



REPLY TO  
ATTENTION OF

## DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS LOS ANGELES DISTRICT  
REGULATORY DIVISION, CARLSBAD FIELD OFFICE  
5900 LA PLACE COURT, SUITE 100  
CARLSBAD, CALIFORNIA 92008

May 2, 2013

Regulatory Division

Mr. Rob Rundle  
Principal Regional Planner  
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-2011-00983-MBS) dated December 8, 2011 for a Department of the Army (DA) permit. Your proposed project, Sorrento Valley Double Track, 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 United States Code [U.S.C.] 1344; 33 Code of Federal Regulations [C.F.R.] parts 323 and 330), your proposed project requires a DA permit. The Sorrento Valley Double Track project is located in Sorrento Valley, City of San Diego, San Diego County, California between Latitude 32.917784° N, Longitude -117.239170°W and Latitude 32.897576°N, Longitude -117.220283°W (as shown on the attached figures).

I have determined construction of Sorrento Valley Double Track complies with Nationwide Permit (NWP) 14, Linear Transportation Projects, if conducted as described in your application.

Specifically, and as shown on the attached figures, you are authorized to conduct the following regulated activities:

Permanently impact 0.25 acre of waters of the U.S. consisting of 0.10 acre of wetland and 0.15 acre of non-wetland waters. Temporarily impact 1.81 acres of waters of the U.S. consisting of 1.58 acres of wetland and 0.23 acre of non-wetland waters of the U.S. Project permanent and temporary impacts are associated with the construction and installation of a second railroad track (Double Track) and replacement of three bridges with modern structures along the Los Angeles to San Diego Rail Corridor between Bridge 247.7 and Mile Post (MP) 248.9. The regulated work consists of the following:

- *Double Track*: A second track will be added 25 feet east of the existing track from MP 247.8 to the Sorrento Valley Train Station (MP 248.9). The toe of the existing western embankment will expand the existing wetlands along Soledad Creek within the railroad

right-of-way (ROW). Approximately 1,000 cubic yards (CY) of rip-rap and soil will be permanently placed within the footprint of the entire existing western slope and proposed track embankment to provide protection from regional storm water flows that have historically eroded the embankment.

- *Retaining Walls:* A retaining wall will be installed along the east side of the second track, between Bridge 247.7 and Bridge 248.5. The retaining wall will incorporate a channel for local drainage. A second and third retaining wall will be installed to support the existing station parking lot and the track at the southerly parking lot.
- *Bridge 247.7:* Bridge 247.7 will be demolished and replaced in-line (same location) with the existing track. Bridge 247.7 will be replaced with a 126-foot long, single-track, concrete railroad bridge consisting of 12 piles in Los Peñasquitos Creek. Approximately 500 CY of soil and 300 CY of rip-rap will be permanently discharged during the construction of Bridge 247.7.
- *Bridge 248.5:* Bridge 248.5 will be demolished and replaced with two, 54-inch diameter reinforced concrete pipes (RCP). The pipes will be buried one foot under proposed grade, creating a "soft bottom" culvert. The replacement of Bridge 248.5 will result in the permanent discharge of approximately 1,700 CY of soil and 80 CY of rip-rap.
- *Bridge 248.7:* Bridge 248.7 will be demolished and replaced with a double-track, concrete railroad bridge. Bridge 248.7 will be built off-line (to the east) to maintain rail operations on the existing track during construction. Bridge 248.7 will be built as a 252-foot long bridge consisting of nine pre-stressed/pre-cast concrete double cell box girder spans that are spaced at 28-foot intervals. During construction of Bridge 248.7, a temporary fill pad across Soledad Creek and/or a temporary construction trestle may be used.

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 following non-discretionary Special Conditions listed below:

**Pre-Construction:**

1. Prior to initiation of grading and project construction the Permittee shall provide written notification to the U.S. Army Corps of Engineers (Corps). The notification shall include the following:
  - a. Corps File Number (SPL-2011-00983-MBS);
  - b. Name of company performing the work and on-site point of contact;
  - c. Schedule for beginning and ending the project; and
  - d. Schedule for beginning the compensatory mitigation site grading.
2. 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 enclosed Final Map and Drawing Standards for the South Pacific Division Regulatory Program dated August 6, 2012 (<http://www.spd.usace.army.mil/Portals/13/docs/regulatory/standards/map.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. 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. shown on Figure 2a-g. 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.
4. Prior to work in waters of the U.S., the Permittee must provide monies in the form of a non-wasting endowment [endowment amount to be determined by Property Analysis Record (PAR) or similar methodology] for review and approval by the Corps prior to initiating work in waters of the U.S. for the purposes 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 and vandalism, repairs and maintenance to fencing and signage) at the off-site compensatory mitigation site.

#### **Construction:**

5. The Permittee shall staff a qualified biologist on-site during project grading and construction in the vicinity of waters of the U.S. to ensure compliance with all requirements of this permit. The qualified biologist shall document compliance with the General and Special Conditions. The Permittee shall submit the biologist's name, address, telephone number, email address (if available), and work schedule on the project to the Corps a minimum of **fifteen (15) days** prior to the planned date of initiating impacts to waters of the U.S. authorized by this permit. The biologist/Permittee shall report any violation to Meris Bantilan-Smith of this office (760-602-4836) within one day of its occurrence.
6. Cultural Resources: 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 (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861) and Corps' Project Manager (Meris Bantilan-Smith at 760-602-4836) within 24 hours. The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.
7. Endangered Species Act: This Corps permit does not authorize you to take any threatened or endangered species, in particular the federally-listed endangered least Bell's vireo (*Vireo bellii pusillus*, "vireo") and light-footed clapper rail (*Rallus longirostris levipes*, "clapper rail") 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 U.S. Fish and Wildlife Service (USFWS) correspondence dated May 2, 2013 (enclosed), including the required avoidance and minimization measures, the Corps has concluded 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.

8. Water Quality Certification: The Permittee shall ensure that water quality is maintained by incorporating the terms and conditions of the enclosed section 401 Water Quality Certification issued by the San Diego Regional Water Quality Control Board (Certification Number 11C-118) for your project, dated January 14, 2013. You must comply with the conditions specified in the Certification as special conditions to this permit.

**Mitigation:**

9. The Permittee shall mitigate for temporary impacts to 1.81 acres of waters of the U. S., through establishment of 1.01 acres of waters of the U.S. as described in the final, approved mitigation plan: "Sorrento Valley Double Track Off-site Wetland Mitigation and Monitoring Plan" (dated January 2013 [Revised April 2013], and prepared by HDR Engineering, Inc.). 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. According to the final, approved mitigation plan, responsible parties would be as follows: a) Implementation: San Diego Association of Governments (SANDAG); b) Performance: SANDAG; c) Long-term management: State Parks. The Permittee retains ultimate legal responsibility for meeting the requirements of the final, approved mitigation plan. Detailed mitigation objectives, performance standards, and monitoring requirements are described in the above final, approved mitigation plan. Any requirements for financial assurances and/or long-term management provisions are also described in the above final, approved mitigation plan, as well as in special condition 13 below.
10. **GIS DATA: Within 60 days** following permit issuance, you shall provide to this office GIS data (polygons only) and one figure depicting the boundaries of all compensatory mitigation sites, as authorized in the final mitigation plan referenced above. All GIS data and associated metadata shall be provided on a digital medium (CD or DVD) or via file transfer protocol (FTP), preferably using the Environmental Systems Research Institute (ESRI) shapefile format. GIS data for mitigation sites shall conform to the Mitigation\_SPD.xlsx data table, as specified in the enclosed Final Map and Drawing Standards for the South Pacific Division Regulatory Program dated August 6, 2012, and shall include a text file of metadata, including datum, projection, and mapper contact information.
11. The Permittee shall provide long-term protection through a real estate instrument, management plan, or other long-term protection mechanism approved by the Corps for the Torrey Pines State Park off-site mitigation area within the State Park to protect and maintain the compensatory 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 areas 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 site protection mechanism prior to it being executed. No later than 30 calendar days after receiving Corps approval of the final draft site protection mechanism, the mechanism shall be executed and a final copy furnished to the Corps.

12. Within **60 calendar days** of complete installation of all mitigation, the Permittee shall submit to the Corps Regulatory Division 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. 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); and
  - d. 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. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 9 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, Corps-approved 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 no perennial non-native plant cover, less than 5 percent annual non-native cover, and 80 percent relative cover of native species.
  - 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; and
  - e. Evidence of wetland hydrology and hydric soil development.

**Post-Construction:**

14. The Permittee shall ensure all sites within waters of the U.S. subject to authorized, temporary impacts are restored to pre-project alignments, elevation contours, and conditions, including revegetation with appropriate native plant species after completion of

construction in the area, as described in the final, Corps-approved revegetation plan: "Conceptual Revegetation Plan for the Sorrento Valley Double Track Project, San Diego County, California " (dated January 2013 [Revised April 11, 2013], and prepared by HDR Engineering, Inc.). Revegetation and enhancement activities shall be conducted and completed in accordance with this approved plan.

15. 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).

Your verification is valid through March 18, 2017. 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 U.S. Army Corps of Engineers (Corps) geographic jurisdiction, upon which this NWP verification is based. A preliminary JD is advisory in nature and is a written indication 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.

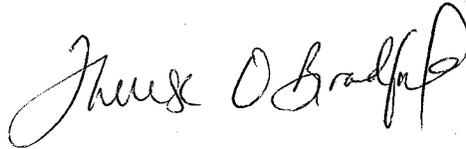
A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with any existing or proposed federal project. Furthermore, it does not obviate the need to obtain other federal, state,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

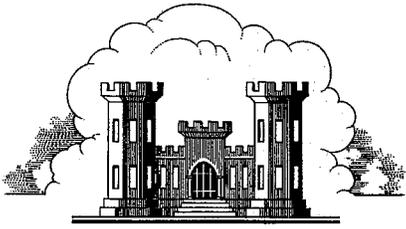
***"Building Strong and Taking Care of People!"***

Sincerely,

A handwritten signature in black ink that reads "Therese O. Bradford". The signature is written in a cursive style with a large, looped initial "T".

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-2011-00983-MBS*

**Name of Permittee:** *Mr. Rob Rundle, San Diego Association of Governments*

**Date of Issuance:** *May 2, 2013*

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-2011-00983-MBS  
5900 La Place Court, Suite 100  
Carlsbad, California 92008

Please note 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 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).

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Signature of Permittee

Date