated activity that would result in a loss of waters of the U.S. The definition of “loss of waters of the United States” for this regional condition is the same as the definition used for the Nationwide Permit Program.
 - f. All waterbodies designated by the Arizona Department of Environmental Quality as Outstanding Arizona Waters (OAWs), within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated OAW, and on tributaries to OAWs within 1600 meters of the OAW (see <http://www.azdeq.gov/index.html>).
 - g. All waterbodies designated by the Arizona Department of Environmental Quality as 303(d)-impaired surface waters, within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated impaired surface water, and on tributaries to impaired waters within 1600 meters of the impaired water (see <http://www.azdeq.gov/index.html>).
5. Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under NWPs 5, 6, and 27 with the submission of a PCN in accordance with General Condition 32 and Regional Condition 3.

6. Within the Murrieta Creek and Temecula Creek watersheds in Riverside County the use of NWPs 29, 39, 42 and 43, and NWP 14 combined with any of those NWPs shall be restricted. The loss of waters of the U.S. cannot exceed 0.25 acre. The definition of "loss of waters of the United States" for this regional condition is the same as the definition used for the Nationwide Permit Program.
 7. Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.
 8. In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has revoked the use of the following 26 selected NWPs within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. Consequently, these NWPs are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.
 9. Any requests to waive the applicable linear foot limitations for NWPs 13, 21, 29, 39, 40 and 42, 43, 44, 51, 52, and 54, must include the following:
 - a. A narrative description of the affected aquatic resource. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characters observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line, or scour marks) or Mean High Water Line; a description of the adjacent vegetation community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.
 - b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 32 and Regional Condition 3;
 - c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
 - d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.
 10. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.
- 4. Further information:**
1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (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.

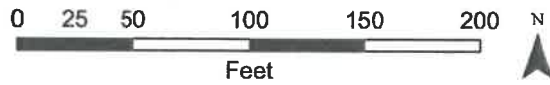
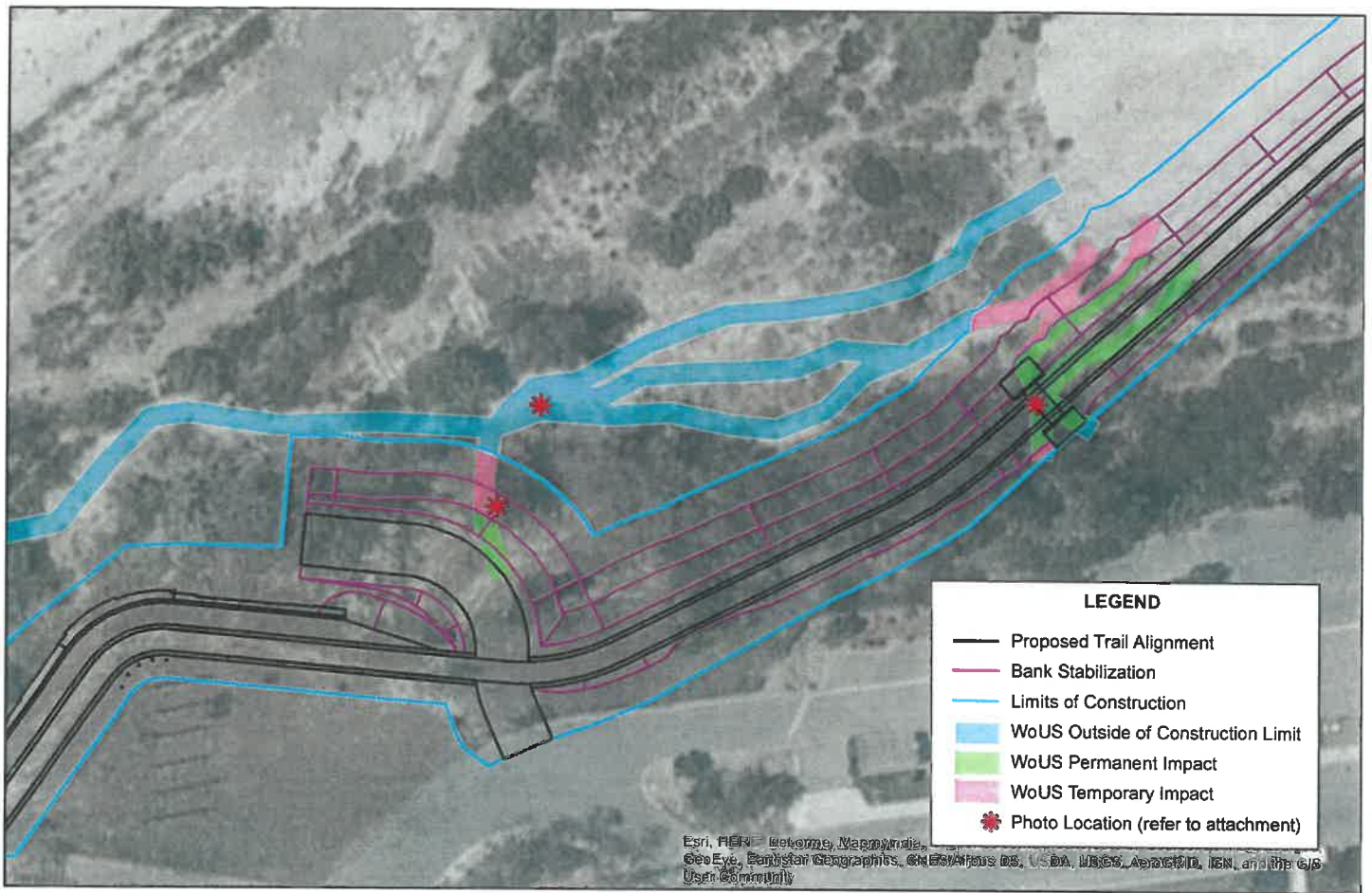
Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance 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. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time.

7. 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 H 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 of this permit from this office, which may require restoration of the area.

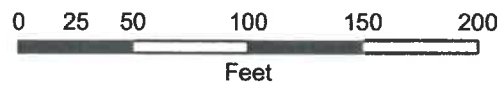
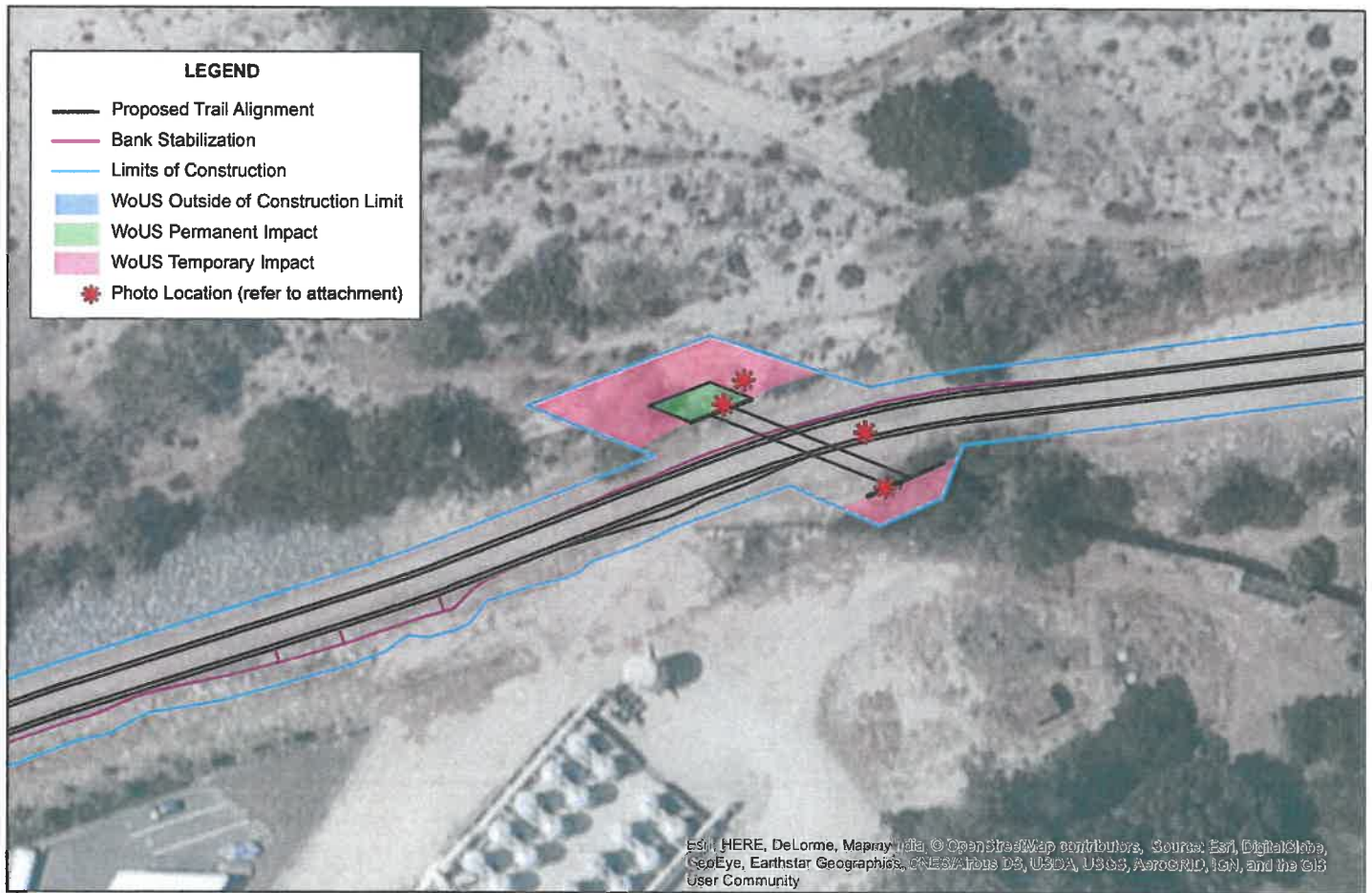
8. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.



MAINTENANCE RAMP

SART III USACE Impact Maps
San Bernardino, California

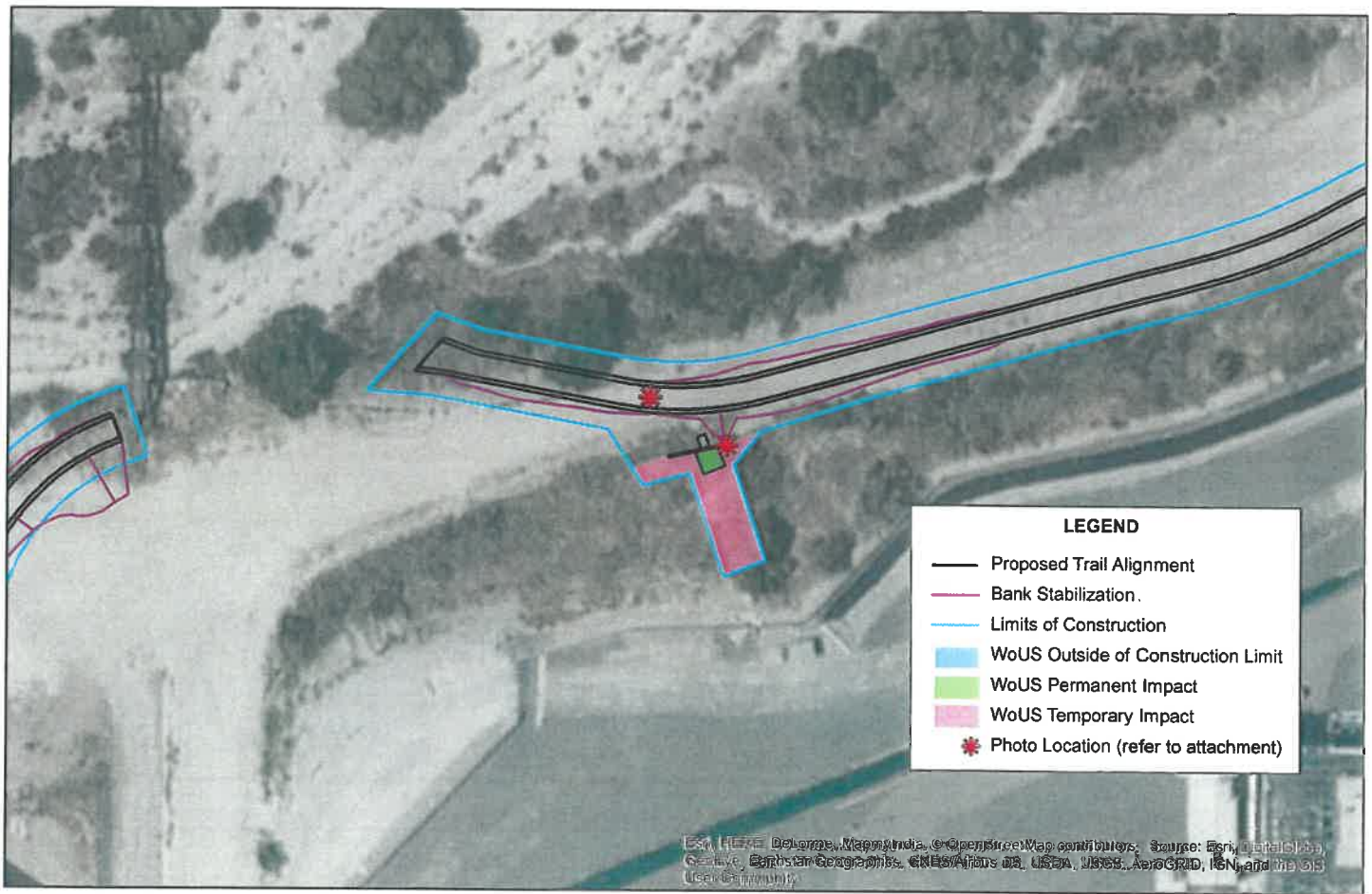
Figure 2



STORM DRAIN EAST OF TIPPECANOE

SART III USACE Impact Maps
San Bernardino, California

Figure 3



STORM DRAIN EAST MOUNTAIN VIEW

SART III USACE Impact Maps
 San Bernardino, California

Figure 4

Table 1. SART III - Project Impacts to WoUS

LOCATION	PERMANENT IMPACT (acres)	TEMPORARY IMPACT (acres)	COMBINED PERMANENT AND TEMPORARY IMPACT
1. Mission Zanja	0.0042	0.0244	0.0286
2. Maintenance Ramp	0.0528	0.0360	0.0888
3. Storm Drain East of Tippecanoe	0.0106	0.0766	0.0872
4. Storm Drain East of Mountain View	0.0030	0.0306	0.0336
TOTAL IMPACTS	0.0706	0.1676	0.2382



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services

Palm Springs Fish and Wildlife Office
777 East Tahquitz Canyon Way, Suite 208
Palm Springs, California 92262



In Reply Refer To:
FWS-SB-09B0287-1810504

Mr. Craig Wentworth
Senior Environmental Planner
Department of Transportation, District 8
464 West Footh Street, 6th Floor
San Bernardino, California 92401

Subject: Informal Section 7 Consultation Request for Santa Ana River Trail Phase III, San Bernardino County, California

Dear Mr. Wentworth:

This letter is in response to your correspondence received December 7, 2017, requesting our concurrence with your determination that construction of Santa Ana River Trail Phase III (Project) is not likely to adversely affect the federally endangered least Bell's vireo (*Vireo bellii pusillus*, vireo), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*, SBKR), and the Santa Ana River woolly-star (*Eriastrum densifolium* subsp. *sanctorum*, woolly-star) in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The Project is receiving Federal funding through the Federal Highway Administration (FHWA). The California Department of Transportation (Caltrans) has assumed FHWA's National Environmental Policy Act (NEPA) responsibilities for section 7 consultation in accordance with 23 U.S.C. 327, and under authorities identified in the signed NEPA assignment Memorandum of Understanding between FHWA and Caltrans (effective December 23, 2016). The San Bernardino County Department of Public Works is the non-federal applicant for this Project.

This letter is based upon information provided in the *Santa Ana River Trail Phase III Biological Assessment, San Bernardino County, California; 08-SBD-0-STPLR-5954-(083)* (Caltrans 2017), including in-person meetings, electronic correspondence, and phone conversations between our agencies.

In your request for consultation, you determined the Project was not likely to adversely affect vireo and woolly-star. Information provided within the biological assessment identified approximately 0.2 acre of suitable habitat within the biological study area between Mission Zanja Creek and Orange Show Road for both species, but not within the area subject to permanent impacts. The biological assessment also identified suitable vireo habitat adjacent to the trail, with documented historical observations. Surveys for woolly-star within the Project footprint revealed negative presence. Furthermore, as suitable woolly-star habitat is not present within the trail alignment, and conservation measures identified in Section 1.4.5 of the biological assessment include implementing Project actions outside the April 1 to September 1 bird nesting season, we have determined direct and indirect effects to both woolly-star and vireo are unlikely to occur, and the species are not mentioned further in this letter.

The proposed Project is one of four parts of the Santa Ana River Trail system under development within Southern California's Inland Empire. Phase I and II occur between Prado Reservoir and Waterman Avenue in the City of San Bernardino, California. These first two phases have been, or are in the process of being, permitted by the various regulatory agencies. Phase III extends the trail from Waterman Avenue to California Street in Redlands, while Phase IV will begin at California Street and enter the San Bernardino National Forest. Once completed, the greater Santa Ana River Trail system will service 14 incorporated cities in three counties, and reach from the Pacific Ocean to the headwaters of the Santa Ana River in the San Bernardino Mountains, a span of over 100 miles.

As proposed, the Project establishes a 3.8-mile trail, 14 feet wide, on the Santa Ana River's southern bank. With limited exceptions, the trail will consist of a 10-foot wide asphalt pathway, with unimproved, two-foot wide shoulders. To navigate existing transportation facilities, the trail will descend into the Santa Ana River channel to circumvent Waterman Avenue, East Orange Show Road, and South Tippecanoe Avenue. An undercrossing already exists at South Mountain View. To minimize disturbance to the riverbed and native vegetation, trail construction under the roads will be built atop existing slope stabilization material (riprap), with vertical retaining walls used to minimize footprint into existing streambed. For trail user safety, protective side-screens and railings will be installed in the vicinity of road/trail junctions.

At confluence of Mission Zanja Creek and the Santa Ana River, eastward to Orange Show Road, no levee currently exists. To accommodate Project construction, the trail will use the unimproved upper bench on the southern bank of the riverbed. This upper bench falls within the San Bernardino County Flood Control right-of-way. The upper bench alignment will follow existing footpaths and traverse an unimproved staging area, a distance of approximately 0.25 miles. Vegetation in the area consists of patchy Riversidean alluvial fan sage scrub, eucalyptus trees, and non-native grasses, with on-going disturbance from homeless encampments.

To avoid impacts to riparian habitat within Mission Zanja Creek, a 14-foot wide, 100-foot long prefabricated, clear-span steel bridge will be erected on the Creek's upper embankments. The use of a prefabricated bridge will minimize time spent adjacent to riparian habitat. Where the bridge terminates on the Creek's northern embankment, the trail will parallel the railroad. To avoid conflicts with existing rail operations, the trail will circumnavigate the railroad bridge by descending into the Santa Ana River channel. To prevent material from passing trains falling onto trail users, a protective overhead screen will be installed.

Project related disturbance is anticipated to reach approximately 17.5 acres of land disturbance. Of the total area disturbed, 13.6 acres will be temporary construction and staging disturbance and 5.9 acres will be permanent disturbance from trail facilities.

To avoid and minimize impacts to SBKR, Caltrans will implement the following conservation measures for the duration of the Project:

1. A qualified biologist, approved by the Service prior to the onset of ground disturbing activities, will perform a visual pre-construction survey within the construction footprint immediately prior to ground disturbing activities;
2. Temporarily disturbance areas will be restored to their pre-Project condition with a Habitat Management and Monitoring Plan (HMMP) developed to ensure success of restoration. A draft of the HMMP will be provided to the Service prior to the onset of ground disturbing activities;

3. An employee education program for all construction personnel will be developed and implemented by a biologist familiar with SBKR and its habitat. For the life of the Project, each employee (including temporary contractors and subcontractors) will receive a training/awareness program prior to conducting any work on the site;
4. Exclusionary barriers will be placed within the streambed to prevent SBKR from entering temporary impact areas;
5. Prior to ground disturbing activities, under the supervision of a qualified biologist, ESA fencing, stakes, flags, or markers, that are clearly visible to construction personnel on foot and in heavy equipment, will be used to delineate areas of grading, staging, and avoidance for the proposed Project;
6. For actions occurring within the streambed and/or within 200 feet of suitable vireo habitat, Project related actions will occur outside the migratory bird nesting season;
7. Vegetation removed between Mission Zanja Creek and Orange Show Road will be disposed of at a Caltrans approved facility.

Based on the description of the proposed Project, and the implementation of the avoidance and minimization measures included in the biological assessment, we concur with your determination that the proposed Project is not likely to adversely affect the San Bernardino kangaroo rat. The interagency consultation requirements of section 7 of the Act have been satisfied. Although our concurrence ends informal consultation, obligations under section 7 of the Act will be reconsidered if new information reveals effects of the agency action that may affect listed species in a manner or to an extent not previously considered, or this action is subsequently modified in a manner that was not considered in this assessment.

We appreciate the opportunity to review the proposed Projects and the incorporation of measures to avoid effects to listed species. If you have any questions regarding this letter, please contact John M. Taylor of this office at 760-322-2070, extension 418.

Sincerely,

JENNESS
MCBRIDE

Digitally signed by JENNESS
MCBRIDE
Date: 2018.04.06 15:39:29 -07'00'

for
Kennon A. Corey
Assistant Field Supervisor

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION
3602 INLAND EMPIRE BLVD., SUITE C-220
ONTARIO, CALIFORNIA, 91764



STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2017-0073-R6 (Revision 3)

San Bernardino County Department of Public Works
SART Phase III Trail Project

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and San Bernardino County Department of Public Works (Permittee), or as represented by Mr. Darren Meeka.

RECITALS

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on April 14, 2017 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to Fish and Game Code 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 in the Santa Ana River, beginning at Waterman Avenue, in the City of San Bernardino and continues easterly to California Street in the City of Redlands, San Bernardino County, State of California. The furthest westernmost extent is located at Latitude: 34.070023° and Longitude: -117.278758° and the furthest easternmost extent of the project is located at Latitude: 34.090225° and Longitude: -117.226201°. The project location can also be found on the U.S. Geological Survey (USGS) – San Bernardino South and Redlands quadrangles, 7.5 Minute Series topographic within un-sectioned portions of Township 1 South and Ranges 4 and 3 West (APNs: 014143119, 014141203, 016739109, 028102117, 028103140, 028103152, 028102126, 028102134, 028102135, 028102136, 028024104, 028025123, 028134110, 029249105, 028101134, 028102116, 028030222, 029201143, 028022213, 016739108, 028025153, 028104167, 028134108, 028024109, 028102130, 014141248, 028134107, 016772103, 028102121, 028104166, 028025161, 016739111, 028104123, 029201142, 028024105, 028103138, 016772102 and 028134104).

PROJECT DESCRIPTION

The project includes the construction of an approximately 3.8-mile-long pedestrian recreational trail along the southern boundary of the Santa Ana River. Most of the alignment will occur on top of an existing levee maintenance road. Between Waterman Avenue and Orange Show Road, where no levee currently exists, the trail will be constructed on the unimproved riverbank within the San Bernardino County Flood Control District right-of-way. Overall, the project will consist of the construction of:

- A 10-footwide asphalt and concrete surface with two-foot-wide unpaved shoulders on each side;
- Protective side screens/railings where the trail crosses roads;
- Five trail access ramps from surface streets located on the east side of Waterman Avenue, and the east and west sides of Orange Show Road and Tippecanoe Avenue;
- Four highway undercrossing improvements at Waterman Avenue, Orange Show Road, Tippecanoe and Mountain View Avenue;
- Rock slope protection and concrete slope paving; and

Additionally, at the Mission Zanja and Santa Ana River confluence, a "keystone" concrete erosion-control retaining wall, approximately 20 feet in height and 295-feet in length, will be constructed. An approximately 100x14-foot prefabricated, clear span steel bridge will be built over the Mission Zanja Creek, while a railroad undercrossing with a protective overhead screen will occur beneath the Burlington Northern Santa Fe Railroad within the Santa Ana River. Finally, a 4x6-foot concrete box culvert will replace an existing storm drainpipe approximately 1,000 feet east of Tippecanoe Avenue.

Associated construction activities will include ground preparation (i.e. grading and filling) for the trail, bridge, and any necessary associated embankment/retaining walls; fencing and railing, trail delineators, and pavement striping/markings; and access gates with signage. Excavation will generally be limited to 2-4 feet along the trail alignment, 9-11 feet for the replacement culvert, up to 25 feet for the undercrossings and retaining walls, and drilling up to 50 feet to install bridge supports for the pedestrian bridge.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include:

BIRDS - Allen's hummingbird (*Selasphorus sasin*), American crow (*Corvus brachyrhynchos*), American goldfinch (*Spinus tristis*), Anna's hummingbird (*Calypte anna*), Bewick's wren (*Thryomanes bewickii*), black phoebe (*Sayornis nigricans*), black headed grosbeak (*Pheucticus melanocephalus*), blue grosbeak (*Guiraca caerulea*), bushtit (*Psaltirparus minimus*), California towhee (*Melospiza crissalis*), California quail (*Callipepla californica*), Cassin's kingbird (*Tyrannus vociferans*), cliff swallow (*Petrochelidon pyrrhonota*), Cooper's hawk (*Accipiter cooperii*), common yellowthroat (*Geothlypis trichas*), great egret (*Ardea alba*), house finch (*Carpodacus mexicanus*), house wren (*Troglodytes aedon*), killdeer (*Charadrius vociferus*), least Bell's vireo (*Vireo bellii pusillus*), lesser goldfinch (*Spinus psaltria*), mourning dove (*Zenaida*

macroura), northern mockingbird (*Mimus polyglottos*), red-tailed hawk (*Buteo jamaicensis*), Say's phoebe (*Sayornis saya*), song sparrow (*Melospiza melodia*), spotted towhee (*Pipilo maculatus*), western kingbird (*Tyrannus verticalis*), white-throated swift (*Aeronautes saxatalis*); **MAMMALS** - black-tailed jackrabbit (*Lepus californicus*), California ground squirrel (*Spermophilus beecheyi*), coyote (*Canis latrans*), and desert cottontail (*Sylvilagus audubonii*); **REPTILES** - side-bloched lizard (*Uta* sp.), and western fence lizard (*Sceloporus occidentalis*); **PLANTS** - arroyo willow (*Salix lasiolepis*), black willow (*Salix gooddingii*), California buckwheat (*Eriogonum fasciculatum*), California Cholla (*Cylindropuntia californica*), coastal sagebrush (*Artemisia californica*), common cryptantha (*Cryptantha intermedia*), common eucrypta (*Eucrypta chrysanthemifolia*), common sunflower (*Helianthus annuus*), deerweed (*Acmispon glaber* var. *glaber*), Fremont cottonwood (*Populus fremontii*), horseweed (*Erigeron canadensis*), mule fat (*Baccharis salicifolia*), narrow-leaved willow (*Salix exigua*), prickly pear (*Opuntia littoralis*), red willow (*Salix laevigata*), scale broom (*Lepidospartum squamatum*), telegraphweed (*Heterotheca grandiflora*), valley popcornflower (*Plagiobothrys canescens*), white sage (*Salvia apiana*), wishbone bush (*Mirabilis laevis*), and willow dock (*Rumex salicifolius*).

The adverse effects the project could have on the fish or wildlife resources identified above include the disturbance to, alteration of, and/or loss of breeding, foraging, and refugia habitat. The construction of the project will permanently impact 1.57 acre of streambed, including 0.98 acre of riparian and stream-associated habitat and 0.59 acre of slopes, and temporarily impact 1.36 acre of streambed, of which 1.05 acre is riparian and stream-associated habitat and 0.31 acre is slopes. If additional impacts to riparian habitat and/or streambed are anticipated that are not described in this Agreement, Permittee shall consult with CDFW prior to initiating those additional impacts, to determine whether a new notification or an amendment to this Agreement will be required.

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 **Take of Listed Species.** The issuance of this Agreement does not authorize the take of any state- or federally-listed threatened, endangered, or fully protected species. Take of any California Endangered Species Act (CESA)-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, the Department recommends that the project proponent seek appropriate authorization prior to project implementation. This may include an incidental take permit (ITP) or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).
- 1.6 **Take of Nesting Birds.** Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code Section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act 1918, as amended (16 U.S.C. § 703 *et seq.*). The issuance of this Agreement does not in any way exempt or excuse compliance with these statutes.

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 **Designated Biologists.** Permittee shall submit to CDFW for review and approval, the name, contact information, and qualifications of each biologist, botanist, or other specialist (Designated Biologist(s)) proposed to perform survey and/or conduct monitoring activities for the project. Permittee shall specify within these submittals which activities each Designated Biologist is being considered for and the specific qualifications and experience they possess to support the assignment. CDFW's written approval of the Designated Biologists must be received prior to the commencement of project activities, including construction and/or site preparation.
- 2.2 **Authority of Designated Biologists.** To ensure compliance with the measures of this Agreement, the Designated Biologists shall have the authority to immediately halt any activity that does not comply with this Agreement, order any reasonable measure to avoid the violation of any measure of this Agreement, and directly

contact CDFW for any reason. If the Designated Biologist(s) determines that the project may have an adverse effect on any special-status species (threatened, endangered, candidate, species of special concern, etc.), they must halt construction and notify the appropriate agencies immediately. Unless authorized by CDFW, the Designated Biologists shall not have the authority to handle any special-status species.

- 2.3 **Lighting Impacts.** No lighting shall be allowed to impact jurisdictional areas, and the lighting and fencing for infrastructure adjacent to jurisdictional areas shall be designed or reviewed by a qualified biologist to allow wildlife to move within the open space and conserved areas without hindrance.
- 2.4 **Worker Environmental Awareness Program.** Prior to implementing any construction activities on the project site, the Permittee shall implement a Worker Environmental Awareness Program (WEAP) to educate on-site workers about sensitive environmental issues associated with the project. The program will be administered to all on-site personnel, including the Permittee's personnel, contractors, and all subcontractors, prior to the employee's commencing work on the site. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Site. The WEAP will include but not be limited to protected species that have potential to occur within the Project site, including nesting birds, plants, and other wildlife species.
- 2.5 **Delineate Work Area Boundary.** In consultation with the Designated Biologist, Permittee shall clearly delineate the outer perimeter of the work areas and access routes with appropriate fencing, signage, and/or flagging to prevent damage to adjacent habitats. The delineation materials shall be in place during all periods of operation and all persons employed or otherwise working on the project site shall be instructed about the restrictions. Permittee shall ensure the delineation materials are monitored daily, and maintained, repaired, or replaced immediately if the materials are damaged, lost, stolen, or become ineffective in any way. The Designated Biologist(s) shall ensure the delineation materials do not create a barrier to wildlife movement and will not pose a risk to wildlife safety.
- 2.6 **Nesting Bird Plan.** No less than 30 days prior to initiating Project activities, including site preparation and staging, Permittee shall submit to CDFW for review a Nesting Bird Plan (NBP) that includes project specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur and that the project complies with all applicable laws related to nesting birds and birds of prey. The NBP shall include, at a minimum: monitoring protocols; survey timing and duration; and project-specific avoidance and minimization measures including, but not limited to: project phasing and timing, monitoring of project-related noise, sound walls, and buffers.

- 2.7 **Work Period and Time Limits – Bird Surveys.** Migratory non-game native bird species are protected (Refer to Measure 1.6). The Designated Biologist(s) shall survey the entirety of the project site, and within a recommended 500-foot buffer surrounding the project site for both diurnal and nocturnal nesting birds, prior to commencing project activities (including construction and/or site preparation). Surveys shall be conducted by the Designated Biologist(s) at the appropriate time(s) of day, no more than three days prior to commencement of project activities. **Documentation of surveys and findings shall be submitted to CDFW for review prior to conducting project activities.** If no nesting activities were observed, project activities may begin. If an active bird nest is located, the Designated Biologist(s) shall implement and monitor specific avoidance and minimization measures as specified in the CDFW-approved NBP (refer to Measure 2.6).
- 2.8 **Biological Monitoring.** The Designated Biologist(s) shall be responsible for monitoring all project activity that have the potential to impact Fish and Game Code section 1602 resources, including streams, associated vegetation/habitat, and wildlife. The Designated Biologist(s) shall ensure that all avoidance and minimization measures are implemented and maintained, including, but not limited to: determining and delineating appropriate avoidance and buffer areas, maintaining delineated access routes and work areas, monitoring for the presence of, and potential impacts to, special-status species, and maintaining/repairing/replacing any exclusionary fencing and trench/excavation covers.
- 2.9 **Best Management Practices.** Permittee shall actively implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants during project activities. BMPs shall be monitored and repaired if necessary to ensure maximum erosion, sediment, and pollution control. Permittee shall prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread. Permittee shall ensure BMPs do not pose a barrier to wildlife movement and shall be installed to allow for the safe passage of wildlife movement, particularly of less vagile species (such as small mammals and reptiles), out of the project area. Long, continuous lengths of silt-fencing or other BMP materials installed without gaps can create a barrier to wildlife movement, trapping wildlife within the project area. Areas of safe passage can be easily accommodated by leaving small gaps between parallel and overlapping lengths of BMPs.

- 2.10 Trash Abatement and Refuse Removal. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at the end of each workday to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs. Upon completion of project activities within each project location, Permittee shall remove and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.
- 2.11 Pollution and Litter. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Permittee to ensure compliance.
- 2.11.1 Permittee shall not allow water containing mud, silt, or other pollutants from grading, aggregate washing, or other activities to enter a lake, streambed, or flowing stream or be placed in locations that may be subjected to high storm flows.
- 2.11.2 Spoil sites shall not be located within a lake, streambed, or flowing stream or locations that may be subjected to high storm flows, where spoil shall be washed back into a lake, streambed, or flowing stream where it will impact streambed habitat and aquatic or riparian vegetation.
- 2.11.3 Raw cement/concrete or washings thereof, asphalt, paint, or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish and wildlife resources resulting from project related activities shall be prevented from contaminating the soil and/or entering the waters of the State. These materials, placed within or where they may enter a lake, streambed, or flowing stream by Permittee or any party working under contract or with the permission of Permittee, shall be removed immediately.
- 2.11.4 No broken concrete, cement, debris, soil, silt, sand, bark, slash, sawdust, rubbish, or washings thereof, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any lake, streambed, or flowing stream.
- 2.11.5 No equipment maintenance shall be done within or near any lake, streambed, or flowing stream where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- 2.12 Disposal of Vegetation. Following any vegetation clearing/removal activities, Permittee shall immediately chip woody debris to pieces 1 - inch in diameter or less and dispose of the materials using one of the following methods: a) solarize with

clear tarp, b) compost at a commercial facility, c) burn at a biogeneration facility, or d) send to a landfill (can be utilized as Alternative Daily Coverage). Handling procedures for plant material infested with polyphagous shot hole borer can be found at <http://eskalenlab.ucr.edu/handouts/decisionmaking.pdf>.

- 2.13 **Excavated Areas.** At the end of each workday, Permittee shall, with the oversight of the Designated Biologist, secure any open trench or excavated area such that animals are unable to enter and become entrapped. The excavated areas must be secured using appropriate site- and species-specific methods, such as, placing plywood or other barrier materials over the excavated area, placing an escape ramp of suitable material and at an angle no greater than 30 degree at each end of the open trench/excavated area, or installing temporary fencing around the perimeter of trenches or holes.
- 2.14 **Nonnative plant species.** Permittee shall utilize local, native plants to the greatest extent feasible in the landscaped areas adjacent to and/or near open space and mitigation areas. Permittee shall not plant, seed, or otherwise introduce invasive plant species to the landscaped areas. Invasive nonnative plant species not to be used include those species listed on the "California Invasive Plant Inventory, February 2006" and the "February 2007 Inventory Update", (which are updates to Lists A & B of the California Exotic Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999"). This list includes: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, bush lupine, sweet alyssum, English ivy, French broom, Scotch broom, Spanish broom, and pepperweed. A copy of the complete list can be obtained by contacting the California Invasive Plant Council by phone at (510) 843-3902, at their website at www.cal-ipc.org, or by email at info@cal-ipc.org.

3. Compensatory Measures

Permittee shall compensate for adverse effects to fish and wildlife resources identified above that cannot be avoided or minimized as follows:

- 3.1 **Habitat Rehabilitation – Offsite.** Permittee shall mitigate project impacts within the Santa Ana River watershed through the contribution of sufficient funds to a CDFW-approved mitigation bank, in-lieu fee program, or other entity, for the rehabilitation of 2.94 acres of riparian habitat. **Permittee shall obtain CDFW approval, in writing, regarding the choice of the mitigation prior to contribution of funds.** Habitat "rehabilitation" activities shall include: erosion control and minor grading where appropriate; removal of nonnative plant species, trash, and debris; installation of temporary irrigation; and the installation of riparian and riparian-upland transitional plant species where appropriate. **Proof of purchase shall be provided to CDFW prior to commencement of any project activities, or as extended by CDFW.**

- 3.2 **Habitat Rehabilitation – Onsite.** Permittee shall restore all temporary impact areas, consisting of 1.05 acres of riparian habitat and coastal sage scrub and 0.31 acre of streambed/slope within the project (herein termed Onsite Mitigation Area). Restoration activities shall include recontouring the stream bank and adjacent areas to natural grade; redistributing previously stockpiled native topsoil, and removing all nonnative plant species, trash, and debris. Prior to start of construction, or as extended by CDFW, Permittee shall develop and submit to CDFW an onsite Habitat Restoration Plan (HRP). At a minimum, the HRP shall include the following information; (a) a description of the existing physical conditions of the restoration site, including water resources and habitat types, and a map that identifies the location of the site; (b) a plan for the preparation of the restoration site, post-project construction, including the removal of nonnative plant species, redistribution of previously stockpiled native topsoil, and grading; (c) a local California native plant palette, for seeding/planting; (d) a planting plan, including monitoring and maintenance measures and a timeline; (e) procedures to ensure that nonnative plants are not introduced or allowed to sustain within the restoration site and a nonnative plant removal plan; and (f) success standards with contingency measures. Monitoring and maintenance of the restoration site shall be conducted annually for a minimum of five years, or until CDFW determines the mitigation site is successful. If the survival and cover requirements have not been met as established in the approved HRP, the Permittee shall follow contingency measures, including but not limited to, performing modifications to the existing habitat, creation of new habitat on or offsite, payment of in-lieu fees, or purchase of additional mitigation credits from a mitigation bank. Any contingency actions will be determined in coordination with all regulatory agencies.

All onsite restoration activities described above shall be completed no later than 12 months following Project completion.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 4.1 **As-Built Report.** Permittee shall submit a brief as-built report to CDFW following the completion of the restoration activities and subsequent 120-day establishment period for the Onsite Mitigation Area. The reports shall describe the preparation, installation methods, and activities conducted within the 120-day establishment period. The report shall document implementation of the HMMP and baseline site conditions. The report shall include an as-built graphic on an aerial photo base and on-ground photos from designated photo stations. The As-Built report shall serve as the beginning of the 5-year maintenance and monitoring period. **Please reference SAA # 1600-2017-0073-R6**
- 4.3 **Annual Reporting.** Annual reports shall be submitted to CDFW each year for a minimum of five years following plant installation or until CDFW deems the Onsite Mitigation Area successful. At a minimum, this reports shall include the following

information: (1) a description of the restoration activities conducted during the previous year, including: (a) the number by species of plants replaced or naturally recruited, (b) when the activities were conducted, and (c) any adaptive management measures implemented; (2) current site conditions, including: (a) the percent survival and percent cover of habitat; (b) the methods used to assess these parameters; and (3) information regarding nonnative plant removal, including: (a) the methods used for removal, (b) the amount removed and/or treated, (c) the frequency and timing of removal and treatment, (d) disposal specifics, and (e) a summary of the general successes and failures of the nonnative removal plan. The reports shall also include wildlife species observed during monitoring surveys including sensitive species and/or listed species. Photos from designated photo stations shall be included. The first annual report is due to CDFW no later than thirteen (13) months following submission of the As-Built Report.

- 4.4 **Notification to CNDDDB.** If any sensitive species are observed on or in proximity to the project site, or during project surveys, Permittee shall submit the occurrence information to California Natural Diversity Data Base (CNDDDB) within five working days of the sightings, and provide the regional CDFW office with copies of the CNDDDB forms and survey maps. Submissions can be made to CNDDDB online at: http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp. A copy of this information shall also be mailed within five days to CDFW Inland Deserts Region, 3602 Inland Empire Blvd., Suite C-220, Ontario, CA, 91764, Attn: Claire Ingel. Please reference SAA # 1600-2017-0073-R6.
- 4.5 **Notification of Start of Construction.** The Permittee shall notify CDFW, in writing, at least five (5) days prior to the initiation of project activities in jurisdictional areas. Notification shall be mailed to CDFW Inland Deserts Region, 3602 Inland Empire Blvd., Suite C-220, Ontario, CA, 91764, Attn: Claire Ingel. Please reference SAA # 1600-2017-0073-R6.

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:

Darren Meeka
825 East 3rd Street, Room 123
San Bernardino, CA 92415
(909) 387-8109 (Phone)
darren.meeka@dpw.sbcounty.gov

To CDFW:

Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Attn: Lake and Streambed Alteration Program – Claire Ingel
Notification #1600-2017-0073-R6
(909) 484-3979 (Phone)
(909) 481-2945 (Fax)
claire.ingel@wildlife.ca.gov

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 complying with, or 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. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

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 Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 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 Fish and Game Code section 1605, subdivision (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 Fish and Game Code section 1605, subdivisions (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 Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall expire on **October 17, 2023**, 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 Fish and Game Code section 1605, subdivision (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 Fish and Game Code section 1602.

CONCURRENCE

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

FOR SAN BERNARDINO COUNTY DEPARTMENT OF PUBLIC WORKS



Darren Meeka
Division Chief, Environmental Management
Division

12/17/18

Date

FOR DEPARTMENT OF FISH AND WILDLIFE



Scott Wilson
Environmental Program Manager
Inland Deserts Region

1/7/2019

Date

Prepared by: Claire Ingel
Senior Environmental Scientist, Specialist

EXHIBIT B

PROJECT DESCRIPTION

The Project Proponent is purchasing credits to offset impacts associated with the Project Proponent's project to construct Phase III of the Santa Ana River Trail ("Project"), which is a 3.8 mile segment of the SART in San Bernardino County on the south side of the Santa Ana River Channel, between Waterman Avenue in the City of San Bernardino and California Avenue in the City of Redlands ("Impact Location"). The project proponent will mitigate the 0.071-acre permanent impact through the purchase of 0.21-acre of rehabilitation credit pursuant to SARWQCP Project No 362017-22 dated March 19, 2018.

EXHIBIT C

BILL OF SALE

Contract No. _____

In consideration of the payment of SEVEN HUNDRED SEVENTY NINE THOUSAND ONE HUNDRED AND NO/100'S DOLLARS (\$779,100.00), receipt of which is hereby acknowledged, SRMA does hereby recognize that the San Bernardino County Department of Public Works (the "Project Applicant"), has acquired 2.94 Rehabilitation Credits from the Santa Ana River Watershed In-Lieu Fee Program (the "Program"), developed and approved by the Los Angeles District of the U.S. Army Corps of Engineers, Region IX of the U.S. Environmental Protection Agency and the California Regional Water Quality Control Board, Region 8.

SRMA, administrator of the Program, represents and warrants that it has good title to the credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

DATED: _____

By: _____
Chief Executive Officer

EXHIBIT D

Statement of Sale of Credit

SRMA letterhead

[date]

U.S. Army Corps of Engineers
Los Angeles District – Regulatory Division
915 Wilshire Blvd.
Los Angeles, CA 90017

Subject: Statement of Sale for 0.21 Rehabilitation Credits from the Santa Ana River Watershed In-Lieu Fee Program to the San Bernardino County Flood Control District (SART Phase III Trail Project)

The Southwest Resource Management Association has an agreement with the U.S. Army Corps of Engineers – Los Angeles District to operate an In-Lieu-Fee Program. This letter confirms the sale of 0.21 Rehabilitation Credits. These credits are being used as compensatory mitigation for permanent impacts to 0.071 acre to waters to the United States. By selling credits to the above permittee, SRMA is the party responsible for fulfilling the mitigation as authorized by RWQCB Clean Water Act Section 401 Water Quality Standards Certification No. 362017-22, dated March 19, 2018.

Signed

cc: R.J. Van Sant, Project Manager/Biologist, Regulatory Division, U.S. Army Corps of Engineers, Carlsbad Field Office

James Mace, Senior Project Manager, Regulatory Division, U.S. Army Corps of Engineers, Los Angeles District

Marc Brown, Regional Planning Programs, Regional Water Quality Control Board-Santa Ana Region.

Sarvy Mahdavi, Environmental Protection Specialist, Wetlands Regulatory Office, U.S. EPA, Region 9

Scott Wilson
Department of Fish & Wildlife
Inland Deserts Region
3602
Los Angeles, CA 90017

Subject: Statement of Sale for 2.94 Rehabilitation Credits from the Santa Ana River Watershed In-Lieu Fee Program to the San Bernardino County Department of Public Works (SART Phase III Trail Project)

This letter confirms the sale of 2.94 Rehabilitation Credits from the Southwest Resource Management Association to the County of San Bernardino, Department of Public Works. This mitigation is being used to satisfy SAA 1600-2017-0073-R6 (Rev 3), under 3. Compensatory Measures, 3.1 Habitat Rehabilitation – Offsite, page 8.

Please let us know if you have any questions about this mitigation.

Sincerely,

SHELLI LAMB
Chief Executive Officer