



REPLY TO  
ATTENTION OF

## DEPARTMENT OF THE ARMY

Los Angeles District, Corps of Engineers  
Regulatory Division, Carlsbad Field Office  
5900 La Place Ct., Suite 100  
Carlsbad, CA 92008

August 7, 2013

Regulatory Division

Eileen Maher  
Port of San Diego  
3165 Pacific Highway,  
San Diego, California 92101-1128

### DEPARTMENT OF THE ARMY – CORPS OF ENGINEERS REGULATORY DIVISION (CORPS) NATIONWIDE PERMIT VERIFICATION

Dear Ms. Maher:

I am responding to your letter request dated May 7, 2013 (SPL-2011-01097-RRS) for a Corps Nationwide Nos. 12 permit verification for the North Embarcadero Visionary Plan Redevelopment (NEVP), in which the Broadway Pier Surface Enhancement Project (and a new electrical line installation) are to be installed over navigable waters of the U.S. per drawings submitted to the Corps on July 1, 2013. Reference is also made to our previous Nationwide Permit Nos. 7 permit verification letter dated April 24, 2013 for the NEVP Phase I project. Your proposed project, Broadway Pier Surface Enhancements with a new utility line, which is a part NEVP, would place structures or consist of work in or affecting navigable waters of the United States. Therefore, pursuant to section 10 of the Rivers and Harbors Act (33 U.S.C. 403), your proposed project requires a Department of the Army permit. The proposed project and the electrical line project are located in San Diego bay in the city of San Diego, San Diego County, California (as shown on the attached drawings).

The Corps has determined construction of the Broadway Pier Surface Enhancement Project and the new electrical line which are both a part of the NEVP project complies with Nationwide Permit No. 12 (NWP 12), Utility Line Activities, if conducted as described in your application. Specifically, and as shown on the attached drawings, you are authorized to conduct the following regulated activities:

Construct the Broadway Pier Surface Enhancement Project with new electrical line in conjunction with the NEVP project (two water quality six-inch diameter band outfalls and twelve 1-1/8 inch diameter wharf outfalls) adjacent to San Diego Bay at the Embarcadero, the Broadway and B Street Piers (see attached Figures 1-6). Permanent impacts of the NEVP are .0032 acres and temporary impacts include 0.001 acres of waters of the U.S. within the temporary construction zone.

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:

Construction:

1. The Permittee has submitted to the Corps Regulatory Division for approval a complete set of detailed grading/construction plans showing all work and structures in waters of the U.S. for Corps approval. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final detailed grading/construction plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans.
2. 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).

Section 10:

1. The permitted activity shall not interfere with the right of the public to free navigation on all navigable waters of the United States as defined by 33 C.F.R. Part 329.
2. No dredging is authorized by this Nationwide Permit verification letter.
3. Creosote treated pilings shall not be placed in navigable waters unless all of the following conditions are met:
  - A) The project involves the repair of existing structures that were originally constructed using wood products;
  - B) The creosote treated pilings are wrapped in plastic;
  - C) Measures are taken to prevent damage to plastic wrapping from boat use. Such measures may include installation of rub strips or bumpers;
  - D) The plastic wrapping is sealed at all joints to prevent leakage; and

E) The plastic material is expected to maintain its integrity for at least ten years, and plastic wrappings that develop holes or leaks must be repaired or replaced in a timely manner by the Permittee.

4. No other modifications or work shall occur to the structures permitted herein.

5. A pre-construction survey of the project area for *Caulerpa taxifolia* (Caulerpa) has been conducted (see Caulerpa Protocol at <http://swr.nmfs.noaa.gov/hcd/caulerpa/ccp.pdf>). The results of that survey shall be furnished to the Corps Regulatory Division, NOAA Fisheries, and the California Department of Fish and Wildlife (CDFW) at least 5 calendar days prior to initiation of work in navigable waters. In the event that Caulerpa is detected within the project area, the Permittee shall not commence work until such time as the infestation has been isolated, treated, and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory Division, in consultation with NOAA Fisheries and CDFW.

6. FOR DOCKS and OTHER STRUCTURES PLACED IN WATERS OF THE US WITH THE POTENTIAL TO IMPACT EELGRASS: Once authorized impacts to navigable waters authorized by this permit have ceased, the Permittee shall conduct two years of post-construction eelgrass monitoring surveys per the mapping guidelines in NOAA Fisheries' Southern California Eelgrass Policy ([http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrev11\\_final.pdf](http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrev11_final.pdf)). All required post-construction monitoring surveys shall be submitted by the Permittee to the Corps Regulatory Division and NOAA Fisheries within 30 calendar days of each survey completion date. Based upon the post-construction monitoring survey results and in accordance with the Policy, the Corps Regulatory Division will determine the need and/or amount of Essential Fish Habitat (EFH) mitigation required to offset adverse impacts to such habitat. The Corps Regulatory Division will transmit its determination to the Permittee in writing. Within 60 calendar days of receiving the Corps Regulatory Division's determination specifying the need and amount of mitigation, the Permittee shall submit a draft EFH mitigation plan to the Corps for review and approval. The EFH mitigation plan shall be prepared in accordance with the Policy and the Corps' Los Angeles District Mitigation Guidelines and Monitoring Requirements, dated April 19, 2004. The Permittee shall fully implement the final EFH mitigation plan as approved by the Corps Regulatory Division.

7. The Permittee shall discharge only clean construction materials suitable for use in the oceanic environment. The Permittee shall ensure 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 United States. Upon completion of the project authorized herein, any and all excess material or debris shall be completely removed from the work area and disposed of in an appropriate upland site.

8. The Permittee shall notify the Corps Regulatory Division of the date of commencement of operations not less than 5 calendar days prior to commencing work unless otherwise approved by the Corps, and shall notify the Corps of the date of completion of operations at least five calendar days prior to such completion.

9. To ensure navigational safety, the Permittee shall provide appropriate notifications to the U.S. Coast Guard as described below:

Commander, 11th Coast Guard District (dpw)  
TEL: (510) 437-2980  
E-mail: d11LNM@uscg.mil  
Website: <http://www.uscg.mil/dp/lnmrequest.asp>

U.S. Coast Guard, Sector San Diego (COTP)  
Attn: John Bannon  
2710 North Harbor Drive  
San Diego, CA 92101  
TEL: (619) 278-7262

A) The Permittee shall notify the U.S. Coast Guard, Commander, 11th Coast Guard District (dpw) and the U.S. Coast Guard, Sector LA-LB and San Diego (contact information shown above), not less than 5 calendar days prior to commencing work and as project information changes. The notification shall be provided by e-mail with at least the following information, transmitted as an attached Word or PDF file:

- 1) Project description including the type of operation (i.e. dredging, diving, construction, etc).
- 2) Location of operation, including Latitude / Longitude (NAD 83).
- 3) Work start and completion dates and the expected duration of operations. The Coast Guard needs to be notified if these dates change.
- 4) Vessels involved in the operation (name, size and type).
- 5) VHF-FM radio frequencies monitored by vessels on scene.
- 6) Point of contact and 24 -hour phone number.
- 7) Potential hazards to navigation.
- 8) Chart number for the area of operation.
- 9) Recommend the following language be used in the LNM: "Mariners are urged to transit at their slowest safe speed to minimize wake, and proceed with caution after passing arrangements have been made."

B) The Permittee and its contractor(s) shall not remove, relocate, obstruct, willfully damage, make fast to, or interfere with any aids to navigation defined at 33 C.F.R. chapter I, subchapter C, part 66. The Permittee shall ensure its contractor notifies the Eleventh Coast Guard District in writing, with a copy to the Corps Regulatory Division, not less than 30 calendar days in advance of operating any equipment adjacent to any aids to navigation that requires relocation or removal. Should any federal aids to navigation be affected by this project, the Permittee shall submit a request, in writing, to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office (contact information provided above). The Permittee and its contractor are prohibited from relocating or removing any aids to navigation until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.

C) Should the Permittee determine the work requires the temporary placement and use of private aids to navigation in navigable waters of the U.S., the Permittee shall submit a request in writing to the Corps Regulatory Division as well as the U.S. Coast Guard, Aids to Navigation office (contact information provided above). The Permittee is prohibited from establishing private aids to navigation in navigable waters of the U.S. until authorized to do so by the Corps Regulatory Division and the U.S. Coast Guard.

D) The COTP may modify the deployment of marine construction equipment or mooring systems to safeguard navigation during project construction. The Permittee shall direct questions concerning lighting, equipment placement, and mooring to the appropriate COTP.

10. Within 30 calendar days of completion of the project authorized by this permit, the Permittee shall conduct a post-project survey indicating changes to structures and other features in navigable waters. The Permittee shall forward a copy of the survey to the Corps Regulatory Division and to the National Oceanic and Atmospheric Service for chart updating: Gerald E Wheaton, NOAA, Regional Manager, West Coast and Pacific Ocean, DOD Center Monterey Bay, Room 5082, Seaside, CA 93955-6711.

11. 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 Regulatory Division, 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.

#### Endangered Species Act:

1. This Corps permit does not authorize you to take any threatened or endangered species, in particular the California least tern (*Sterna antillarum brownii*, "tern"). In order to legally take a listed species, you must have separate authorization from the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The Corps Regulatory Division has determined that your activity shall not affect the above species.

#### Essential Fish Habitat (EFH):

1. The Permittee shall implement and abide by the proposed EFH measures in the Programmatic Consultation for outfall structures per the email from the National Marine Fisheries Service (NMFS) as submitted to the Corps and dated January 23, 2012. The Corps also re-confirmed that the no adverse affect call was still valid for the Broadway Surface Enhancements and electrical line project via telephone conference with NMFS on July 23, 2013.

#### Coastal Zone Management Consistency Determination:

1. The Permittee shall implement and abide by the Coastal Development Permit from the California Coastal Commission (CCC) as stated in the CCC letter dated April 18, 2011 to the Port (A-6-PSD-11-006).

#### Cultural Resources:

1. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff within 24 hours (Steve Dibble at (213) 452-3849 or John Killeen at (213) 452-3861) and the Corps Regulatory project manager (Robert Smith at (760) 602-4831). 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.

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.

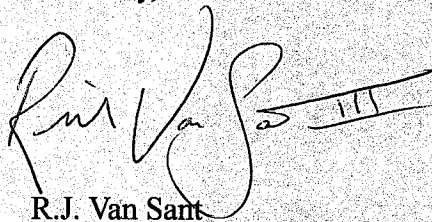
An approved jurisdictional determination (JD) for work in a Traditional Navigable Water has been conducted to determine the extent of U.S. Army Corps of Engineers (Corps) geographic jurisdiction, upon which this NWP verification is based. An approved JD is an official Corps determination of the precisely 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 mailed 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 Robert R. Smith at (760) 602-4831 or via e-mail at [Robert.R.Smith@usace.army.mil](mailto:Robert.R.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>.

Sincerely,

A handwritten signature in black ink, appearing to read "R.J. Van Sant", with a horizontal line extending to the right.

R.J. Van Sant  
Senior Project Manager  
Regulatory Division

Enclosure(s)



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

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

**Permit Number:** *SPL-2011-01097-RRS*

**Name of Permittee:** *Eileen Maher, Port of San Diego*

**Date of Issuance:** *August 7, 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 Office  
ATTN: SPL-2011-01097-RRS  
5900 La Place Ct., Suite 100  
Carlsbad, CA 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).

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date