

DEPARTMENT OF THE ARMY

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

April 12, 2012

Office of the Chief Regulatory Division

Chris Flynn, Senior Environmental Planning Chief Branch C California Department of Transportation, District 12 Attention: Kedest Ketsela 3347 Michelson Drive, Suite 100 Irvine, California 92612

SUBJECT: Approved Jurisdictional Determination regarding presence/absence of geographic jurisdiction

Dear Mr. Flynn:

Reference is made to your request (File No. SPL-2011-00526-SCH), dated May 24, 2011, for an approved Department of the Army jurisdictional determination (JD) for the Interstate 5 (I-5) High Occupancy Vehicle Lane Extension project site, more specifically Drainages 4, 7, 10, 15, 16, 18, 19, 22, 25, and 27 located along I-5 between Avenida Pico and San Juan Creek Road, within the cities of San Clemente, Dana Point, and San Juan Capistrano, in Orange County, California.

As you may know, the Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, then a permit is required. The first test determines whether or not the proposed project is located in a water of the United States (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under section 10 of the River and Harbor Act or section 404 of the Clean Water Act. As part of the evaluation process, pertaining to the first test only, we have made the jurisdictional determination below.

Based on available information, we have determined there are waters of the United States on the project site, as well as non-jurisdictional aquatic resources, in the locations depicted on the enclosed figures. The basis for our determination can be found in the enclosed JD form(s).

This letter contains an approved jurisdictional determination for the I-5 High Occupancy Vehicle Lane Extension project site, more specifically Drainages 4, 7, 10, 15, 16, 18, 19, 22, 25, and 27. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet (Appendix A) and Request for Appeal (RFA) form. If you request to appeal this decision you must submit a completed RFA form to the Corps South Pacific Division Office at the following address:

Tom Cavanaugh Administrative Appeal Review Officer, U.S. Army Corps of Engineers South Pacific Division, CESPD-PDS-O, 2042B 1455 Market Street, San Francisco, California 94103-1399 In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. section 331.5, and that it has been received by the Division Office within 60 days of the date on the NAP. Should you decide to submit an RFA form, it must be received at the above address by **June 11, 2012**. It is not necessary to submit an RFA form to the Division office if you do not object to the decision in this letter.

This verification is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. If you wish to submit new information regarding the approved jurisdictional determination for this site, please submit this information to Sophia Huynh at the letterhead address by **June 11, 2012**. The Corps will consider any new information so submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. A revised or reissued jurisdictional determination can be appealed as described above.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the particular project site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

If you have any questions, please contact Sophia Huynh of my staff 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: <u>http://per2.nwp.usace.army.mil/survey.html</u>.

Sincerely,

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Mark D. Cohen Deputy Chief, Regulatory Division

Enclosures

App	licant: Chris Flynn, Caltrans, District 12 File Number: SPL-2011-00526-SCH	Date: 04/12/2012										
Atta	ched is:	See Section below										
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	Α										
_	PROFFERED PERMIT (Standard Permit or Letter of permission) B											
_	PERMIT DENIAL	С										
X APPROVED JURISDICTIONAL DETERMINATION D												
_	PRELIMINARY JURISDICTIONAL DETERMINATION	Е										
SEC Add CFR A: II	 SECTION 1 - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <u>http://usace.army.mil/inet/functions/cw/cecwo/reg</u> or Corps regulations at 33 CFR Part 331. A: INITIAL PROFFERED PERMIT: You may accept or object to the permit. ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit. OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit for your reconsideration, as indicated in a posterior objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in a posterior objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in a posterior objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in a posterior objections, the district engineer will send you a proffered permit for your reconsideratio											
B: P •	 B: PROFFERED PERMIT: You may accept or appeal the permit. ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit. APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice. 											
C: F com engi	ERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Admipleting Section II of this form and sending the form to the division engineer. This form must be neer within 60 days of the date of this notice.	inistrative Appeal Process by be received by the division										
D: A info	APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved mation.	JD or provide new										
•	ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the date of this notice, means that you accept the approved JD in its entirety, and waive all rights APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Administrative Appeal Process by completing Section II of this form and sending the form to form must be received by the division engineer within 60 days of the date of this notice.	e Corps within 60 days of the to appeal the approved JD. Corps of Engineers the division engineer. This										
E: P prel:	RELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Comminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved	prps regarding the JD (which may be										

preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATIC	DN:							
If you have questions regarding this decision and/or the	If you only have questions regarding the appeal process you							
appeal process you may contact:	may also contact:							
DISTRICT ENGINEER	DIVISION ENGINEER							
Los Angeles District, Corps of Engineers	South Pacific Division, Corps o	f Engineers						
ATTN: Chief, Regulatory Division	Attn: Tom Cavanaugh							
P.O. Box 532711	Administrative Appeal Review	' Officer						
Los Angeles, CA 90053-2325	South Pacific Division, CESPD-	-PDS-O, 2052B						
Tel. (213) 452-3425	1455 Market Street, San Francisco, California 94103-1399							
	Phone: (415) 503-6574 Fax: (415) 503-6646							
	Email: thomas.j.cavanaugh@usace.army.mil							
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government								
consultants, to conduct investigations of the project site during	the course of the appeal process.	You will be provided a 15 day						
notice of any site investigation, and will have the opportunity to participate in all site investigations.								
	Date:	Telephone number:						
Signature of appellant or agent.								



APPROVED JURISDICTIONAL DETERMINATION FORM **U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): March 19, 2012 Α.

DISTRICT OFFICE, FILE NAME, AND NUMBER:Los Angeles District Office, Interstate 5 High Occupancy Vehicle Lane R Extension Project between Avendia Pico and San Juan Creek Road, SPL-2011-00526-SCH

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Drainage 4, 7, 10, 15, 18, 19, 22, and 27

The project site is located along Interstate 5 (I-5) between Avenida Pico and San Juan Creek Road, on the United States Geological Survey (USGS) San Clemente and Dana Point, California 7.5-minute series topographical quadrangles. Land uses adjacent to the project site include transportation, residential, commercial, industrial, recreational, and institutional uses and undeveloped land. The elevation within the project site ranges from approximately 100 to 200 feet (ft) above the mean sea level. The topography is gentle rolling hills adjacent to I-5, with fairly steep canyons and hillsides for the Santa Ana Mountain foothills east of the I-5. The climate is classified as Mediterranean (i.e., arid climate with hot and dry summers and moderately mild and wet winters). The average precipitation is approximately 13.5 inches. Although most of the precipitation occurs from November to May, thunderstorms occur at all times of the year and can cause extremely high precipitation rates. Temperature within the project site ranges between 45 and 85 degrees Fahrenheit.

The project site is located within the San Juan Creek and San Clemente Coastal Streams Watersheds. The San Juan Creek and San Clemente Coastal Streams Watersheds cover approximately 134 and 18 square miles, respectively. Canyons and washes associated with tributaries from San Juan Creek and San Clemente Coastal Streams Watersheds occur throughout the project site. Within the project site, runoff from I-5 discharges into drainage inlets via culverts, which discharge to San Juan Creek, Prima Deschecha Canada, and Segunda Deschecha Canada. All three named drainages ultimately drain to the Pacific Ocean. At least parts of the creeks are considered TNWs due to tidal influences at their mouths, approximately a half a mile from the project site.

San Juan Creek passes underneath I-5 at the northern project limits. However, it is not within the limits of project site. Pima Deschescha Canada passes underneath I-5 northwest of Avenida Vaquero. Segunda Deschecha Canada passes underneath I-5 southeast of East Avenida Pico.

State: California County/parish/borough: Orange County City: San Clemente, Dana Point and San Juan Capistrano. Center coordinates of site (lat/long in degree decimal format): Lat. 33.52123° N, Long. -117.55985° W.

Universal Transverse Mercator:

Name of nearest waterbody: San Juan Creek and San Clemente Coastal Streams Watersheds

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Pacific Ocean

Name of watershed or Hydrologic Unit Code (HUC): San Juan Creek and San Clemente Coastal Streams Watersheds

 \boxtimes Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

 \square Office (Desk) Determination. Date:

Field Determination. Date(s): March 6, 2011

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply): ¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.



Non-RPWs that flow directly or indirectly into TNWs Wetlands directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs Impoundments of jurisdictional waters Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: see attached spreadsheet linear feet: see attached spreadsheet width (ft) and/or see attached

spreadsheet acres.

Wetlands: see attached spreadsheet acres.

c. Limits (boundaries) of jurisdiction based on: Not Applicable.

Elevation of established OHWM (if known):see attached spreadsheet A.

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

This jurisdiction determination is for Drainage 4, 7, 10, 15, 18, 19, 22, and 27. These drainage features are nonrelatively permanent waters (non-RPW) that are wholly intra-state. These drainage features are small, ephemeral first-order streams. They have minimal flow rates and volume due to the relatively small drainage area of less than 10 acres. Pursuant to 33 CFR section 328.3 these drainage features are not waters of the U.S. because they are nontidal drainage excavated on dry land to convey urban and road runoff.

Water conveyed by these features either sheet flows once the drainage terminates or flow through improved storm water drainage facilities prior to feeding into the RPW. Because of the relatively small size of the drainage area for these features, and the lack of significant biological, chemical, and physical effects on downstream receiving waters, these drainage features are not considered to contain more than a speculative or insubstantial effect on the biological, chemical, or physical integrity of a TNW. On-site portions of these drainages support ephemeral flows. These drainage feature experience minimal flow rates and volume due to their relatively small drainage area of less than 10 acres. Based on the low volume of water these drainages carry, they are not expected to transport significant quantities of pollutants that could substantially affect downstream receiving waters. These drainage features were constructed on uplands to convey road and urban runoff from the highway (I-5) and adjacent residential development. Common urban and road runoff typically contain pollutants such as oil, grease, road salts and heavy metals; nutrients and pesticides from turf management and gardening; and viruses and bacteria from failing septic systems. These drainage features are ephemeral and generally support minimal riparian vegetation. No federally-listed endangered or threatened aquatic species are present within the on-site portion of these drainages. These drainage features provide negligible habitat for wildlife and do not provide any significant functions and values for downstream receiving waters. Therefore, each of these drainage features is not considered to be waters of the United States because it does not contain a significant nexus with the Pacific Ocean.

 $^{^{2}}$ For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size:	acres
Drainage area:	Pick List
Average annual rainfa	ll: inches
Average annual snow	fall: inches

(ii) Physical Characteristics:

(a) <u>Relationship with TNW:</u>
 ☐ Tributary flows directly into TNW.
 ☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are Pick List river miles from TNW.
Project waters are Pick List river miles from RPW.
Project waters are Pick List aerial (straight) miles from TNW.
Project waters are Pick List aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵: . . Tributary stream order, if known:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b)	General Tributary Characteristics (check all that apply):
	Tributary is: Natural Artificial (man-made). Explain:
	Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List.
	Primary tributary substrate composition (check all that apply):
	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: NA. Presence of run/riffle/pool complexes. Explain: NA. Tributary geometry: Pick List Tributary gradient (approximate average slope): %
(c)	Flow: Tributary provides for: Pick List Estimate average number of flow events in review area/year: Pick List Describe flow regime: . Other information on duration and volume: .
	Surface flow is: Pick List. Characteristics:
	Subsurface flow: Unknown. Explain findings: .
	Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): the presence of litter and debris clear, natural line impressed on the bank the presence of litter and debris changes in the character of soil destruction of terrestrial vegetation shelving shelving vegetation matted down, bent, or absent sediment sorting leaf litter disturbed or washed away scour sediment deposition multiple observed or predicted flow events water staining abrupt change in plant community other (list): j Discontinuous OHWM. ⁷ Explain: .
	If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list):
Che	mical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:

Identify specific pollutants, if known:

(iii)

.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. ⁷Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

- (a) <u>General Wetland Characteristics:</u> Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:
- (b) <u>General Flow Relationship with Non-TNW</u>: Flow is: **Pick List**. Explain:

Surface flow is: Pick List Characteristics:

Subsurface flow: **Pick List**. Explain findings:

- (c) <u>Wetland Adjacency Determination with Non-TNW:</u>
 - Directly abutting
 - □ Not directly abutting
 - Discrete wetland hydrologic connection. Explain:
 - Ecological connection. Explain:
 - Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW. Project waters are **Pick List** aerial (straight) miles from TNW. Flow is from: **Pick List**. Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width):
 - Vegetation type/percent cover. Explain:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List** Approximately () acres in total are being considered in the cumulative analysis. For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

- TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
- 2. <u>RPWs that flow directly or indirectly into TNWs.</u>
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

acres.

Tributary waters: linear feet width (ft).

- Other non-wetland waters:
 - Identify type(s) of waters:
- 3. Non-RPWs⁸ that flow directly or indirectly into TNWs.
 - Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

acres.

- Tributary waters: linear feet width (ft).
- Other non-wetland waters:
 - Identify type(s) of waters:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
- Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

- 7. Impoundments of jurisdictional waters.⁹
 - As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
 - Demonstrate that impoundment was created from "waters of the U.S.," or
 - Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 - Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain:
- Other factors. Explain:

Identify water body and summarize rationale supporting determination:

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos*.

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: linear feet width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters: .

Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based <u>solely</u> on the "Migratory Bird Rule" (MBR).
 - Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .

Other: (explain, if not covered above): Pursuant to 33 CFR section 328.3 these drainage features are not waters of the U.S. because they are nontidal drainage excavated on dry land to convey urban and road runoff.

Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR
factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best profession
judgment (check all that apply):
Non model and model $(i - i)$ and $(i - i)$

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.

Other non-wetland waters: acres. List type of aquatic resource:

Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

Non-wetland waters (i.e., rive	rs, streams):	linear feet,	width (ft)
Lakes/ponds: acres.			
Other non-wetland waters:	acres. List	type of aquatic rea	source:
Wetlands: acres.			

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked
and requested, appropriately reference sources below):
Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
Delineation of Jurisdictional Report.
Data sheets prepared/submitted by or on behalf of the applicant/consultant.
Office concurs with data sheets/delineation report.
Office does not concur with data sheets/delineation report.
Data sheets prepared by the Corps:See attached spreadsheet A.
Corps navigable waters' study:
U.S. Geological Survey Hydrologic Atlas: U.S. Geological Survey, 7.5 Minute Sercies Topographic Quadrangle, Black Star
Canyon and El Toro, California Quadrangles, both dated 1997.
USGS NHD data.
USGS 8 and 12 digit HUC maps.
U.S. Geological Survey map(s). Cite scale & quad name: .
USDA Natural Resources Conservation Service Soil Survey. Citation:
National wetlands inventory map(s). Cite name:
State/Local wetland inventory map(s):
FEMA/FIRM maps: .
100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
Photographs: 🖾 Aerial (Name & Date): .
or 🛛 Other (Name & Date): .
Previous determination(s). File no. and date of response letter:
Applicable/supporting case law:
Applicable/supporting scientific literature:
Other information (please specify):
San Clemente Coastal Streams Watershed Workplan dated November 9, 2010

We bis te to the City of San Clemente: Construction: http://webcache.googleusercontent.com/search?rls=com.microsoft%3A*&oe=UTF-8&startIndex=&startPage=1&hl=en&spell=1&q=cache:fchberwu-dAJ:http://san-clemente.org/sc/standard.aspx?pageid=455+biological+characteristics+of+Segunda+Deshecha+Canada&ct=clnk.

B. ADDITIONAL COMMENTS TO SUPPORT JD: These drainage features support mostly upland plant species and in most cases do not support hydric soils or any other discernible wetland indicators within or adjacent to the drainage feature. These drainage features are not likely to contain any significant quantities of pollutants that could substantially affect the downstream receiving waters. These drainages provide negligible habitat for wildlife, do not provide any aquatic habitat and do not prove any significant functions and values for downstream receiving waters. Because of the relatively small size of the drainage area for each of these features, and the lack of significant biological, chemical, and physical effects on downstream receiving waters, these drainage features are not considered to have more than a speculative or insubstantial effect on the biological, chemical, or physical integrity of a TNW. Regardless, as noted above, these drainage features are not waters of the U.S. because they are non-tidal features excavated on dry land to convey urban and road runoff.

Waters Name	Latitude (dd nad83)	Longitude (dd nad83)	Linear (ft) (length)	Depth (ft)	Width (ft)	Slope	Approximate Drainage Area	Nearest Watershed	Watershed Size (Square Mile)	Nearest Traditional Navigable Water	Number of tributary feature flows into before entering the TNW	Tributary has: OHWM Indicators	Flow route to TNW	Distance from RPW (Areal Mile)*	Tributary substrate composition	Tributary geometry:	Flow	Estimated average number of flow event in review area/year	Average annual rainfall (inches)	Surface flows
Drainage 4	33.4695	-117.67296	1253	<1	4	2:1 side slopes	5.783	San Juan Creek	160	Pacific Ocean	N/A	water staining	Conveys flows from the Camino las Ramblas northbound on-ramps (road runoff) to a 36-inch storm drain grate adjacent to northbound I- 5.	<1 mile	48-inch concrete v-ditch with approximately 2:1 slopes.	Relatively straight	Ephemeral	6 to 10	14	confined
Drainage 7	33.4661	-117.66951	1040	<1	2	4:1 or greater	4.467	San Juan Creek	177	Pacific Ocean	N/A	water staining	conveys flows west from adjacent residential development and eventually flows into the storm drain system	<1 mile	2 feet wide asphalt path.	Relatively straight	Ephemeral	6 to 10	14	unknown/ flow is overland sheetflow
Drainage 10	33.4566	-117.65164	330	<1	2.5	Vertical 1:1 or less	1.546	Tributary to Prima Deshecha 13Canada	177	Pacific Ocean	N/A	water staining	Drainage 10 conveys flows northward from the upslope commercial properties into a grated manhole, and flows into the storm drain system.	<1 mile	31-inch concrete v-ditch with 1:1 slopes	Relatively straight	Ephemeral	6 to 10	14	confined
Drainage 15	33.4518	-117.64139	985	1 to 2	4	Vertical 1:1 or less	0.216	Tributary to Prima Deshecha Canada	177	Pacific Ocean	N/A	water staining	Conveys flows both northwest and northeast from the uphill residential direction from the central part toward the two ends of the channel. Drainage 15 terminates abruptly on both ends and does not connect to the storm drain system or flow to TNW	<1 mile	38-inch concrete trapezoidal channel with a 13-inch base and 1:1 slopes.	Relatively straight	Ephemeral	6 to 10	14	confined
Drainage 18	33.4485	-117.6365	182	1 to 2	3	Vertical 1:1 or less	0.158	Cascadita Creek	177	Pacific Ocean	N/A	water staining	Conveys flows from the uphill residential development along Calle Frontera. It does not flow to storm drain system.	<1 mile	36-inch trapezoidal concrete channel with a 14-inch base and 1:2	Relatively straight	Ephemeral	6 to 10	14	confined
Drainage 19	33.4477	-117.6348	400	I to 2	3	Vertical 1:1 or less	0.592	Cascadita Creek	177	Pacific Ocean	2	water staining	Drainage 19 terminates abruptly on the southeast end, then sheet flows into Drainage 20. Drainage 20 may enter Cascadita Creek, which flows into the Pacific Ocean.	<1 mile	36-inch trapezoidal concrete channel with a 14-inch base and 1:2 slopes.	Relatively straight	Ephemeral	6 to 10	14	confined
Drainage 22	33.4389	-117.62326	205	<1	4	4:1 or greater	1.395	Tributary to Segunda Deshecha Canada	177	Pacific Ocean	N/A	water staining	conveys road runoff from the off-ramp in a southeast direction into a 34-inch grate leading to the storm drain system.	<1 mile	46-inch wide flat concrete swale	Relatively straight	Ephemeral	6 to 10	14	confined
Drainage 27	33.436	-117.61902	314	<1	4	Vertical 1:1 or less	1.304	Tributary to Segunda Deshecha Canada	177	Pacific Ocean	N/A	water staining	Drainage 27 conveys flows from a 26-inch RCP beneath I- 5 and flows into Drainage 26. Drainage 26 is a 48-inch concrete v-ditch with 1:1 slopes. Drainage 26 conveys flows from drainage 27 and adjacent commercial properties and terminates abruptly. It does not connect	<1 mile	49-inch concrete f-ditch with 1:1 slopes.	Relatively straight	Ephemeral	6 to 10	14	confined

* The distance to the nearest RPW is based on aerial distance and connectivity may not occur. Please see Flow route to TNW column for more details.

















