



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

August 6, 2012

OK
RECEIVED
8/6/12

Regulatory Division

Ms. Lesley Hill, Project Manager
Orange County Transportation Authority
550 South Main Street,
P.O. Box 14184
Orange County, California, 92683

Dear Ms. Hill:

Reference is made to your request (Corps File No. SPL-2012-00227-SCH), dated March 22, 2012, for a Department of the Army authorization to discharge fill into waters of the U.S. associated with road maintenance activities within the Ferber Ranch access road, an unimproved dirt road that crosses a portion of Hickey Wash. The proposed project would result in temporary impacts to 0.01 acre of non-wetland waters of the United States. Under the provisions of section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344; 33 C.F.R. parts 320 and 332), you are hereby authorized to conduct the maintenance work described below within Hickey Wash (33.672105°N, -117.58775°W), located within Trabuco Canyon, Orange County, California, as shown on the attached figure.

Specifically, you are authorized to excavate up to approximately 10 cubic yards of sediment and debris within an approximately 22-foot-long by 14-foot-wide (308 square feet) roadway segment through Hickey Wash. The maintenance activity may be conducted as needed and must be conducted with the use of a bobcat or small-tracked grader and a rubber-tired front-end loader to clear the roadway, and a dump truck to haul the silt and/or debris to a local landfill.

The owner or authorized responsible official must sign and date all copies of this Letter of Permission (LOP) indicating that he/she agrees to the work as described and will comply with all conditions of this permit authorization described below. One of the signed copies of this LOP must be returned to the Corps Regulatory Division. In addition, please use the two attached postcards to notify this office as to the dates of commencement (within 10 days prior to the start of construction) and completion of the activity (within 10 days following the end of construction).

Furthermore, you are hereby advised that the Corps Regulatory Division has established an Administrative Appeal Process which is fully described in 33 C.F.R. part 331. The complete appeal process is diagrammed in the enclosed Appendix A.

Thank you for participating in our regulatory program. If you have any questions, please contact Sophia Huynh at 213-452-3357 or via e-mail at Sophia.c.Huynh@usace.army.mil.

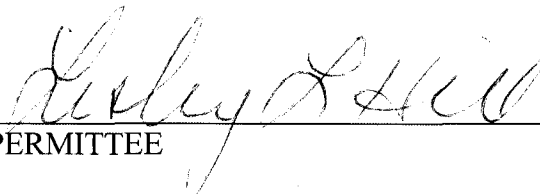
Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at:
<http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,



David J. Castanon
Chief, Regulatory Division

Enclosures



PERMITTEE

01/11/2012

DATE

If the activities authorized by this permit are still being conducted at the time the property is transferred, the terms and conditions of this LOP will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

TRANSFEEEE

DATE

PERMIT CONDITIONS

General Conditions:

1. The time limit for completing the authorized activity ends on **August 6, 2017**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. 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 3 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.
3. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
4. 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.
5. Avoidance and Minimization: The permittee must provide a written statement describing avoidance and minimization measures used to minimize discharges to jurisdictional waters at the project site to the maximum extent practicable.
6. Mitigation Policy: The permit must comply with the San Juan Creek Watershed/Western San Mateo Creek Watershed Special Area Management Plan (SAMP) mitigation framework, including the Strategic Mitigation Plan, established in conjunction with the proposed permitting procedures.
7. Equipment: If personnel would not be subjected to additional, potential hazardous conditions, heavy equipment working in or crossing wetlands must be placed on temporary construction mats (timber, steel, geotextile, rubber, etc.), or other measures must be taken to minimize soil disturbance such as using low pressure equipment. Temporary construction mats shall be removed promptly after construction.
8. Suitable Material: No discharge of dredged or fill material into jurisdictional waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).

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 and storm water management activities, 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. To the maximum extent practicable, the activity must provide for the retention of excess flows from the site and for the maintenance of surface flow rates from the site similar to pre-project conditions, while not increasing water flows from the project site, relocating water, or redirecting water flow beyond pre-project conditions unless it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. Removal of Temporary Fills: Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing conditions, including any native riparian and/or wetland vegetation. If an area impacted by such temporary fill is considered likely to naturally re-establish native riparian and/or wetland vegetation within two years to a level similar to pre-project or pre-event conditions, the permittee will not be required to restore the riparian and/or wetland vegetation. However, Exotic Species Management may be required to prevent the establishment of invasive exotic vegetation (see General Condition #13).
11. Preventive Measures: Measures must be adopted to prevent potential pollutants from entering the watercourse. Within the project area, construction materials, and debris, including fuels, oil, and other liquid substances shall be stored in a manner as to prevent any runoff from entering jurisdictional areas.
12. Staging of Equipment: Staging, storage, fueling, and maintenance of equipment must be located outside of the waters in areas where potential spilled materials will not be able to enter any waterway or other body of water.
13. Fencing of Project Limits: Prior to initiation of the project, the boundaries of the project's impact area must be delimited by the placement of temporary construction fencing, staking, and/or signage. Any additional jurisdictional acreage impacted outside of the approved project footprint shall be mitigated at a 5:1 ratio. In the event that additional mitigation is required, the type of mitigation shall be determined by the Corps Regulatory Division in accordance with the SAMP mitigation framework and may include riparian and/or wetland enhancement, restoration, creation, or preservation.
14. Avoidance of Breeding Season: With regard to federally listed avian species, avoidance of breeding season requirements shall be those specified in the section 7 consultation for the LOP procedures. For all other species, initial vegetation clearing in waters of the United States must occur between September 15 and March 15, which is outside the breeding season. Work in waters may occur during the breeding season between March 15 and September 15 if bird surveys indicate the absence of any nesting birds within a 300-foot radius.

15. Exotic Species Management: All giant reed (*Arundo donax*), salt cedar (*Tamarix* spp.), and castor bean (*Ricinus communis*) must be removed from the affected area and ensure that the affected area remains free from these invasive, non-native species for a period of five years from completion of the project.
16. Site Inspections: The Corps Regulatory Division shall be allowed to inspect the site at any time during and immediately after project implementation. In addition, compliance inspections of all mitigation sites shall be allowed at any time.
17. Posting of Conditions: A copy of the LOP conditions shall be included in all bid packages for the project and be available at the work site at all times during periods of work and must be presented upon request by any Corps or other agency personnel with a reasonable reason for making such a request.
18. Post-Project Report: Within 60 days of completion of impacts to waters, as-built drawings with an overlay of waters that were impacted and avoided must be submitted to the Corps Regulatory Division. Post-project photographs, which document compliance with permit conditions, must also be provided.
19. Water Quality: An individual section 401 water quality certification must be obtained or waived (see 33 C.F.R. §330.4(c)).
20. Historic Properties: (a) In cases where the district engineer determines that the activity may affect 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 NHPA have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the NHPA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-Federal permittees must submit with their application information on historic properties that may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register of Historic Places (see 33 C.F.R. §330.4(g)). 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 and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties that the activity may 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 or that consultation under section 106 of the National Historic

Preservation Act (NHPA) has been completed. (d) Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 C.F.R. §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until section 106 consultation is completed. (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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, explaining 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. Air Quality: No activity is authorized that causes or contributes to any new violation of national ambient air quality standards, increases the frequency or severity of any existing violation of such standards, or delays timely attainment of any such standard or interim emission reductions, as described in the applicable California State Implementation Plan for the South Coast Air Basin. As part of the Corps application package, the applicant shall submit an air quality emission and impact analysis for the proposed activity if the project would result in long-term or permanent stationary (point or area) source or indirect mobile source emissions, or if the proposed activity would result in area source and direct mobile source emissions that exceed the annual *de minimis* emissions thresholds for any criteria air pollutant or its precursors.

Special Conditions:

1. A copy of this permit shall be on the job site at all times during construction. The permittee shall provide a copy of this permit to all contractors, subcontractors, and forepersons. The permittee shall require that all contractors, subcontractors, and forepersons read this authorization in its entirety and acknowledge they understand its contents and their responsibility to ensure compliance with all general and special conditions contained herein.
2. This Corps permit does not authorize you to take any federally listed threatened or endangered species, in particular the coastal California gnatcatcher (*Polioptila californica californica*), 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). Pursuant to the U.S. Fish and Wildlife Service (USFWS) correspondence dated June 25, 2012, 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. Specific avoidance and minimization measures are:

- a. If construction occurs during the nesting season for birds (generally February 15 through August 31) and an active nest is present, then project activities may impact the nest. Therefore, it is recommended that implementation of the proposed routine roadway maintenance occur outside of the nesting season (September 1 through February 14). If this is not feasible, then a qualified biologist shall conduct a preconstruction nesting bird survey prior to any routine roadway maintenance activities to ensure that no nesting birds are present. If a nest is present and the qualified biologist determines that the routine maintenance activity may substantially disrupt the nesting and breeding behavior of a bird species, the qualified biologist shall establish appropriate buffers (based on the species identified) around active nests to be avoided until the nests are no longer active and the young have fledged. Buffers generally shall consist of approximately 300 feet for nesting birds. If the qualified biologist determines that the routine roadway maintenance will not affect the breeding and nesting behavior of a nesting bird species, the biologist shall provide these findings to the California Department of Fish and Game with a request to authorize the maintenance work to proceed.
- b. If project construction activities are initiated during the raptor nesting season (February 1 to June 30), a nesting raptor survey shall be conducted. Seven days prior to the onset of construction activities, a qualified biologist shall survey within the limits of the project's disturbance area for the presence of any active raptor nests (common or special status). Any nest found during survey efforts shall be mapped on the construction plans. If no active nests are found, no further mitigation would be required, and survey results shall be provided to the CDFG. If nesting activity is occurring, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the California Fish and Game Code. To protect any nest site, heavy construction equipment (e.g., graders, scrapers) shall not operate within 500 feet (or other distance deemed appropriate by a qualified biologist) of an occupied nest between February 1 and June 30 (or until nests are no longer active as determined by a qualified biologist). Any encroachment into the 500-foot-wide buffer area around the known active nest shall only be allowed if it is determined by a qualified biologist that the proposed activity will not disturb the nest occupants. During the non-nesting season, proposed work activities can occur only if a qualified biologist has determined that fledglings have left the nest. If an active nest is observed during the non-nesting season, the nest site shall be monitored by a qualified biologist, and when the raptor is away from the nest, the biologist shall flush any

raptors to open space areas. The qualified biologist shall then monitor removal of the nest site so raptors cannot return.

Failure to comply with the required avoidance and minimization measures would constitute non-compliance with your Corps permit.

3. Pursuant to 36 C.F.R. §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' Regulatory Division staff and archeology staff (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861) within 24 hours. The permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall immediately suspend all work within 100 feet of 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.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to **section 404 of the Clean Water Act (33 U.S.C. 1344)**.
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. Re-evaluation of Permit Decision. This office may re-evaluate 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 re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. §325.7 or enforcement procedures such as those contained in 33 C.F.R. §§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 C.F.R. §209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps Regulatory Division will normally give you favorable consideration to a request for an extension of this time limit.

LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

**NOTIFICATION OF COMMENCEMENT OF WORK
FOR
DEPARTMENT OF THE ARMY PERMIT**

Permit Number: *SPL-2012-00227-SCH*
Name of Permittee: *Lesley Hill, Orange County Transportation Authority*
Date of Issuance: *August 6, 2012*

Date work in waters of the U.S. will commence: _____
Estimated construction period (in weeks): _____
Name & phone of contractor (if any): _____

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 permit, you may be subject to permit suspension, modification, or revocation.

I hereby certify that I, and the contractor (if applicable), have read and agree to comply with the terms and conditions of the above referenced permit.

Signature of Permittee Date

At least ten days prior to the commencement of the activity authorized by this permit, sign this certification and return it using any ONE of the following three methods:

1. E-MAIL a statement including all the above information to:
Sophia.C.Huynh@usace.army.mil

OR

2. FAX this certification, after signing, to: 213-452-4196

OR

3. MAIL to the following address:
U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
ATTN: CESPL-RG-SPL-2012-00227-SCH
P.O. Box 532711
Los Angeles, California 90053-2325

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

**NOTIFICATION OF COMPLETION OF WORK AND CERTIFICATION OF
COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT**

Permit Number: *SPL-2012-00227-SCH*
Name of Permittee: *Lesley Hill, Orange County Transportation Authority*
Date of Issuance: *August 6, 2012*

Date work in waters of the U.S. completed: _____
Construction period (in weeks): _____
Name & phone of contractor (if any): _____

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 permit you may be subject to permit suspension, modification, or revocation.

I hereby certify the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit.

Signature of Permittee Date

Upon completion of the activity authorized by this permit, sign this certification and return it using any ONE of the following three methods:

1. E-MAIL a statement including all the above information to:
Sophia.C.Huynh@usace.army.mil

OR

2. FAX this certification, after signing, to: 213-452-4196

OR

3. MAIL to the following address:
U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
ATTN: CESPL-RG-SPL-2012-00277-SCH
P.O. Box 532711
Los Angeles, California 90053-2325

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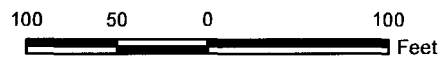


	Impact Boundary
USACE Jurisdiction	
	Non-wetland "Waters of the U.S."
	Official High Water Mark

USACE Jurisdictional Resources

Exhibit 1A

Ferber Ranch





Facing upstream. Project impact area along drainage.

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Site Photographs

Ferber Ranch

Exhibit 3

Bonterra
CONSULTING