



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

Los Angeles District Corps of Engineers
CORPS OF ENGINEERS LOS ANGELES DISTRICT
Regulatory Division, Carlsbad Field Office
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

June 7, 2012

Regulatory Division

Mr. Rob Rundle
San Diego Association of Governments
401 B Street, Suite 800
San Diego, California 92101

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT VERIFICATION

Dear Mr. Rundle:

I am responding to your request (SPL-2011-00828-MBS) for a Department of the Army (DA) Nationwide permit. Your proposed project, San Ysidro Freight Rail Yard Improvement, would result in a discharge of fill material into waters of the United States. Therefore, pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344; 33 C.F.R. parts 323 and 330), your proposed project requires a DA permit. The San Ysidro Freight Rail Yard Improvement Project is located in San Ysidro, San Diego, California, Latitude: 32.54578 N and Longitude: -117.02941 W (as shown on the enclosed figures).

Based on the information you have submitted to this office, I have determined construction of the San Ysidro Freight Rail Yard Improvement Project complies with the terms of Nationwide Permit Number (NWP) 14, Linear Transportation Projects, if conducted as described in your application.

Specifically, you are authorized to conduct the following regulated activities:

Permanently discharge 315 cubic yards of clean fill material into 0.25 acre of mulefat scrub wetlands and 0.02 acre of ephemeral stream, associated with the two new track extensions and revisions of the track alignment, new truck access road, drainage improvements and sediment detention basins, as shown on the enclosed figures (Enclosure 1).

For this NWP 14 Linear Transportation Projects verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 2. Furthermore, you must comply with the following non-discretionary Special Conditions listed below:

Pre-Construction

1. Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Army Corps of Engineers (Corps) a final detailed mitigation plan prepared in accordance with the

Corps' Los Angeles District Mitigation Guidelines and Monitoring Requirements, dated April 19, 2004 and the Mitigation Rule (33 C.F.R. Part 332; 73 FR 19670-19687 (April 10, 2008)). The final mitigation plan shall address the permanent impacts to 0.25 acre of mulefat scrub wetlands and 0.02 acre of streambed through establishment of 0.73 acre of wetland waters of the U.S. All maps and drawings shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated September 21, 2009 (http://www.spl.usace.army.mil/regulatory/pn/SPL-RG_map-drawing-standard_final_w-fig.pdf). No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps approval of the final mitigation plan. The Permittee shall complete site preparation and planting and initiate monitoring as described in the final, approved mitigation plan concurrently with impacts to waters of the U.S. Your responsibility to complete the required compensatory mitigation as set forth in this Special Condition will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers (Corps).

2. At least **30 days prior** to initiating construction in waters of the U.S., the Permittee shall submit to the Corps a complete set of final detailed grading/construction plans showing all work and structures in waters of the U.S. All plans shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated September 21, 2009. All plan sheets shall be signed, dated, and submitted on paper no larger than 11x 17 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps approval of the final detailed grading/construction plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans.
3. The Permittee shall provide monies in the form of a non-wasting endowment [endowment amount to be determined by Property Analysis Record or similar methodology] for review and approval by the Corps prior to initiating work in waters of the U.S. for the purpose of fulfilling the long-term responsibilities including maintenance activities (i.e. invasive non-native plant species and trash removal, restoration of areas disturbed or destroyed due to off-road vehicle use, or other trespassing or vandalism, repairs and maintenance to fencing and signage).
4. Prior to initiating construction in waters of the U.S., the Permittee shall post financial assurance ("financial assurance") in a form approved by the Corps for the estimated cost of implementing the approved final detailed mitigation plan (including a 20% contingency to be added to the total costs). The purpose of this financial assurance is to guarantee the successful implementation, maintenance and monitoring of the wetland and non-wetland waters creation, restoration, and enhancement work. Our preferred form of financial assurance is a letter of credit, in which case, you shall post a letter of credit for a minimum of 120% of the anticipated cost of the mitigation and monitoring associated with the project, as indicated above. In addition,
 - a. The bonding company must appear on the Department of Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies. For a current list of Treasury-authorized companies, write or call the Surety Bond Branch, Financial Management Services, Department of the

Treasury, Washington DC 20227; (202) 874-6850 or at the following website:
<http://www.fms.treas.gov/c570/c570.html>.

- b. The performance bond shall be released only upon a determination by the Corps that successful mitigation has been completed.
 - c. Alternatively, the Corps will accept an irrevocable letter of credit in the same amount in lieu of a Performance Bond. The terms of the irrevocable letter of credit are subject to Corps approval.
5. Prior to work in waters of the U.S. the Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter avoided waters of the U.S. and riparian wetland/habitat areas shown on Figure 4b and c. Adverse impacts to waters of the U.S. beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.
 6. Prior to initiation of work in waters of the U.S. the Permittee shall provide written notification to the Corps. The notification shall include the following:
 - a. Corps File Number (SPL-2011-00828-MBS);
 - b. Name of company performing the work and on-site point of contact and their contact information;
 - c. Size and type of equipment performing the work; and
 - d. Schedule for beginning and ending the project.

Construction

7. No debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the U.S. Therefore, the Permittee shall employ all Best Management Practices necessary to ensure that toxic materials, silt, debris, or excessive erosion do not enter waters of the U.S. during project construction. Upon completion of the activities authorized by this permit, any excess material or debris shall be removed from the work area and disposed of in an appropriate upland site.
8. The Permittee shall discharge only clean fill materials suitable for the activities permitted herein. Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

Water Quality Certification

9. The Permittee shall ensure that water quality is maintained by incorporating the terms and conditions of the Section 401 Water Quality Certification issued by the San Diego Regional Water Quality Control Board (Certification Number 11C-074) for your project, dated April 18, 2012. You must comply with the conditions specified in the Certification as special conditions to this permit.

Cultural Resources

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

Mitigation

11. The Permittee has proposed to mitigate for impacts to waters of the U. S., through implementation of the draft conceptual mitigation plan: "Wetland Mitigation Plan for the San Ysidro Freight Rail Yard Improvement" (dated June 4, 2012, and prepared by Helix Environmental Planning). According to the draft mitigation plan, the San Diego Association of Governments (SANDAG) would be responsible for implementation, performance, and long-term management. The Permittee retains ultimate legal responsibility for meeting the requirements of the final mitigation plan. Detailed mitigation objectives, performance standards, and monitoring requirements are described in the above draft mitigation plan. Any requirements for financial assurances and/or long-term management provisions are also
12. Within **60 calendar days** following written Corps approval of the mitigation plan, you shall provide to this office GIS data (polygons only) and a figure depicting the boundaries of all compensatory mitigation sites, as authorized in the final mitigation plan referenced in special condition 1. All GIS data and associated metadata shall be provided on a digital medium (CD or DVD), preferably using the Environmental Systems Research Institute (ESRI) shapefile format. GIS data for mitigation sites shall conform to the data dictionary, as specified in the current Map and Drawing Standards for the Los Angeles District Regulatory Division, and shall include a text file of metadata, including datum, projection, and mapper contact information. Within 60 days following completion of compensatory mitigation construction activities, if any deviations have occurred, you shall submit as-built GIS data (polygons only) accompanied by a narrative description listing and explaining each deviation.
13. The Permittee shall record a site protection mechanism (in a form approved by the Corps, which shall run with the land, obligating the Permittee, its successors and assigns to protect and maintain the 0.73-acre mitigation area as natural open space in perpetuity. The site protection mechanism shall preclude establishment of fuel modification zones, paved public trails, drainage facilities, walls, maintenance access roads and/or future easements, except as provided in the Project Description (described herein). Further, to the extent practicable, any such facilities outside the mitigation site area shall be sited to minimize indirect impacts on the avoided, created, restored and enhanced wetland and non-wetland waters of the U.S. Prior to its execution and within six months of issuance of this permit, the Permittee shall submit a draft site protection mechanism to the Corps for review. The Permittee shall receive written approval (by letter or e-mail) from the Corps of this mechanism prior to it being executed and recorded. No later than 30 calendar days after receiving Corps approval of the final draft site

protection mechanism, the mechanism shall be executed and recorded and a recorded copy furnished to the Corps.

14. Within **45 calendar days** of complete installation of all mitigation, the Permittee shall submit to the Corps two copies of a memo indicating the following:
 - a. Date(s) all mitigation was installed and monitoring was initiated;
 - b. Schedule for future mitigation monitoring, implementation and reporting pursuant to final, Corps-approved compensatory mitigation plan;
 - c. Summary of compliance status with each special condition of this permit (including any noncompliance previously occurred or currently occurring and corrective actions taken to achieve compliance);
 - d. Color photographs taken at the project site before and after construction for those aspects directly associated with impacts to waters of the U.S.; and
 - e. One copy of "as built" drawings for the entire project, including all mitigation sites (all sheets must be signed, dated, to-scale, and no larger than 11 x 17 inches).

Post-Construction

15. Within **45 calendar days** of completion of authorized work in waters of the U.S., the Permittee shall submit to the Corps a post-project implementation memo indicating the following:
 - a. As-built construction drawings with an overlay of waters of the U.S. that were impacted;
 - b. A summary of all project activities, which documents that authorized impacts to waters were not exceeded, and demonstrated compliance with all permit special conditions;
 - c. Summary of compliance status with each special condition of this permit (including any noncompliance previously occurred or currently occurring and corrective actions taken to achieve compliance);
 - d. Color photographs taken at the project site before and after construction for those aspects directly associated with impacts to waters of the U.S.; and
 - e. A completed Certification of Compliance Form (page 7 of this verification).

Your verification is valid through June 6, 2014. All NWP's will expire on March 18, 2017. It is incumbent upon you to remain informed of changes to the NWP's. A public notice of the change(s) will be issued when any of the NWP's are modified, reissued, or revoked.

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 our regulatory program. If you have any questions, please contact Meris Bantilan-Smith at 760-602-4836 or via e-mail at Meris.Bantilan-Smith@usace.army.mil.

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

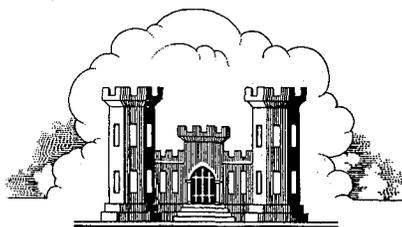
“Building Strong and Taking Care of People!”

Sincerely,

A handwritten signature in cursive script that reads "Therese O. Bradford". The signature is written in black ink and is positioned above the printed name.

Therese O. Bradford
Chief, South Coast Branch

Enclosures



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

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

Permit Number: *SPL-2011-00828-MBS*

Name of Permittee: *Rob Rundle, San Diego Association of Governments (SANDAG)*

Date of Issuance: *June 6, 2012*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division, Carlsbad Field Office
ATTN: CESPL-RG-SPL-2011-00828-MBS
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this Nationwide Permit, you may be subject to permit suspension, modification, or revocation procedures as contained in 33 C.F.R. § 330.5 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit condition(s).

Signature of Permittee

Date