



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS LOS ANGELES DISTRICT
Regulatory Division, Carlsbad Field Office
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

November 16, 2012

Regulatory Division

Mr. Thomas Duffy
County of San Diego
Department of Public Works, ESU
5555 Overland Avenue, Suite 2188
San Diego, California 92133-1295

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT VERIFICATION

Dear Mr. Duffy:

I am responding to your request (SPL-2011-00980-MBS) dated February 14, 2012 for a Department of the Army (DA) permit. Based on the information you furnished to this office, your proposed project, Emery Road Realignment, would result in a discharge of fill material into waters of the United States (U.S.). 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 Emery Road Realignment Project is located on Emery Road, approximately 0.75 mile north of the U.S.-Mexico Border, Tecate, San Diego County, California (as shown on the attached maps; Enclosure 1).

I have determined construction of the Emery Road Realignment Project complies with Nationwide Permit Number 14 (NWP 14), *Linear Transportation Projects*, if conducted as described in your application.

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

- Realign approximately 0.14 mile of Emery Road to the west of the existing road to eliminate a sharp blind curve;
- Conduct grading activities within unnamed stream channels to remove two degraded corrugated metal pipe culverts;
- Install one 24-inch reinforced concrete pipe culvert and one four by three foot reinforced concrete box culvert within the unnamed stream channels;
- Permanently impact approximately 0.011 acre (130 linear feet) of non-wetlands waters of the U.S. and temporarily impact approximately 0.022 acre (280 linear feet) of non-wetlands waters of the U.S.; and
- Permanently discharge approximately 30 cubic yards of rip rap associated with the realignment of Emery Road.

For this NWP 14 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. 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. Adverse impacts to waters of the U.S. beyond the U.S. Army Corps of Engineers (Corps) approved construction footprint (Enclosure 1- Figure 8) are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial additional compensatory mitigation requirements.
2. **Thirty (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 (http://www.spl.usace.army.mil/regulatory/pn/SPL-RG_map-drawing-standard_final_w-fig.pdf). All plan sheets shall be signed, dated, and submitted on paper no larger than 11 x 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. **Fifteen (15) days prior to work** in waters of the U.S., the Permittee shall provide written notification to the Corps of anticipated starting and completion dates of activities authorized herein.

Construction

4. The Permittee shall allow Corps representatives to inspect the authorized activities at any time deemed necessary to ensure compliance with permit terms and conditions.
5. The Permittee shall ensure that all construction materials and staging, storage, dispensing, fueling, and maintenance activities are located in upland areas outside of Corps jurisdiction, and that adequate measures are taken to prevent any potential runoff from entering waters of the U.S.
6. Water Quality: The Permittee shall ensure that water quality is maintained within the unnamed streams, at and downstream of the project site, by incorporating appropriate design elements into the project as approved by the Corps and the Regional Water Quality Control Board (RWQCB). The terms and conditions of the 401 Water Quality Certification (File No. 772336:mporter), issued by the San Diego Regional Water Quality Control Board on November 16, 2012, are incorporated as conditions of this authorization.

7. Cultural Resource: 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 Meris Bantilan-Smith at 760-602-4836 and 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 or may be discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction per 36 C.F.R. section 800.13.
8. Endangered Species: This Corps permit does not authorize the take of any federally listed species as threatened or endangered species, or adversely modify their 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.

Mitigation

9. The Permittee shall mitigate for permanent impacts to 0.011 acre of non-wetland waters of the U.S. through enhancement of 0.03 acre of riparian habitat within the Lawrence and Barbara Daley Preserve in San Diego County, California as described in the Habitat Management and Monitoring Plan (HMMP): "*Comprehensive Wetland Conceptual Mitigation Plan for Wing Avenue Drainage Improvement Project, Tavern Road Drainage Improvement Project, Woodside Avenue Drainage Improvement Project and Emery Road Drainage Improvement Project*" (conceptual plan dated October 14, 2011, and prepared by AMEC Earth and Environmental, Inc. for San Diego County). According to the approved conceptual HMMP, responsible parties would be as follows: a) Implementation: San Diego County; b) Performance: San Diego County; and c) Long-term management: San Diego County.
10. Within **60 calendar days** following permit issuance, you shall provide to this office GIS data (polygons only) and the associated figure depicting the boundaries of all compensatory mitigation sites, as authorized in the above, final mitigation plan. All GIS data and associated metadata shall be provided on a digital medium (CD or DVD), 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 (please refer to special condition 2) 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.
11. Within **forty-five (45) calendar days** of complete installation of all mitigation under the HMMP, 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 HMMP;
 - c. Color photographs taken at the mitigation site before and after mitigation site construction; and
 - d. One copy of "as built" drawings of the mitigation site (all sheets must be signed, dated, to-scale, and no larger than 11 x 17 inches).
12. Your responsibility to complete the required compensatory mitigation as set forth in this Special Condition shall not be considered fulfilled until you have demonstrated compensatory mitigation project success (listed below) and have received written verification of that success from the Corps. The Permittee retains ultimate legal responsibility for meeting the requirements of the approved conceptual mitigation plan. Detailed mitigation objectives, performance standards, and monitoring requirements are described in the final approved October 14, 2011 mitigation plan with key Year 5 performance standards outlined below.
- a. A minimum of 5-years of maintenance and monitoring for the mitigation site has been completed;
 - b. All substantial remedial activities (i.e. irrigation and replanting) shall not occur for a minimum of 2 years prior to mitigation release;
 - c. The mitigation site must have 90 percent cover of native species, 100 percent container survival, less than five percent non-native cover, and less than five percent bare ground;
 - d. Final Year 5 California Rapid Assessment Method (CRAM) Biotic Structure Attribute scores should meet or exceed the projected values outlined in Table 1 below;
 - e. Evidence of wet to saturated subsurface soils at a depth of six inches in wetland areas and nine inches in riparian areas during the month of August; and
 - f. Presence of surface water at least four months per year in the wetland areas.

Table 1. Year 5 Projected Biotic Structure CRAM Attribute Scores	
Biotic Structure Metrics	Projected Scored
# of Plant Layers	12
# of Co-dominants	9
% Invasion	12
Horizontal Interspersion	9
Vertical Structure	9

Post-Construction

13. Temporary impacts to waters of the U.S. shall be restored to pre-construction contours. All disturbed areas shall be revegetated with pre-existing and/or native vegetation.
14. **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 date authorized

impacts to waters of the U.S. ceased and a signed certification of compliance (page 6 of this authorization).

Your verification is valid through November 16, 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. Furthermore, if you commence or are under contract to commence this activity before the date on which the relevant NWP is reissued, modified, or revoked, you will have twelve (12) months from the date of the reissuance, modification, or revocation of the NWP to complete the activity under the present terms and conditions of the relevant NWP.

A preliminary jurisdictional determination (JD) has been conducted to determine the extent of Corps geographic jurisdiction, upon which this NWP verification is based. A preliminary JD is advisory in nature and is a written indication that Corps geographic jurisdiction may be present on a particular site, but is not appealable. An approved JD is an official Corps determination of the precisely identified limits of Corps geographic jurisdiction on a particular site, and is appealable. Should you wish to appeal an approved JD, you may request an administrative appeal under Corps regulations at 33 C.F.R. part 331. Please refer to the enclosed Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form for more information (Enclosure 3). Please sign, date, and return to this office the enclosed preliminary JD (Enclosure 4).

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>.

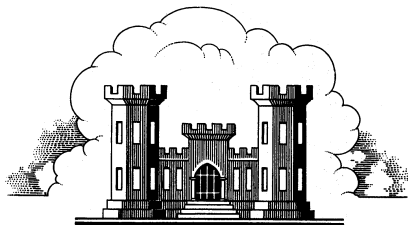
"Building Strong and Taking Care of People!"

Sincerely,

A handwritten signature in cursive script that reads "Therese O Bradford".

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-2011-00980-MBS*

Name of Permittee: *Thomas Duffy, San Diego County*

Date of Issuance: *November 16, 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:

CORPS OF ENGINEERS LOS ANGELES DISTRICT
Regulatory Division, Carlsbad Field Office
ATTN: SPL-2011-00980-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