

INFORMATION HANDOUT

WATER QUALITY

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

PROJECT NO. 06C-018

PERMITS

**UNITED STATES ARMY CORPS OF ENGINEERS
NON-REPORTING NATIONWIDE 404 PERMIT
U.S. DEPT OF AGRICULTURE - FOREST SERVICE**

AGREEMENTS

**CALIFORNIA DEPARTMENT OF FISH AND GAME
NOTIFICATION NO. 1600-2006-0084-R5
UNITED STATES FISH AND WILDLIFE SERVICE**

ROUTE: 12-ORA-74-13.3/16.6



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

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Arnold Schwarzenegger
Governor

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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

June 12, 2008

Arianne Preite
Caltrans District 12
3337 Michelson Drive, Suite CN380
Irvine, CA 92612-0699

CERTIFIED MAIL

7007 3020 0001 0040 7362

In reply refer to:

NWU:18-2006018.02:cloflen

Regulatory Measure ID: 341954
Place No. 714438

Dear Ms. Preite:

SUBJECT: Amendments to CWA Section 401 Water Quality Certification
No. 06C-018

On May 9, 2008 the California Regional Water Quality Control Board, San Diego Region (Regional Board) received a request from Caltrans District 12 to amend the State Route 74 Safety Improvements (Project) Section 401 Water Quality Certification, File No. 06C-018, (Certification) to allow for proposed changes to the Project's impacts and compensatory mitigation.

The Project is a safety improvement project for the two existing lanes of the Ortega Highway in Orange County, CA. Caltrans District 12 proposes to retrofit an additional 2 existing culverts for the Project, which will result in an increase in the permanent and temporary impacts of the Project. Caltrans is requesting an amendment to the Certification for the additional impacts and additional compensatory mitigation for those impacts.

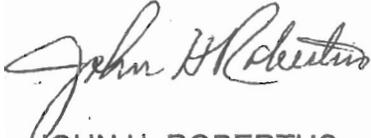
After review of the Project's file, the additional wetland delineation for proposed impacts by Bonterra Consults and the mitigation for those impacts, we concur that the proposed changes are reasonable modifications to the original Section 401 Water Quality Certification. As a result, the Section 401 Water Quality Certification for the State Route 74 Safety Improvements Project has been amended to reflect the proposed changes. The amendments are included as Enclosure 1.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to." In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter. If you have any questions regarding this notification, please contact Chad Loflen at (858) 467-2727 or cloflen@waterboards.ca.gov.

California Environmental Protection Agency



Respectfully,



JOHN H. ROBERTUS
Executive Officer

Enclosures

1. Addendum to Clean Water Act Section 401 Water Quality Certification No. 06C-018
2. Clean Water Act Section 401 Water Quality Certification No. 06C-018, dated May 18, 2006

cc (via email only):

Stephanie Hall, US Army Corps of Engineers Regulatory Branch, Los Angeles CA

Laurie.A.Monarres@usace.army.mil

Bill Orme, State Water Resources Control Board, Division of Water, Quality 401 Water
Quality Certification and Wetlands Unit, BOrme@waterboards.ca.gov

Tamara Spear, California Department of Fish and Game
tspear@dfg.ca.gov

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION

ADDENDUM TO

CLEAN WATER ACT SECTION 401
WATER QUALITY CERTIFICATION NO. 06C-018

FOR

STATE ROUTE 74 IMPROVEMENTS PROJECT

Condition D.1 is modified:

D.1. Mitigation for permanent impacts to 0.05 acres and temporary impacts to 0.06 acres, will be achieved by implementation of the *Draft Fencing and Restoration Plan* (Caltrans, March 2006) as modified to meet the requirements of this Certification and requirements from the U.S. Fish and Wildlife Service, U.S. Forest Service, U.S. Army Corps of Engineers, and the California Department of Fish and Game. **In addition to original impacts, project impacts requiring the Amendment of the original Certification include an additional .08 acres of permanent impacts and .06 acres of temporary impacts. Mitigation for the additional impacts will be achieved by implementation of the updated Amended Final Fencing and Updated Restoration Plan/Mitigation Plan.** Mitigation for original **and additional impacts** shall consist of:

- a. Restoration of 0.44 acre of riparian vegetation and 0.03 acre of wetland at the Lower San Juan Picnic Area **for original project impacts; for additional impacts (see above), restoration of an additional .06 acres of wetland and .26 acres of riparian vegetation on-site and at the Lower San Juan Picnic Area. Updated mitigation maps for the additional mitigation are required to be submitted to the Regional Board within 30 days of the issuance of the Amended Certification.**

Condition D.8 is modified:

D.8. Mitigation monitoring reports shall be submitted annually until mitigation has been deemed successful by the mitigation monitor with written concurrence by the Regional Board. Annual monitoring reports shall be submitted prior to August 1 of each year. Monitoring reports shall include, but not be limited to, the following:

- b. Names, qualifications, and affiliations of the persons contributing to the report;

c. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data at the ~~Lower San Juan Picnic Area~~ **each mitigation site**, including at a minimum;

- i. Topographic complexity characteristics;
- ii. Upstream and downstream habitat and hydrologic connectivity;
- iii. Source of hydrology (note that urban runoff is not sufficient);
- iv. Width of native vegetation buffer around the entire mitigation site.

- in CNF, full of natives

- easements

*photos

headwaters of SJ creek
2nd some runoff



JOHN H. ROBERTUS
Executive Officer

6/12/2008

Date



California Regional Water Quality Control Board

San Diego Region



Dan Skopec
Acting Secretary

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Action on Request for Clean Water Act section 401 Water Quality Certification and Waiver of Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials

PROJECT: State Route 74 Safety Improvements Project
(401 Project No. 06C-018)

In reply refer to:
NWU:18-2006018.02:haasj

APPLICANT: Mili Lim, Senior Transportation Engineer
Caltrans, District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612

ACTION:

- | | |
|---|--|
| <input type="checkbox"/> Order for Low Impact Certification | <input type="checkbox"/> Order for Denial of Certification |
| <input checked="" type="checkbox"/> Order for Technically-conditioned Certification | <input checked="" type="checkbox"/> Waiver of Waste Discharge Requirements |

STANDARD CONDITIONS:

The following three standard conditions apply to all Certification actions, except as noted under Condition 3 for denials (Action 3).

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial Certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

California Environmental Protection Agency

Recycled Paper



ADDITIONAL CONDITIONS:

In addition to the three standard conditions, **Caltrans, District 12** shall satisfy the following:

A. GENERAL CONDITIONS

1. Caltrans, District 12 shall, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the California Regional Water Quality Control Board (Regional Board) with this application for Clean Water Act Section 401 Water Quality Certification (Certification) and all subsequent submittals required as part of this Certification.
2. The discharge of fill material in a manner that has not been described in the application / report of waste discharge and for which valid waste discharge requirements are not in force are prohibited.
3. Caltrans, District 12 shall permit the Regional Board or its authorized representative at all times, upon presentation of credentials:
 - a. Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Certification.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
 - d. Sampling of any discharge or surface water covered by this Certification.
4. Caltrans, District 12 shall notify the Regional Board within 24 hours of any unauthorized discharge to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and recovered; and additional BMPs or other measures that will be implemented to prevent future discharges.
5. Caltrans, District 12 shall, at all times, maintain appropriate types and sufficient quantities of materials onsite to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the U.S. and/or State.
6. This Certification is not transferable to any person except after notice to the Executive Officer of the Regional Board. Caltrans, District 12 shall notify the Regional Board of any change in ownership of the project area. Notification shall include, but not be limited to, a statement that the property owner has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands the permit requirements and shall implement them; the

seller and purchaser shall sign and date the notification. Notification shall be provided within 5 days of the sale of the property.

7. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
8. In response to a suspected violation of any condition of this Certification, the Regional Board may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
9. In response to any violation of the conditions of this Certification, the Regional Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.

B. PROJECT CONDITIONS

1. Caltrans, District 12 shall maintain a copy of this Certification at the project site so as to be available at all times to site personnel and agencies.
2. Prior to the start of the project, Caltrans, District 12 shall educate all personnel on the requirements in this Certification, pollution prevention measures, spill response, and BMP implementation and maintenance.
3. Caltrans, District 12 shall comply with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity. The Stormwater Pollution Prevention Plan prepared in accordance with Order No. 99-08-DWQ shall include, and not be limited to, the following measures proposed in the application process for Certification:
 - a. Spoil sites shall not be located within waters of the State/U.S. or in areas or such a manner where spoil material could be washed into waters of the State/U.S.;
 - b. No fueling, lubrication, or maintenance of construction equipment shall occur within waters of the State or in adjacent areas without appropriate containment practices;

- c. All trash and debris related to the project shall be removed from the project site prior to the completion of project activities each day;
 - d. Construction limits shall be fenced or flagged off prior to construction;
 - e. Specific BMPs shall be identified for preparation and management of blasting operations and work on steep slopes; and
 - f. All concrete and asphalt contractors shall be educated by Caltrans personnel regarding risks of spills and appropriate management measures.
4. Caltrans District 12 shall comply with the requirements of State Water Resources Control Board Water Quality Order No. 99-06-DWQ, the NPDES General Permit for *Storm Water Discharges From The State of California, Department of Transportation (Caltrans) Properties, Facilities, and Activities*. During construction and operation road improvements, Caltrans District 12 shall implement all appropriate provisions of the most recently updated and approved version of the Caltrans Storm Water Management Plan.
5. To protect the Wildlife and Rare Beneficial Uses within and adjacent to the project area, the following measures shall be implemented in general accordance with the *Draft Fencing and Restoration Plan* (Caltrans, March 2006) and the *Final Biological Recommendations for the Ortega Highway Safety Improvements Project* (U.S. Dept. of Transportation and Caltrans, June 2005), and the project's Mitigated Negative Declaration.
 - a. Barrier fencing will be installed to keep arroyo toads from entering the construction area;
 - b. Pre-construction biological surveys shall be conducted shall be conducted prior to construction activities within 500 feet of areas identified as sensitive habitat in the project's *Biological Assessment* (Caltrans May 2005) or the U.S. Fish and Wildlife Service Biological Opinion;
 - c. A qualified biologist shall monitor all construction activities, including operations at the construction staging area, with the potential to impact arroyo toads to ensure that conservation measures are being implemented and that there are not unanticipated impacts to arroyo toads or their habitat;
 - d. Prior to construction activities in or adjacent to arroyo toad habitat, a qualified biologist shall conduct a briefing session for construction personnel that covers all known necessary conservation measures; and

- e. No plant species on the most recent California Invasive Plant Council (Cal-IPC) List, "Exotic Pest Plants of Greatest Ecological Concern in California"¹ shall be planted in mitigation areas, waters of the State, vegetated stormwater BMP areas, erosion control areas, or other areas used to convey urban runoff and stormwater.

C. POST CONSTRUCTION STORM WATER MANAGEMENT

1. All storm drain inlet structures within the project boundaries shall be stamped and/or stenciled with appropriate language prohibiting non-storm water discharges.
2. Treatment Best Management Practices (BMPs). Biofiltration strips shall be constructed throughout the project site wherever feasible, and at a minimum at the six locations identified by letter dated March 2, 2006. Those six stations are:
 - a. Station 10+05 to 10+38;
 - b. Station 16+25 to 16+85;
 - c. Station 26+76 to 27+65;
 - d. Station 47+00 to 47+85;
 - e. Station 49+80 to 51+20; and
 - f. Station 54+20 to 55+60
3. Caltrans, District 12 or their designated party shall inspect the biofilters at least annually and conduct maintenance as necessary to maintain design and performance standards.
4. Within 90 days following project completion, Caltrans, District 12 shall submit documentation to the Regional Board, including photographs and site plans, that the biofiltration strips were installed according to industry and/or Caltrans standards.

D. COMPENSATORY MITIGATION

1. Mitigation for permanent impacts to 0.05 acres and temporary impacts to 0.06 acres, will be achieved by implementation of the *Draft Fencing and Restoration Plan* (Caltrans, March 2006) as modified to meet the requirements of this Certification and requirements from the U.S. Fish and Wildlife Service, U.S. Forest Service, U.S. Army Corps of Engineers, and the California Department of Fish and Game. Mitigation shall consist of:
 - a. Restoration of 0.44 acre of riparian vegetation and 0.03 acre of wetland at the Lower San Juan Picnic Area;
 - b. Restoration of all temporarily affected waters of the State/U.S.; and

¹ The Cal-IPC list may be found on-line at <http://www.cal-ipc.org/>.

- c. In-lieu fee payment to the U.S. Forest Service for the removal of four acres of *Arundo donax* in San Juan Creek or a tributary to San Juan Creek.
2. Caltrans, District 12 shall submit a Final Mitigation Plan prior to discharging fill into waters of the U.S./State. Any deviations from the Draft Plan that affect waters of the State/U.S. shall be clearly identified in an executive summary or cover letter.
3. Caltrans, District 12 shall restore all areas of temporary impacts to waters of the United States/State and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the State. Restoration shall include grading of disturbed areas to pre-project contours and revegetation with native species. Caltrans, District 12 shall implement all necessary BMPs to control erosion and runoff from areas associated with this project.
4. Caltrans, District 12 shall submit a report (including topography maps and planting locations) to the Regional Board within 90 days of completion of mitigation site preparation and planting, describing as-built status of the mitigation project. If the site grading and planting are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.
5. The construction of proposed mitigation shall be concurrent with project grading and completed no later than 12 months following the initial discharge of fill into on-site waters. Delays in implementing mitigation shall result in increased mitigation restoration requirements by 0.01 acre or 0.5 acres of *A. donax* removal for each 30 days of delay.
6. Throughout the mitigation monitoring program mitigation areas shall be maintained free of perennial exotic plant species including, but not limited to, pampas grass, giant reed, tamarisk, sweet fennel, tree tobacco, castor bean, and pepper tree. Annual exotic plant species shall not occupy more than 5 percent of the onsite or offsite mitigation areas.
7. If at any time during the implementation and establishment of the mitigation area(s), and prior to verification of meeting success criteria, a catastrophic natural event (e.g., fire, flood) occurs and impacts the mitigation area, Caltrans, District 12 shall be responsible for repair and replanting of the damaged area(s).
8. Mitigation monitoring reports shall be submitted annually until mitigation has been deemed successful by the mitigation monitor with written concurrence by the Regional Board. Annual monitoring reports shall be submitted prior to **August 1** of each year. Monitoring reports shall include, but not be limited to, the following:
 - a. Names, qualifications, and affiliations of the persons contributing to the report;

- b. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data at the Lower San Juan Picnic Area mitigation site, including at a minimum;
 - i. Topographic complexity characteristics;
 - ii. Upstream and downstream habitat and hydrologic connectivity;
 - iii. Source of hydrology (note that urban runoff is not sufficient); and
 - iv. Width of native vegetation buffer around the entire mitigation site.
 - c. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
 - d. Photodocumentation from established reference points;
 - e. Survey report documenting boundaries of mitigation area;
 - f. Photodocumentation of the stormwater biofiltration strips; and
 - g. Other items specified in the final *Fencing and Restoration Plan*.
9. For the purpose of determining mitigation credit for the removal of exotic/invasive plant species, only the actual area occupied by exotic/invasive plant species shall be quantified to comply with mitigation requirements
10. For purposes of this Certification, creation is defined as the creation of vegetated or unvegetated waters of the U.S. where they have never been documented or known to occur (e.g., conversion of nonnative grassland to freshwater marsh). Restoration is defined as the creation of waters of the U.S. where they previously occurred (e.g., removal of fill material to restore a drainage). Enhancement is defined as modifying existing waters of the U.S. to enhance functions and values (e.g., removal of exotic plant species from jurisdictional areas and replacing with native species).

E. REPORTING

1. All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.
2. All applications, reports, or information submitted to the Regional Board shall be signed and certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

3. Caltrans, District 12 shall submit reports required under this Certification, or other information required by the Regional Board, to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification; Project No. 06C-018
9174 Sky Park Court, Suite 100
San Diego, California 92123

PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On March 21, 2006 receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.

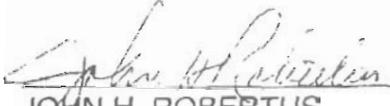
REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Jeremy Haas
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
858-467-2735
jhaas@waterboards.ca.gov

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the **State Route 74 Safety Improvements Project** (Project No. 06C-018) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under California Regional Water Quality Control Board, San Diego Region, Waiver of Waste Discharge Requirements (Waiver Policy) No. 17. Please note that this waiver is conditional and, should new information come to our attention that indicates a water quality problem, the Regional Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).



JOHN H. ROBERTUS
Executive Officer
Regional Water Quality Control Board

5/18/2006
Date

- Attachments:
- 1. Project Information
 - 2. Distribution List
 - 3. Location Map

ATTACHMENT 1 PROJECT INFORMATION

Applicant:	Mili Lim, Senior Transportation Engineer Caltrans, District 12 3337 Michelson Drive, Suite 380 Irvine, CA 92612 949-724-2167 fax: 949-724-2256 mili_lim@dot.ca.gov
Applicant Representatives:	Arianne Glagola, District Biologist Caltrans, District 12 949-724-2704 arianne_glagola@dot.ca.gov
Project Name:	State Route 74 Safety Improvements Project
Project Location:	The proposed project is located on a section of Ortega Highway (SR-74) within Orange County and the Cleveland National Forest, between the San Juan Canyon Bridge and the Orange/Riverside County line, from KiloPost (KP) 21.4 (Postmile, PM 13.3) to KP 26.7 (PM 16.6). The proposed project is located east of the City of San Juan Capistrano. USGS Quad: Canada Gobernadora and Sitton Peak Lat / Long: 37 17 N & 117 30 W
Type of Project:	Road improvements
Project Description:	<p>The proposed project includes improvements to the existing two lanes of the Ortega Highway to improve the highway's safety. The total length of the project is 3.3 miles. Existing lane widths range from 10 to 11 feet (ft). The project proposes to widen lanes to the standard width of 12 ft, add 4 ft shoulders, improve drainage facilities, and add intermittent turnout/rock catchment areas. Project features would be built on both the cut (primarily south side) and fill (primarily north side) sides of the highway. In order to accommodate the project, minor grading to a maximum of 4.9 ft from the existing edge of pavement would be required. This alternative would construct barrier slabs and/or viaducts.</p> <p>All corrugated metal pipe (CMP) culverts would be replaced with reinforced concrete pipe (RCP) culverts at the same locations where currently CMP exist. A few will be extended toward, but not into San Juan Creek. Most of the CMP culverts are deteriorating and some are completely clogged with</p>

debris. A total of 46 RCP culverts are proposed in the project, including 41 cross culverts of various sizes to replace existing CMP culverts and five new RCP culverts to convey runoff. It is anticipated that the two rock culverts would receive only minor retrofits. Forty inlets are proposed to convey on-site water to the culverts and discharge it to San Juan Creek. Rock dissipation will be placed at culvert outlets outside of jurisdictional waters.

Federal Agency/Permit:	U.S. Army Corps of Engineers §404 NWP 14 and 27
Other Required Regulatory Approvals:	California Department of Fish and Game Streambed Alteration Agreement U.S. Fish and Wildlife Biological Opinion
California Environmental Quality Act (CEQA) Compliance:	Caltrans, District 12 issued a Notice of Determination for a Mitigated Negative Declaration/Finding of No Significant Impacts for the project on October 13, 2005. An addendum was issued on March 7, 2006. SCH# 2005031040
Receiving Water:	San Juan Creek (HSA 901.25)
Impacted Waters of the United States:	Temporary: Streambed 0.06 acres (48 linear feet) Permanent: Wetland <0.1 acre Streambed 0.04 acre (41 linear feet)
Dredge Volume:	none
Related Projects Implemented/to be Implemented by the Applicant(s):	Caltrans has the following projects proposed: 1. <u>Lower Ortega</u> . The State Route (SR) 74 Lower Ortega Highway improvement project proposes to widen a 2.97 km (1.84 miles) portion of Sr-74 from two lanes to four lanes and also includes the widening of the Lower San Juan Creek Bridge. Currently Caltrans is preparing the draft environmental document, to be completed in 2006. The Rancho Mission Viejo may be responsible for project design and construction. 2. <u>Middle Ortega</u> . This project would restore the eroded shoulder, replace all existing traffic striping, and where conditions allowed, create a 0.3 m (1 ft) soft barrier. A Categorical Exemption/Categorical Exclusion was prepared for the project in

October 2004. Drainage improvements are not proposed and the project is scheduled for construction in 2006.

Compensatory Mitigation:	Wetland: 0.03 acre restored and enhanced Riparian: 0.4 acres restored Streambed: 4 acres exotic species removal via in-lieu fee payment.
Best Management Practices (BMPs):	Caltrans has proposed to construct biofiltration strips at six locations within the project site and determined no other post-construction treatment BMPs were feasible due to steep terrain and the narrow roadway. Caltrans has stated that it is unable to implement treatment BMPs offsite at other Caltrans facilities to compensate for the untreated project areas because the timeframe and resources constrain Caltrans from amending the CEQA/NEPA environmental document and other resource agency regulatory authorizations.
Public Notice:	On March 21, 2006 receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.
Fees:	Total Due: \$995.00 Total Paid: \$995.00 (check No. 082-898787)

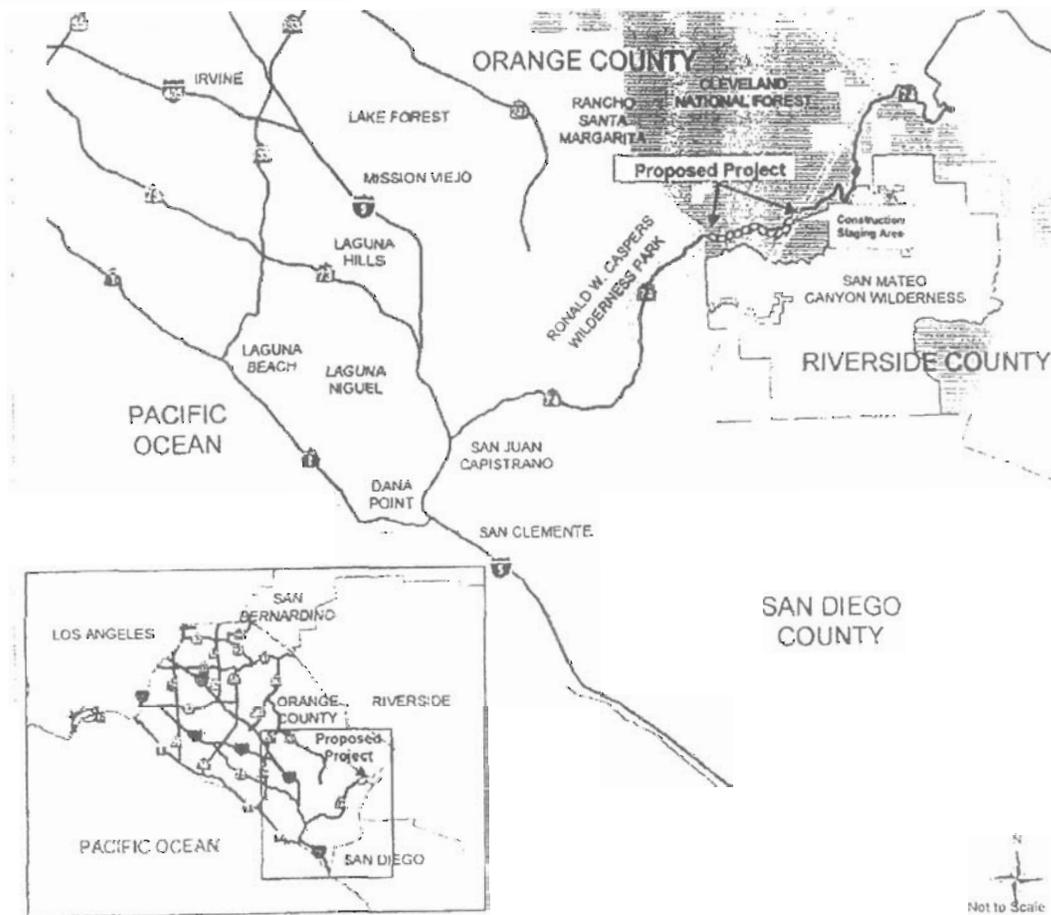
**ATTACHMENT 2
DISTRIBUTION LIST**

Stephanie Hall
U.S. Army Corps of Engineers
Regulatory Branch
P.O. Box 532711
Los Angeles, CA 90053-2325
(213) 452-4196 (fax)

401 Program
State Water Resources Control Board
Division of Water Quality

ATTACHMENT 3 PROJECT LOCATION

The proposed project is located along SR-74 (Ortega Highway) within the Cleveland National Forest, east of the City of San Juan Capistrano. The construction staging area is located within the lower San Juan picnic area and will become the on-site mitigation area upon project completion.





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

April 30, 2008

REPLY TO
ATTENTION OF:

Office of the Chief
Regulatory Division

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT AUTHORIZATION

California Department of Transportation, District 12
Attention: Arianne Preite
Office of Environmental Planning
3337 Michelson Drive, Suite 380
Irvine, California 92612-1699

Dear Ms. Preite:

This is in reply to your amendment request letter (No. SPL-2006-907-SJH), dated April 18, 2008, concerning our permit authority under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) over your proposal to discharge additional fill into 0.10-acre of non-wetland waters of the United States (U.S.). Additional discharge is associated with the replacement of two viaducts with retaining walls at Stations 31+49 and 44+39 as part of the safety improvements to the Upper Ortega Highway, State Route (SR) 74, from the San Juan Canyon Bridge to the Riverside County Line near the community of San Juan Hot Springs, Orange County, California.

Your original permit, issued March 17, 2008, authorized the discharge of permanent fill into 0.04-acre of non-wetland waters of the U.S. This amendment brings the total amount of permanent fill to 0.14-acre for the Safety Improvements to Upper Ortega Highway, SR-74. In addition, restoration will include a minimum of 0.24-acre of oak woodlands, 0.329-acre of chaparral, 0.054 acre of riparian vegetation, and 0.37-acre of coastal sage scrub at the Lower San Juan Picnic Area (on-site) as approved under the original Nationwide Permit.

The Corps of Engineers has determined your proposed activity complies with the terms and conditions of **Nationwide Permit Number 14: Linear Transportation Projects** (Sections 10 and 404) as described in enclosure 1.

In addition, the Corps has determined that your proposed activity complies with the terms and conditions of **Nationwide Permit Number 27: Aquatic Habitat Restoration, Establishment, and Enhancement Activities** (Sections 10 and 404) as described in enclosure 1.

Finally, the Corps has determined that your proposed activity complies with the terms and conditions of the **Nationwide Permit Number 33: Temporary Construction** (Sections 10 and 404) as described in enclosure 1.

Furthermore, you must comply with the following non-discretionary Special Conditions:

Special Conditions:

1. The Permittee shall abide by the terms and conditions of the Clean Water Act (CWA) Section 401 Technically-Conditioned Certification dated May 18, 2006.
2. To minimize impacts to and avoid take of the federally endangered/threatened arroyo toad (*Bufo microscaphus californicus*), the Permittee shall implement the conservation measures included in the Biological Opinion (BO) issued by the U.S. Fish & Wildlife Service (USFWS) (FWS-OR-1-6-05-F-1688.6) on September 30, 2005.
3. Prior to initiation of project construction, the Permittee shall notify the USFWS in writing of the intended project initiation date and anticipated duration of the construction period. The notification shall include verification of compliance with the conservation measures included in the BO.
4. This Corps permit does not authorize you to take an endangered species, in particular the arroyo toad. 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). The enclosed USFWS BO contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.
5. The Permittee shall provide compensatory mitigation per the approved *Fencing and Restoration/Mitigation Plan*, dated March 3, 2006. Mitigation shall be as follows:
 - a. Restoration and enhancement of the Lower San Juan Creek Picnic Area to assist the USFWS with the permanent closure of the site due to the presence of arroyo toad. With a roadway contract, the stone structure (bathroom) will be removed, and arroyo toad and ESA fencing put in place around the existing asphalt. The existing asphalt at the Lower San Juan Picnic Area will be removed. The following will be restored and enhanced with container planting: riparian = 0.414 acre; wetlands = 0.03 acre; chaparral = 0.335 acre; oak woodland = 0.24 acre.
 - b. Within the project limits, a site used by Caltrans Maintenance for rock disposal will be enhanced with the planting of coastal sage scrub (0.369 acre). This area is located at Station 40-41, on the northern side of the existing SR-74. The berm at the site entrance will be graded.
 - c. Four acres of *Arundo donax* or other invasive riparian vegetation will be removed from the San Juan Creek Watershed. Caltrans and the USFWS will enter into a Cooperative

Agreement prior to the start of construction, for the transfer of \$200,000 for the USFWS to complete this work at a tributary to San Juan Creek.

d. Areas of temporary impact will be seeded with native seed mix per the Mitigation Plan.

e. Caltrans shall transplant populations of California Native Plant Species (CNPS) sensitive plants to an area above the Lower San Juan Picnic Area. In addition, container plants of CNPS will be placed at retaining walls within the project limits.

6. The Permittee shall ensure that all vehicle maintenance, staging, storage, and dispensing of fuel occurs in designated upland areas. The Permittee shall ensure that these designated upland areas are located at least 50 feet from waters of the U.S. to prevent any runoff from entering CWA Section 404 jurisdictional waters.

7. The Permittee shall employ all standard Best Management Practices to ensure that no debris, soil, silt, sand, rubbish, cement or concrete washings thereof, oil or petroleum products or washings thereof, are allowed to enter into or placed where it may be washed by rainfall or runoff into waterways. When project operations are completed, any and all excess construction materials, debris, and or other associated excess project materials shall be removed to an appropriate off-site location outside of any jurisdictional areas.

8. The Permittee shall ensure that there are no direct, permanent impacts to all the preserved waters of the United States on-site. Prior to the commencement of construction activities, the Permittee shall flag the limits of the construction footprint to delineate areas of impact permitted within waters of the United States. Any additional acreage impacted outside of the approved 0.14-acre of permanent and 0.06 acre of temporary impacts identified and submitted with the Permittee's permit application shall be mitigated at a 5:1 ratio. The form of additional mitigation, if necessary, will be determined by the Corps and may include on-site or off-site restoration, enhancement, preservation and/or enhancement.

9. Vehicles shall not be driven or equipment operated in waters of the U.S. on-site, except as necessary to complete the proposed project. If applicable, mats (or the like) may be used to reduce both direct and indirect impacts from construction activities.

10. Upon completion of the project, any and all flow-diverting structures and all temporary fill used for construction access shall be completely removed and the affected area returned to pre-project conditions as appropriate.

11. 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.

This letter of verification is valid through April 30, 2010. All nationwide permits expire on March 18, 2012. It is incumbent upon you to remain informed of changes to the nationwide permits. If the Corps of Engineers modifies, reissues, or revokes any nationwide permit at an earlier date, we will issue a public notice announcing the changes.

A nationwide permit does not grant any property rights or exclusive privileges. Also, it does not authorize any injury to the property or rights of others or 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: Stephanie J. Hall of my staff at: (213) 452-3410.

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,

A handwritten signature in black ink that reads "Mark Durham". The signature is written in a cursive, slightly slanted style.

Mark Durham
Chief, South Coast Branch
Regulatory Division

Enclosure

LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

CERTIFICATION OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT

Permit Number: SPL-2006-907

Name of Permittee: Arianne Preite - California Department of Transportation, District 12

Date of Issuance: April 30, 2008

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U.S Army Corps of Engineers
Regulatory Division
ATTN: CESPL-CO-R-2006-907
P.O. Box 532711
Los Angeles, California 90053-2325

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this nationwide permit you may be subject to permit suspension, modification, or revocation procedures as contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit condition(s).

Signature of Permittee

Date

NATIONWIDE PERMIT NUMBERS 14, 27, and 33 TERMS AND CONDITIONS

1. Nationwide Permits 14, 27, and 33 Terms:

Your activity is authorized under Nationwide Permit Numbers 14, 27, and 33, subject to the following terms:

Nationwide Permit Number 14: *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the US, including wetlands, if the activity meets the following criteria:

a. This NWP is subject to the following acreage limits:

(1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than 1/2-acre of waters of the US; or

(2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than 1/3-acre of waters of the US.

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10-acre of waters of the US; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the US to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing waters of the US. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an Individual Permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

Nationwide Permit Number 27: *Stream and Wetland Restoration Activities.* Activities in waters of the US associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural

Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(3) Any other public, private or tribal lands;

(b) Notification: For activities on any public or private land that are not described by paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(3), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the US caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

Nationwide Permit Number 33: Temporary Construction, Access and Dewatering. Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the USCG, or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize

flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR part 322). The permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add special conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable.). (Sections 10 and 404)

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

2. Nationwide Permit General Conditions:

The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. *Navigation.*
 - (a) No activity may cause more than a minimal adverse effect on navigation.
 - (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
 - (c) 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, 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.
2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.
6. *Suitable Material.* No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows.* To the maximum extent practicable, the preconstruction 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. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
13. *Removal of Temporary Fills.* Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The affected areas must be revegetated, as appropriate.
14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.
15. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
16. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
17. *Endangered Species.*

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP. (e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. *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 National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties 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 or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 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 which 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 NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete preconstruction notification whether NHPA Section 106 consultation is required. 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 CFR 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.

19. *Designated Critical Resource Waters.* Critical resource waters include: NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands

adjacent to such waters.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require preconstruction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP's. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP's.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. *Water Quality.* Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management

consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
24. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWP does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 13-acre.
25. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

26. *Compliance Certification.* Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

27. *Pre-Construction Notification.*

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity:

- (1) Until notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) If 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed.

Also, work cannot begin under NWP 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);
- (4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
- (5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan;
- (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and
- (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) *Agency Coordination:*

- (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.
- (2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring preconstruction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each preconstruction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed

immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

- (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
- (4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.
- (5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either:

- (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;
- (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or
- (3) that the project is authorized under the NWP with specific modifications or conditions.

Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. *Single and Complete Project.* The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

3. Regional Conditions for the Los Angeles District:

In accordance with General Condition Number 23, "Regional and Case-by-Case Conditions," the following Regional Conditions, as added by the Division Engineer, must be met in order for an authorization by any Nationwide to be valid:

1. For coastal watersheds from the southern reach of the Santa Monica Mountains in Los Angeles County to the San Luis Obispo County/Monterey County boundary, all road crossings must employ a bridge crossing design that ensures passage and/or spawning of steelhead (*Oncorhynchus mykiss*) is not hindered in any way. In these areas, bridge designs that span the stream or river, including designs for pier- or pile-supported spans, or designs based on use of a bottomless arch culvert simulating the natural stream bed (i.e., substrate and streamflow conditions in the culvert are similar to undisturbed stream bed channel conditions) shall be employed unless it can be demonstrated the stream or river does not support resources conducive to the recovery of federally listed anadromous salmonids, including migration of adults and smolts, or rearing and spawning. This proposal also excludes approach embankments into the channel unless they are determined to have no detectable effect on

steelhead.

2. For the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), no nationwide permit, except Nationwide Permits 1 (Aids to Navigation), 2 (Structures in Artificial Canals), 3 (Maintenance), 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities), 5 (Scientific Measurement Devices), 6 (Survey Activities), 9 (Structures in Fleeting and Anchorage Areas), 10 (Mooring Buoys), 11 (Temporary Recreational Structures), 20 (Oil Spill Cleanup), 22 (Removal of Vessels), 27 (Stream and Wetland Restoration Activities), 30 (Moist Soil Management for Wildlife), 31 (Maintenance of Existing Flood Control Projects), 32 (Completed Enforcement Actions), 35 (Maintenance Dredging of Existing Basins), 37 (Emergency Watershed Protection and Rehabilitation), 38 (Cleanup of Hazardous and Toxic Waste) and 47 (Pipeline Safety Program Designated Time Sensitive Inspections and Repairs), or other nationwide or regional general permits that specifically authorize maintenance of previously authorized structures or fill, can be used to authorize the discharge of dredged or fill material into a jurisdictional special aquatic site as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes).
3. For all projects proposed for authorization by nationwide or regional general permits where prior notification to the district engineer is required, applicants must provide color photographs or color photocopies of the project area taken from representative points documented on a site map. Pre-project photographs and the site map would be provided with the permit application. Photographs should represent conditions typical or indicative of the resources before impacts.
4. Notification pursuant to general condition 27 shall be required for projects in all special aquatic sites as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes), and in all perennial waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), excluding the Colorado River from Davis Dam downstream to the north end of Topock and downstream of Imperial Dam (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification do not apply to Nationwide Permit 47).
5. Notification pursuant to general condition 27 shall be required for projects in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092), regional conditions requiring notification do not apply to Nationwide Permit 47).
6. Notification pursuant to general condition 27 shall be required for projects in all watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification do not apply to Nationwide Permit 47).
7. Individual permits shall be required for all discharges of fill material in jurisdictional vernal pools.
8. Individual permits shall be required in Murrieta Creek and Temecula Creek watersheds in Riverside County for new permanent fills in perennial and intermittent watercourses otherwise authorized under NWP's 29, 39, 42 and 43, and in ephemeral watercourses for these NWP's for projects that impact greater than 0.1 acre of waters of the United States. In addition, when NWP 14 is used in conjunction with residential, commercial, or industrial developments the 0.1 acre limit would also apply.
9. Individual permits shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.
10. Notification pursuant to general condition 27 shall be required for projects in the Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the mainstem of the Santa Clara River (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification

do not apply to Nationwide Permit 47).

4. **Further information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - () 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 non-permitted 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 non-permitted 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. Reevaluation of Permit Decision. This office may reevaluate 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 reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 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 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.
6. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time.
7. 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 H 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.
8. 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.

Authorization ID: TRD06807
Contact ID: CALTRANS
Expiration Date: 12/31/2011
Use Code: 522

FS-2700-1 (05/03)
OMB 0596-0082

U.S. DEPARTMENT OF AGRICULTURE
Forest Service
SPECIAL USE PERMIT
AUTHORITY:
ORGANIC ADMINISTRATION ACT June 4, 1897

State of California Department of Transportation (Caltrans) District 12, 3337 Michelson Dr., Suite 380, Irvine, CA 92612, USA (hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the Cleveland National Forest or on a unit of the National Forest System.

This permit covers approximately 4 acres, and/or n/a miles and is described as: Lower San Juan Picnic Area, as shown on the location map attached to and made a part of this permit, and is issued for the purpose of:

Use and restoration of Lower San Juan Picnic Area, including:

Use:

- Staging and storage of equipment
- Sealing existing asphalt to prevent seepage from equipment
- Placing fencing for resource protection
- Biological and Cultural Resource monitoring

Restoration:

- Biological and Cultural Resource monitoring
- Removal of existing restrooms
- Removal tables, barbecues, and grates
- Removal of road and asphalt
- Hydroseeding
- Container planting of Oak Woodland, Chaparral, and Riparian Vegetation
- Transplant of California Native Plant Society Species
- Removal of gate at highway

The above described or defined area shall be referred to herein as the "permit area"

TERMS AND CONDITIONS

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall

be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. License. This permit is a license for the use of federally owned land and does not grant any permanent, possessory interest in real property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Amendment. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

E. Existing Rights. This permit is subject to all valid rights and claims of third parties. The United States is not liable to the holder for the exercise of any such right or claim.

F. Nonexclusive Use and Public Access. Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.

G. Forest Service Right of Entry and Inspection. The Forest Service has the right of unrestricted access of the permitted area or facility to ensure compliance with laws, regulations, and ordinances and the terms and conditions of this permit.

H. Assignability. This permit is not assignable or transferable. If the holder through death, voluntary sale or transfer, enforcement of contract, foreclosure, or other valid legal proceeding ceases to be the owner of the improvements, this permit shall terminate.

I. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Expiration at the End of the Authorized Period. This permit will expire at midnight on 12/31/2011. Expiration shall occur by operation of law and shall not require notice, any decision document, or any environmental analysis or other documentation.

B. Minimum Use or Occupancy of the Permit Area. Use or occupancy of the permit area shall be exercised at least 365 days each year, unless otherwise authorized in writing under additional terms of this permit.

C. Notification to Authorized Officer. If the holder desires issuance of a new permit after expiration, the holder shall notify the authorized officer in writing not less than six (6) months prior to the expiration date of this permit.

D. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.
2. The permit area is being used for the purposes previously authorized.
3. The permit area is being operated and maintained in accordance with the provisions of the permit.
4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits laws, or regulations

E. Discretion of Forest Service. Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service.

F. Construction. Any construction authorized by this permit may commence by January 1, 2006 and shall be completed by December 31, 2011. If construction is not completed within the prescribed time, this permit may be revoked or suspended.

III. RESPONSIBILITIES OF THE HOLDER

A. Compliance with Laws, Regulations, and other Legal Requirements. The holder shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property

B. Plans. Plans for development, layout, construction, reconstruction, or alteration of improvements on the permit area, as well as revisions of such plans, must be prepared by a qualified individual acceptable to the authorized officer and shall be approved in writing prior to commencement of work. The holder may be required to furnish as-built plans, maps, or surveys, or other similar information, upon completion of construction

C. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this authorization. If requested, the holder shall comply with inspection requirements deemed appropriate by the authorized officer.

D. Hazard Analysis. The holder has a continuing responsibility to identify all hazardous conditions on the permit area which would affect the improvements, resources, or pose a risk of injury to individuals. Any non-emergency actions to abate such hazards shall be performed after consultation with the

authorized officer. In emergency situations, the holder shall notify the authorized officer of its actions as soon as possible, but not more than 48 hours, after such actions have been taken.

E. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

F. Change in Ownership. This permit is not assignable and terminates upon change of ownership of the improvements or control of the business entity. The holder shall immediately notify the authorized officer when a change in ownership or control of business entity is pending. Notification by the present holder and potential owner shall be executed using Form SI-299 Application for Transportation and Utility Systems and Facilities of Federal Lands, or Form FS-2700-3a, Holder Initiated Revocation of Existing Authorization, Request for a Special Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the party who acquires ownership of, or a controlling interest in, the improvements or business entity.

IV. LIABILITY

For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors.

A. The holder assumes all risk of loss to the authorized improvements.

B. The holder shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the holder's use or occupancy of the property. The holder's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this permit. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this authorization, regardless of cause.

C. The holder has an affirmative duty to protect from damage the land, property, and interests of the United States.

D. In the event of any breach of the conditions of this authorization by the holder, the authorized officer may, on reasonable notice, cure the breach for the account at the expense of the holder. If the Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages shall, at the election of the Forest Service, be deemed to be additional fees hereunder and shall be due from the holder to the Forest Service on the first day of the month following such election.

E. With respect to roads, the holder shall be proportionally liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided above, except that liability shall not include reasonable and ordinary wear and tear.

F. The Forest Service has no duty to inspect the permit area or to warn of hazards and, if the Forest Service does inspect the permit area, it shall incur no additional duty nor liability for identified or non-identified hazards. This covenant may be enforced by the United States in a court of competent jurisdiction.

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. The Forest Service may suspend or revoke this permit in whole or part for

1. Noncompliance with Federal, State, or local laws and regulations.
2. Noncompliance with the terms and conditions of this permit.
3. Reasons in the public interest.
4. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to Section V (B), the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Prior to abandonment of the improvements or within a reasonable time following revocation or termination of this authorization, the holder shall prepare, for approval by the authorized officer, an abandonment plan for the permit area. The abandonment plan shall address removal of improvements and restoration of the permit area and prescribed time frames for these actions. If the holder fails to remove the improvements or restore the site within the prescribed time period, they become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VI. FEES

A. Fees for this use have been exempted or waived in full pursuant to 36 CFR 251.57, or revisions thereto, and direction in FSH 2709.11, chapter 30.

VII. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

C. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

D. 1906 Uniform Rules and Regulations, Part of Authorization (X83). The holder agrees to abide by, and observe the provisions of, the Uniform Rules and Regulations of the Secretaries of the Interior, Agriculture, and Defense, approved December 28, 1906, which are attached here to and made a part hereof.

E. Application, Part of Authorization (X82). The holder agrees to comply with all commitments made in the application dated April 12, 2006. The research design or plan of work is part of that application.

F. Archaeological-Paleontological Discoveries (X17). The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest. These include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this authorization, and shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the holder.

G. Protection of Habitat of Endangered, Threatened, and Sensitive Species (X8). Location of areas needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act of 1973, as amended, or as sensitive by the Regional Forester under authority of FSM 2670, derived from ESA Section 7 consultation, may be shown on a separate map, hereby made a part of this authorization, or identified on the ground. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the authorization holder.

If protection measures prove inadequate, if other such areas are discovered, or if new species are listed as Federally threatened or endangered or as sensitive by the Regional Forester, the authorized officer may specify additional protection regardless of when such facts become known. Discovery of such areas by either party shall be promptly reported to the other party.

H. Nondiscrimination (B-1).

1. The holder and its employees shall not discriminate against any person on the basis of race, color, sex (in educational activities), national origin, age, or disability or by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. In addition, the holder and its employees shall comply with the provisions of Title VII of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Title

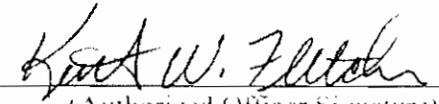
This permit is accepted subject to the conditions set out above.

HOLDER NAME:

State of California Department of Transportation
(Caltrans)

U.S. DEPARTMENT OF AGRICULTURE
Forest Service

By: 
(Holder Signature)

By: 
(Authorized Officer Signature)

By: Mili Lim, Senior Transportation Engineer
(Name and Title)

Title: KEITH W. FLETCHER, District Ranger
(Name and Title)

Date: 

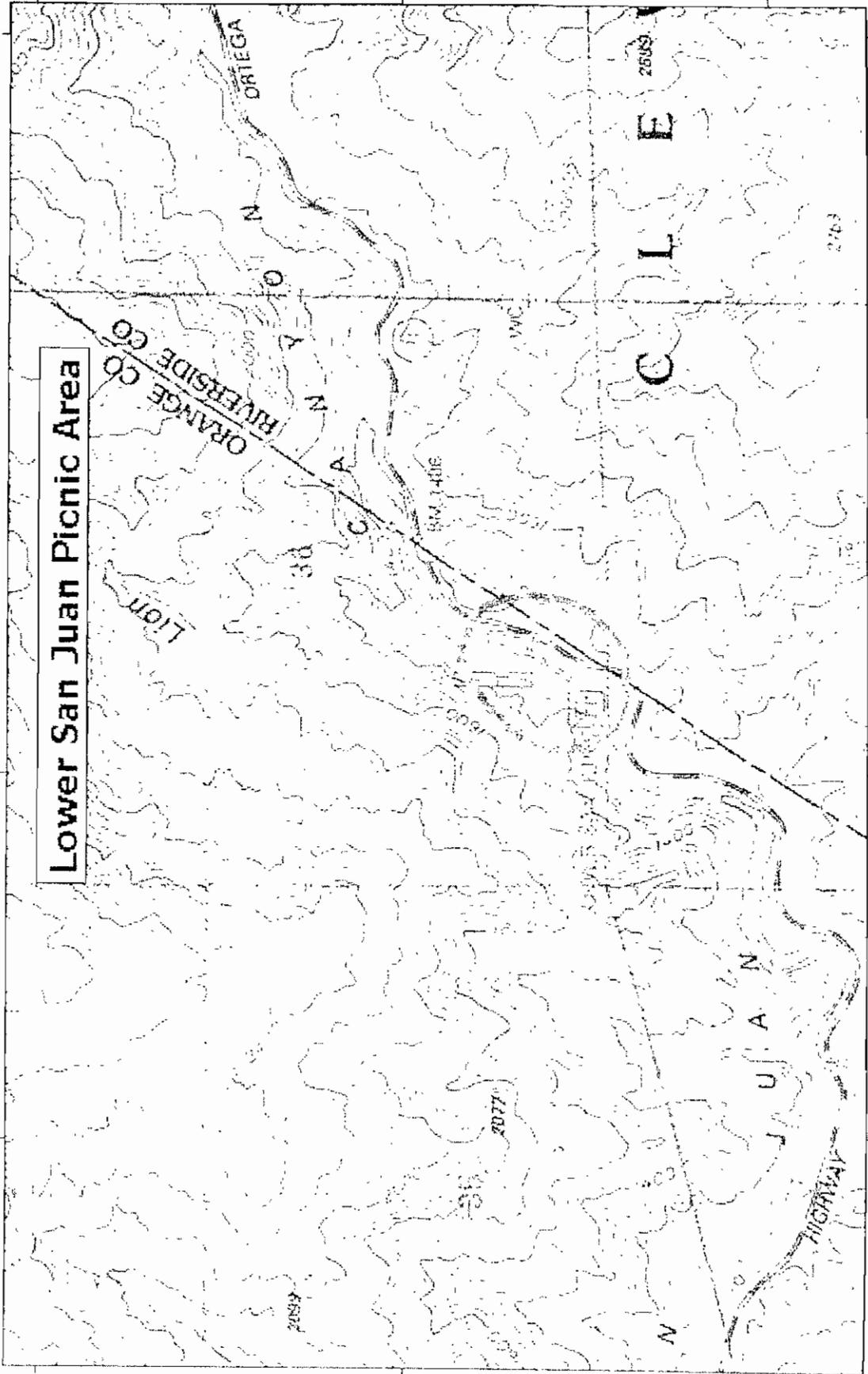
Date: May 19, 2006

Caltrans Special Use Permit TRD06807

NAD27 Zone 11S 459000m E.

457000m E.

456000m E.



3719000m N

3718000m N

3717000m N



NAD27 Zone 11S 459000m E.

457000m E.

456000m E.



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Antiquities Act of 1906

AS AMENDED

This Act became law on June 8, 1906 (34 Stat. 225, 16 U.S.C. 431-433) and has been amended once. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

16 U.S.C. 433,
Penalties for damage,
destruction, etc. of
antiquities

Section 1

Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

16 U.S.C. 431,
Proclamation of
national monuments,
reservation of lands,
etc.

Section 2

The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in [sic] behalf of the Government of the United States.

16 U.S.C. 431a,
Limitation on more
national monuments
in Wyoming

No further extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

Antiquities Act of 1906

16 U.S.C. 432,
Permits for excavation, etc

Section 3

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

16 U.S.C. 432,
Rules and regulations

Section 4

The Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.

**OPERATING PLAN
FOR SPECIAL USE PERMIT TRD06807**

1. Caltrans must adhere to all Avoidance and Minimization Measures described in the environmental analysis for this project.
2. Environmentally sensitive areas must be flagged before use of area.
3. Hazardous materials will be stored at safe distances from flowing streams and intermittent channels and will only be stored in designated locations designed to contain spills.
4. Hazardous material spills will be cleaned-up immediately and contaminated soils removed to approved disposal areas.
5. All vehicles and equipment will be inspected regularly to ensure that they are free of any leaks of fuel, coolant, lubricants, or other potentially polluting fluids.
6. Water for dust control will be trucked in from a closely examined source that is free of invasive species and non-native predators.
7. Dust control measures will be implemented.
8. Water will not be taken from San Juan Creek, it's pools, or it's tributaries.
9. Areas of temporary impact will be restored to their natural condition.
10. Best Management practices will be used at all times.
11. Smoking is permitted while in enclosed vehicles or while stopped in areas that are cleared or barren of flammable vegetation. At no time is smoking permitted while walking in grass, brush or timber. Smoking may be prohibited or limited to designated areas during periods of high fire danger.
12. The holder shall pack out or otherwise remove from National Forest System Lands and waters all refuse resulting from operation under this permit.
13. The Forest Service is not liable for securing of any vehicles.
14. Ensure that the Forest Service has a current telephone number to contact the Caltrans project manager on duty at all times during the project.
15. Vehicles must remain on designated roads. Off-road travel is prohibited.

Authorization ID: TRD06807
Contact ID: CALTRANS
Use Code: 522

FS-2700-23 (03/06)
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
AMENDMENT
FOR
SPECIAL USE AUTHORIZATION
AMENDMENT NUMBER: 1**

This amendment is attached to and made a part of the special use authorization (identified above) issued to State of California Department of Transportation (Caltrans) on 05/19/2006 which is hereby amended as follows:

Extend the term of this permit through December 31, 2014 for the purpose of completing mitigation measures identified during analysis of highway widening, culvert installation, and other road construction activities. The restoration areas are both within and outside of current easement for State Route 74 and are identified on the attachment map. The project location includes :1) Portions of Sec. 1, 2, and 3, T.7 S., R.6W., S.B.M.; 2) Portions of Sec. 34, 35, and 36 T.6 S., R. 6 W., S.B.M., 30 Portions of Sec. 4, T.7 S., R.6 W., S.B.M.

This Amendment is accepted subject to the conditions set forth herein, and to conditions (below) attached hereto and made a part of this Amendment.

Mitigation measures will be implemented as described and accepted by the Forest service in the final "State of California Department of Transportation Project for Construction on State Highway in Orange County near San Juan Hot Springs from San Juan Canyon Bridge to Riverside County Line 100% PS&E," and will incorporate visual mitigations required by the Forest Service.



(Holder Signature)



(Authorized Officer Signature)

ERIC DICKSON, District Landscape Architecture
(Name and Title)

for
KEITH W. FLETCHER, District Ranger _____
(Name and Title)

Date: 7/13/09

Date: July 23, 2009

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.



DEPARTMENT OF FISH AND GAME

http://www.dfg.ca.gov
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



June 4, 2008

Ms. Arianne Preite
Caltrans, District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612-8894

**Amendment to Streambed Alteration Agreement
(Notification No. 1600-2006-0084-R5)**

Dear Ms Preite:

We have reviewed your request to amend our Streambed Alteration Agreement #1600-2006-0084-R5. Pursuant to Fish and Game Code Section 1600 *et seq.*, this letter, when countersigned by you amends our Agreement as follows:

The Project Description shall be amended and restated in its entirety as follows:

PROJECT DESCRIPTION:

The Operator proposes to alter the streambed and banks to construct the Upper Ortega (SR-74) Safety Project. Project activities include installation of 5 new and 41 replacement culverts. Forty inlets are proposed to convey on-site water to the culverts and discharge it to San Juan Creek. Asphalt concrete (AC) dikes would also be incorporated to minimize erosion. Corrugated metal pipe (CMP) culverts would be replaced by reinforced concrete pipe (RCP) via open cut method. Replacement would occur only from the level of the roadway. All RCP would be installed at the same location where currently CMP exist. In addition, two viaducts will be replaced with retaining walls at STA 31+49 and 44+39. Included with replacement of the viaducts is the retrofit of two existing culverts.

Four acres of *Arundo donax* and/or other invasive riparian vegetation will be removed from the San Juan Creek watershed, Caltrans will remove existing asphalt and structures at the Lower San Juan Creek Picnic Area, Caltrans will restore 0.24 acre of oak woodland, 0.335 acre of chaparral, and create 0.444 acre of riparian vegetation (including wetlands) at the Lower San Juan Creek Picnic Area (adjacent to San Juan Creek). A total of 0.37 acre of coastal sage scrub will be restored at the on-site planting area and barrier fencing will be installed to keep arroyo toads from entering the construction area.

Condition 3 shall be amended and restated in its entirety as follows:

3. The Operator shall not impact more than 0.24 acre of stream channel and associated wetland/riparian habitat consisting of mule fat, western sycamore, fremont cottonwood, and arroyo willow, of which approximately 0.12 acre are permanent and approximately 0.12 acre are temporary.

Condition 4 shall be amended and restated in its entirety as follows:

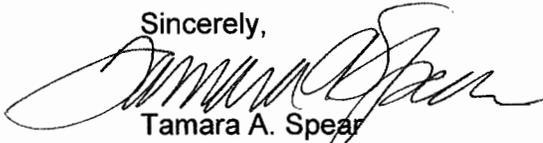
- 4.. The Operator shall mitigate for 0.12 acre temporary impact and 0.12 acre permanent impact through the restoration of 0.444 acre mule fat scrub and willow forest and the removal of 4 acres of *Arundo*. The Operator shall perform the mitigation as outlined in Draft Fencing and Restoration Plan, Mitigation Plan Caltrans Upper Ortega (SR-74) Safety Project from San Juan Canyon Bridge to Orange/Riverside County Line State Route 74, KP 21.4/26.7 (PM 13.3/16.6), EA 12—043200 Cleveland National Forest, Prepared for CDFG, USFS, USACOE, CRWQCB, and USFWS, prepared by Arianne Glagola, District Biologist with Caltrans, dated March 3, 2006 unless directed differently by this Agreement.

A copy of Streambed Alteration Agreement **1600-2006-0084-R5** AND THIS AMENDMENT LETTER must be kept on site and be shown upon request to Department personnel during all periods of work.

Two copies of this letter are being sent to you. PLEASE RETURN ONE SIGNED ORIGINAL to the Department of Fish and Game, at 4949 Viewridge Avenue, San Diego, CA 92123.

If you have further questions, please contact me at (858)467-4223.

Sincerely,



Tamara A. Spear
Environmental Scientist

ACCEPTANCE

CalTrans, District 12, hereby agrees to amend the Project Description, Condition Three and Condition Four of Streambed Alteration Agreement No. 1600-2006-0084-R5 as described in the letter above.

CalTrans, District 12

Name: _____

Date: _____

Title: _____

:

~~STATE OF CALIFORNIA-THE RESOURCES AGENCY~~

~~ARNOLD SCHWARZENEGGER Governor~~

DEPARTMENT OF FISH AND GAME

FACSIMILE TRANSMITTAL

TO: ARIANNE GLAGOLA

FAX NUMBER: (949) 724-2256

FROM: GERRY RUTH

CALIFORNIA DEPARTMENT OF FISH AND GAME
SOUTH COAST REGION
4949 VIEWRIDGE AVENUE
SAN DIEGO, CALIFORNIA 92123
TELEPHONE: ~~6~~ (858) 636-3159

FAX: (858) 467-4299

DATE: 5/25/06 TIME 3:25

NO. OF PAGES SENT INCLUDING TRANSMITTAL SHEET 10

COMMENTS:

STREAMBED ALTERATION AGREEMENT (SIGNED)

IF YOU DO NOT RECEIVE ALL OF THE PAGES INDICATED, PLEASE CALL THE SENDER AS SOON AS POSSIBLE. THANK YOU.

CALIFORNIA DEPARTMENT OF FISH AND GAME
South Coast Region
4949 Viewridge Avenue
San Diego, California 92123

Notification No. 1600-2006-0084-R5
Page 1 of 9

AGREEMENT REGARDING PROPOSED STREAM ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and the California Department of Transportation (Caltrans) (P.O.C. Arianne Glagola), 3337 Michelson Drive, Suite No. 380, Irvine, California 92612; (949)724-2704, fax (949)724-2256, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1602 of California Fish and Game Code, the Operator, on the 9th day of March, 2006, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the bed of the unnamed drainages and San Juan Creek, tributary to the Pacific Ocean, Orange County, California, Section 4, Township 7S, Range 6W; USGS Map Canada Gobernadora and Siton Peak 7.5; and

WHEREAS, the Department, represented by Mr. Naeem Siddiqui, has determined that such operations may substantially adversely affect those existing fish and wildlife resources within the streambed of unnamed drainages and San Juan Creek, tributary to the Pacific Ocean, and within the vicinity of the site, specifically identified as follows: Fishes: arroyo chub, partially armored threespine stickleback and steelhead; Amphibians: southwestern arroyo toad, red-legged frog, ensatina, arboreal salamander, California newts, western spadefoot, and Pacific treefrog, California treefrog; Reptiles: southwestern pond turtle, silvery legless lizard, western fence lizard, side-blotched lizard, coastal western whiptail, two-striped garter snake and other snakes; Birds: white-tailed kite, northern harrier, golden eagle, sharp-shinned hawk, Cooper's hawk, red-shouldered hawk, red-tailed hawk, prairie falcon, merlin, long-eared owl, burrowing owl, cactus wren, coastal California gnatcatcher, loggerhead shrike, least Bell's vireo, southwestern willow flycatcher, warblers, sparrows, hummingbirds, and chats; Mammals: California ground squirrel, gophers, mice, San Diego desert woodrat, San Diego black-tailed jackrabbit, coyote, raccoon, bobcat, and mule deer; and all other aquatic and wildlife resources, including that riparian vegetation which provides habitat for such species in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, and 5948, may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of the Department's signature and the construction/impacts portion terminates on July 31, 2009. This Agreement shall remain in

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STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NO: 1600-2006-0084-R5

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effect to satisfy the terms/conditions of the Agreement. Any provisions of the Agreement may be amended at any time provided such amendment is agreed to in writing by both parties. Mutually approved amendments become part of the original Agreement and are subject to all previously negotiated provisions.

Pursuant to Section 1600 et seq., the Operator may request one extension of the Agreement; the Operator shall request the extension of the Agreement prior to its termination. ~~The one extension may be granted for up to five (5) years from the date of termination of the Agreement and is subject to Department approval.~~ The extension request and fees shall be submitted to the Department's South Coast Office at the above address. If the Operator fails to request the extension prior to the Agreement's termination, then the Operator shall submit a new notification with fees and required information to the Department. Any construction/impacts conducted under an expired Agreement are a violation of Fish and Game Code Section 1600 et seq. For complete information, see Fish and Game Code Section 1600 et seq.

The Department reserves the right to suspend or cancel this Agreement for reasons including but not limited to the following:

- The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate.
- The Department obtains new information that was not known to it when preparing the terms and conditions of this Agreement.
- The project or project activities as described in the Notification/Agreement have changed.
- The conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment.

Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of such notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification. The Operator shall not continue the specified activities until that time when the Department notifies the Operator in writing that adequate methods and/or measures have been identified and agreed upon to mitigate or eliminate the significant adverse effect.

It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator and is not required by this Agreement. It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this Agreement, remain the sole responsibility of the Operator. The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.

The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.

PROJECT LOCATION:

The proposed project is located on a section of Ortega Highway (SR-74) within Orange County and the Cleveland National Forest, between the San Juan Canyon Bridge and the Orange/Riverside County line, from KiloPost (KP) 21.4 (Postmile, PM 13.3) to KP 26.7 (PM 16.8). The proposed project is located east of the City of San Juan Capistrano. This

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STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NO: 1600-2006-0084-R5

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section of Ortega Highway primarily runs east/west, following the topography of San Juan Canyon. The project location is just east of Ronald W. Caspers Wilderness Park and north of the San Mateo Canyon Wilderness. The project is found on the USGS 7.5-minute topographic maps for Canada Gobernadora, Section 4, T7S, R6W, and Sitton Peak, Sections 1-3 and 34-36, T6S and 7S, R6W. The proposed project is composed of open space and is surrounded by the Cleveland National Forest;

PROJECT DESCRIPTION:

The Operator proposes to alter the streambed and banks to construct the Upper Ortega (SR-74) Safety Project. Project activities include installation of 5 new and 41 replacement culverts. It is anticipated that two rock culverts would receive only minor retrofits. Forty inlets are proposed to convey on-site water to the culverts and discharge it to San Juan Creek. Asphalt concrete (AC) dikes would also be incorporated to minimize erosion. Corrugated metal pipe (CMP) culverts would be replaced by reinforced concrete pipe (RCP) via open cut method. Replacement would occur only from the level of the roadway. All RCP would be installed at the same location where currently CMP exist.

Four acres of *Arundo donax* and/or other invasive riparian vegetation will be removed from the San Juan Creek watershed. Caltrans will remove existing asphalt and structures at the Lower San Juan Creek Picnic Area. Caltrans will restore 0.24 acre of oak woodland, 0.335 acre of chaparral, and create 0.444 acre of riparian vegetation (including wetlands) at the Lower San Juan Creek Picnic Area (adjacent to San Juan Creek). A total of 0.37 acre of coastal sage scrub will be restored at the on-site planting area and barrier fencing will be installed to keep arroyo toads from entering the construction area.

CONDITIONS

1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.
2. The agreed work includes activities associated with project location and project description as described above. Specific work areas and mitigation measures are described on/in the plans and documents (Notification of Lake or Streambed Alteration; Initial Study/ Environmental Assessment Negative Declaration/ Finding of No Significant Impacts, dated December 2005, Biological Evaluation/Natural Environment Study from San Juan Bridge to Orange/Riverside County Line, dated May 2005, Wetland Delineation Assessment Report, dated June 2005, Final Sensitive Plant Survey and Vascular Plant Inventory, dated June 2005, Biological Assessment, dated May 2005, Fencing and Restoration Plan, Mitigation Plan Caltrans Upper Ortega (SR-74) Safety Project, and Final Biological Recommendations for the Ortega Highway Safety Improvement Project, dated June 2005), submitted by the Operator, and shall be implemented as proposed unless directed differently by this agreement.

IMPACTS:

3. The Operator shall not impact more than 0.125 acre of stream channel and associated wetland/riparian habitat consisting of mule fat, western sycamore, fremont cottonwood, and arroyo willow, of which approximately 0.055 acre are permanent impacts (0.015 acre of existing culvert and 0.04 acre of streambed/ riparian) and approximately 0.07 acre are temporary impacts.

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NO: 1600-2006-0084-R5

Page 4 of 10

MITIGATION/ RESTORATION:

The Operator shall mitigate for 0.07 acre temporary impact and 0.055 acre permanent impact through the restoration of 0.444 acre mule fat scrub and willow forest and the removal of 4 acres of arundo. The Operator shall perform the mitigation as outlined in Draft Fencing and Restoration Plan, Mitigation Plan Caltrans Upper Ortega (SR-74) Safety Project from San Juan Canyon Bridge to Orange/Riverside County Line State Route 74, KP 21.4/26.7 (PM 13.3/16.6), EA 12—043200 Cleveland National Forest, Prepared for CDFG, USFS, USACOE, CRWQCB, and USFWS, prepared by Arianne Glagola, District Biologist with Caltrans, dated March 3, 2006 unless directed differently by this Agreement.

4. The Operator shall submit a final project report that will show pre- and post-restoration condition six months after the end of project. This report shall include the survival, % cover, and height of both tree and shrub species. The number by species of plants replaced/planted, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.

5. The Department recommends that all planting shall be done between October 1 and April 30 to take advantage of the winter rainy season.

6. All planting associated with the southern willow scrub and transitional riparian mitigation planting palates shall have a minimum of 80% survival the first year and 100% survival thereafter and shall attain 75% cover of native woody species after 3 years and 90% cover of native woody species after 5 years for the life of the project. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting. At the completion of the monitoring period, the mitigation site shall have received NO supplemental irrigation for a period of two consecutive years, nonnative plants shall not make up more than 5% of the entire cover of the site, no more than 5% of the site shall consist of bare ground and the site shall be free of invasive exotic plant species such as arundo and tamarisk.

Monitor

7. An annual report shall be submitted to the Department by January 1 of each year for 5 years after planting for enhancement and restoration activities. This report shall include the survival, % cover, and height of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.

8. The Operator shall not be released from these maintenance and monitoring obligations until such time as the Operator has requested and received written concurrence from the Department that the success criteria have been met.

BIOLOGICAL SURVEYS AND TIME RESTRICTIONS:

9. The Operator shall not remove vegetation within the stream from February 1 to September 15 to avoid impacts to nesting birds. However, work may occur during this time if a qualified biologist conducts a minimum of three days of surveys for nesting birds within seven days prior to the vegetation removal. At least one survey must be within three days prior to the vegetation removal to ensure no nesting birds shall be impacted by the project. These surveys shall include the areas within 200 feet of the edge of the proposed impact areas. Documentation of findings, including a negative finding, must be submitted to the Department for review and concurrence. If no breeding/nesting birds are observed and concurrence has been received from the Department, site preparation and construction activities may begin. If breeding activities and/or an active bird nest is located and concurrence has been received from the Department, the breeding habitat/nest site shall be fenced a minimum of 200 feet (500 feet for raptors) in all directions, and this area shall not

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STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NO: 1600-2006-0084-R5

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be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the project.

10. Prior to construction activities, the area shall be surveyed for southwestern pond turtle, southwestern arroyo toad, and arroyo chub/ steelhead by a qualified biologist to ensure that no direct or indirect impacts shall occur to sensitive species as a result of the proposed project. If any of these species are present, the specialist shall submit a Mitigation Plan to the Department, and it shall include complete avoidance measures for Department review and approval, prior to project initiation.

11. No direct or indirect impacts shall occur to any threatened or endangered species, e.g. least Bell's vireo (*Vireo bellii pusillus*) as a result of implementing the project or the project's activities. If any threatened or endangered species could be impacted by the work proposed, U.S. Fish and Wildlife Service (USFWS) protocol surveys shall be conducted prior to implementing the project or the project's mitigation activities. If necessary, the Operator shall obtain the required state and federal threatened and endangered species permits. If there is no USFWS survey protocol for a particular listed species, the Department shall be consulted to determine appropriate survey procedures. The Department shall be provided copies of survey reports prior to project implementation and prior to the implementation of mitigation activities. This Agreement does not authorize the take of any federal or state threatened or endangered species.

12. If any sensitive species are observed in project surveys, the Operator shall cause a California Native Species Field Survey Form and survey map to be submitted to the Natural Diversity Database (NDDDB) within five (5) working days of the sightings. This form is available on-line at <http://www.dfg.ca.gov/whdab/natspec.pdf>; instructions for completing the form are available at <http://www.dfg.ca.gov/whdab/fsfinst.pdf>. The form and survey map shall be sent to the Department of Fish and Game, California Natural Diversity Database, 1807 13th Street, Suite 202, Sacramento, CA 95814, with copies sent to the Department at 4949 Viewridge Avenue, San Diego, CA 92123, Attn: Streambed Alteration Program, SAA # 1600-2006-0084-R5.

VEGETATION REMOVAL AND HABITAT PROTECTION:

not approved
 13. Disturbance, removal, or trimming of vegetation for equipment access shall not exceed the limits approved by the Department. - *not permitted for any removal*

14. Due to the presence of native riparian vegetation, all vegetation clearing shall be conducted under the supervision of a qualified biological monitor, and the perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat and to ensure that direct and indirect impacts to fish or wildlife, in particular birds and arroyo toads, are avoided.

15. The work area shall be identified to all workers, as represented in plans. Native vegetation shall not be removed or intentionally damaged beyond the designated work area.

EXOTIC SPECIES ERADICATION CONTROL:

16. Should exotic species be removed, the Operator shall not do removal or follow up treatment of target exotic vegetation within the stream from March 15 to September 15 to avoid impacting nesting birds. However, the Operator may conduct such removal/treatment of target vegetation during this time if a qualified biologist conducts a survey for nesting birds within three (3) days prior to the vegetation treatment/removal and ensures no nesting birds shall be impacted or disturbed by the activity. These surveys shall include the areas within 200 feet of the edge of the proposed impact/work area(s). If active nests are found, a minimum 50-foot zone around the nest site shall be identified on the ground by the placement of "caution tape" or similar identifying material. No vegetation removal/treatment or any other work shall occur within the identified nest zone until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project, even if the nest continues active beyond September 15. After each treatment

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application the monitoring biologist shall remove the identification tape so that the nest site does not attract attention from unauthorized persons. The Operator shall submit the mapped survey results to the Department for review and approval prior to treatment to ensure full avoidance measures are in place.

17. The Operator shall remove non-native vegetation from the restoration/enhancement area and shall dispose of it in a legal manner; in all cases it shall be placed in a manner which prevents its reestablishment in the stream and in such a manner that it does not negatively affect other sensitive native habitat communities. If the Operator determines that the treated non-native vegetation should be left in place, the Operator shall provide the Department a written (letter, fax, e-mail) description of where and why the treated vegetation should not be removed. If the Operator does not receive a written (letter, fax, e-mail) positive response from the Department, the treated exotic vegetation shall be removed.

18. No alteration of the streambed, bank, or channel shall occur except as otherwise permitted in this Agreement. The removal of soil, native vegetation, and vegetative debris from the streambed or stream banks is prohibited except as otherwise specified within this Agreement; however, the Operator may remove all human-generated debris, such as lawn and farm cuttings, garbage, and trash.

19. Whenever possible, vegetation shall be removed by hand or by hand-operated tools.

20. All herbicide use conditions for mixing, application, and clean-up shall conform to all applicable federal, State, and local regulations. Nothing in this Agreement represents a pesticide use recommendation that allows for actions that conflict with pesticide use regulations.

21. Any application of herbicide shall be done by a licensed applicator in accordance with all applicable, federal, state, local laws, and County Park procedures and/or guidelines.

22. No vehicles shall be operated within the stream except as described as follows: Vehicles may be used to carry equipment and transport cut vegetation; all vehicles shall use existing roads for access to the sites; truck-based sprayers may be used only where existing roads are adjacent to exotic species and where exotic plants are growing in large clumps with no native vegetation adjacent. Small soft rubber-tired ATV's may be used where existing road access is not available provided that such ATV's can access the central channel without entering wetland areas or damaging native vegetation. Native vegetation shall not be impacted by any vehicle use.

23. Backpack sprayers may be used in all situations where the exotic plants are growing in small clumps interspersed with the native vegetation and in those situations where truck or ATV access is limited or impossible.

24. The restoration activities shall be conducted in a manner to minimize overspray of herbicide onto adjacent native vegetation.

25. A small amount of selective trimming of native species (e.g. willow, oak and sycamore) may occur to prevent overspray of herbicide from reaching these branches, but only as provided within the conditions of this Agreement. Native vegetation may only be trimmed; individual plants shall not be removed. Material in excess of three (3) inches DBH shall require specific notice to and consultation with the Department.

26. A qualified biological monitor shall be present and/or examine the site and mark native vegetation that is to be trimmed with flagging to ensure impacts are within the conditions of this Agreement.

27. Herbicide mixing sites shall only be located in areas devoid of vegetation and where there is no potential of a spill reaching a vegetated area or a stream; for example, avoid mixing at a storm water inlet.

28. Any herbicide used where there is the possibility that the herbicide could come into

Exotics

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direct contact with water shall be approved for use in an aquatic environment (e.g. Rodeo). Great care shall be taken to avoid contact with any native vegetation and it shall only be applied on calm days to prevent airborne transfer of the herbicide.

EQUIPMENT ACCESS AND TEMPORARY FLOW DIVERSIONS:

29. Staging/storage areas for equipment and materials shall be located outside of the stream.

30. Access to the work site shall be via existing roads and access ramps.

31. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.

32. Vehicles shall not be driven or equipment operated in water covered portions of a stream or lake or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed.

33. No equipment shall be operated in ponded or flowing areas. When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around the work area by a barrier, temporary culvert, new channel, or other means approved by the Department. Location of the upstream and downstream diversion points shall be approved by the Department. Construction of the barrier and/or the new channel shall normally begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Diversion berms shall be constructed of on-site alluvium of low silt content, inflatable dams, sand bags, or other approved materials. Channel banks or barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock rip-rap, or other protective material. The enclosure and the supportive material shall be removed when the work is completed, and removal shall normally proceed from downstream in an upstream direction. The Operator shall obtain all written approvals from the Department prior to initiation of construction activities.

34. Flow diversions shall be done in a manner that shall prevent pollution and/or siltation and which shall provide flows to downstream reaches. Flows to downstream reaches shall be provided during all times that the natural flow would have supported aquatic life. Said flows shall be of sufficient quality and quantity and of appropriate temperature to support fish and other aquatic life both above and below the diversion. Normal flows shall be restored to the affected stream immediately upon completion of work at that location.

35. Pump intakes placed in stream/lake water shall be fitted with (1/8) inch or smaller mesh screens for January 1, through March 30, and (1/4) inch or small mesh screens thereafter

36. The Operator shall report all fish mortality immediately to the Departments Fisheries Biologist, John O'Brien at (562) 342-7173.

37. The completed project will not substantially interfere with the movement of steelhead or impede the use of spawning and rearing nursery areas.

POLLUTION, SEDIMENTATION AND LITTER:

Stream
diversions

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38. All equipment shall be properly cleaned off site prior to entering the stream channel.
39. All sediment and associated material removed from the stream channel shall be legally hauled and disposed of off site.
40. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project-related activities shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake by the Operator or any party working under contract or with the permission of the Operator, shall be removed immediately.
41. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 100 feet of the high water mark of any stream or lake.
42. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the Operator to ensure compliance.
43. The Operator shall provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel or agency personnel upon demand.
44. If the Operator or any of the individuals mentioned above violate any of the terms or conditions of this agreement, all work shall terminate immediately and shall not proceed until the Department has taken all of its legal actions.
45. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 4949 Viewridge Avenue, San Diego, California 92123, Attn: Naeem Siddiqui, ES. SAA# 1600-2006-0084-R5.
46. Silty/turbid water from dewatering or other activities shall not be discharged into the stream. Such water shall be settled, filtered, or otherwise treated prior to discharge. The Operator's ability to minimize turbidity/siltation shall be the subject of pre-construction planning and feature implementation.
47. Upon Department determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective Department-approved control devices are installed or abatement procedures are initiated.
48. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
49. Water containing mud, silt, or other pollutants from equipment washing or other activities shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.
50. If an off-stream siltation pond/s is/are used to control sediment, pond/s shall be

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constructed in a location or be designed so that potential spills into the stream/lake during periods of high water levels/flow are precluded.

51. If silt catchment basin(s) is/are used, the basin(s) shall be constructed across the stream immediately downstream of the project site. Catchment basins shall be constructed of materials which are free from mud and silt. Upon completion of the project, all basin materials along with the trapped sediments shall be removed from the stream in such a manner that said removal shall not introduce sediment to the stream.

CONCURRENCE

**California Department of Transportation
Game**

**California Department of Fish and
Game**

Mili S. Lim 5/23/06

(Signature)

(Date)

Michael J. Mulligan 5/25/06

(Signature)

(Date)

Mili S. Lim Sr. Trans.

Name

Title
Engineer

Michael J. Mulligan, Deputy Regional Manager

Name

Title



DEPARTMENT OF FISH AND GAME

http://www.dfg.ca.gov
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



July 23, 2009

California Department of Transportation, District 12
3337 Michelson Drive, Suite 390
Irvine, CA 92612
Attn: Mili Lim

Re: State Route 74 (Ortega Highway) Safety Improvement Project, SAA#1600-2006-0084-R5, Extension

Dear Ms. Lim:

The California Department of Fish and Game (Department) has reviewed the submitted request to extend Streambed Alteration Agreement (Agreement) No. 1600-2006-0084-R5.

Pursuant to Fish and Game Code Section 1600 *et seq.*, this letter, when countersigned by you, extends our agreement as follows:

The new termination date of the agreement is **July 31, 2014**. Be advised that all other conditions of agreement 1600-2006-0084-R5 remain in force throughout the new term of the agreement. A copy of said Agreement AND THIS EXTENSION LETTER must be kept on site and be shown upon request to Department personnel during all periods of work.

Two copies of this letter are being sent to you. PLEASE RETURN ONE SIGNED ORIGINAL to the Department of Fish and Game, at 4949 Viewridge Avenue, San Diego, CA 92123.

If you have further questions, please contact me at (858)467-4223.

Sincerely,

Tamara A. Spear
Environmental Scientist

CONCURRENCE:

DATE:

7/29/09



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

In Reply Refer To:
FWS-OR-1688.6

Gene Fong
Federal Highway Administration
650 Capitol Mall, Suite 4-100
Sacramento, California 95814

SEP 30 2005

Attn: Larry Vinzant

Subj: Biological Opinion for the State Route 74 (SR 74) Safety Improvements Project in the County of Orange, California (1-6-05-F-1688.6)

Dear Mr. Fong:

This document transmits the United States Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed SR74 Safety Improvement Project in the County of Orange, California, and its effects on the federally endangered arroyo toad (*Bufo californicus*, "toad") in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The project will be constructed by the California Department of Transportation (Caltrans) and funded, in part, by the Federal Highway Administration (FHWA). Your request for formal consultation was received on May 24, 2005.

This biological opinion is based on information provided in the *State Route 74 Safety Improvements Project Biological Assessment (BA)* dated May 2005, the *State Route 74, Ortega Highway, from San Juan Creek Bridge to Orange/Riverside County Line Natural Environment Study (NES)* dated February 2005, a site visit, and other correspondence, notes and information compiled during the course of our consultation with the Federal Highway Administration (FHWA) on the subject project. This information and other references cited in this biological and conference opinion constitute the best available scientific information on the status and biology of the species considered. The complete project file addressing this consultation is on file at the Carlsbad Fish and Wildlife Office (CFWO).

Consultation History

On April 28, 2005, representatives from Caltrans and the Service met at the project site and discussed potential measures to avoid and minimize potential impacts to toad.



On May 24, 2005, we received the BA for the project and your letter requesting initiation of formal consultation for potential impacts to the toad from the safety improvements to SR74. Your letter also requested our concurrence with your determination that that the project will not adversely affect the federally threatened coastal California gnatcatcher (*Polioptila californica californica*, “gnatcatcher”) or federally endangered least Bell’s vireo (*Vireo bellii pusillus*, “vireo”), and southwestern willow flycatcher (*Empidonax traillii extimus*, “flycatcher”).

In our letter (FWS-OR-1688.5) dated May 25, 2005, we acknowledged your request for formal consultation and agreed that consultation was initiated on May 24, 2005. We also concurred with your determination that the proposed project is not likely to adversely affect gnatcatcher, vireo, or flycatcher.

Project components, conservation measures, and impacts were discussed and clarified through electronic correspondence and telephone conversations between FHWA, Caltrans, and Service staff during the consultation period. All conservation measures were finalized on September 20, 2005.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

The purpose of the proposed project is to improve highway safety and operation along SR74. This will be accomplished by widening lanes, providing shoulders, and improving sight distance for drivers. In addition, drainage facilities will be improved during construction. The project extends from San Juan Creek Bridge (PM 13.3) to the Riverside County Line (PM 16.6). The total length of the project is 3.3 miles. Existing 10 to 11 foot lanes would be widened to the standard lane width of 12 feet; four foot shoulders and rock catchment areas would be added, and existing turnouts would be enhanced. Existing corrugated metal pipe culverts would be replaced with reinforced concrete pipes throughout the length of the project. Project construction is anticipated to begin in 2006 and continue for an estimated two years.

Road widening would be accomplished through a combination of cut and fill along the upslope and downslope sides and use of barrier slabs and viaducts to extend the roadway on the downslope side. Barrier slabs and viaducts will be used to extend a roadway where it is not practical or desirable to import fill material and create a standard roadbed using other earth-retaining methods.

A staging area will be established at the Lower San Juan Creek Campground. This campground has been closed to visitors, but still has a paved entrance road and parking lot. The campground and proposed staging area are immediately adjacent to San Juan Creek.

The proposed project will result in permanent impacts to 0.329 acre of chaparral, 0.123 acre of coastal sage scrub, 0.024 acre of coast live oak forest, and 0.018 acre of riparian vegetation. The project will temporarily impact 0.053 acre of chaparral, 0.028 acre of coastal sage scrub, 0.019

acre of coast live oak forest, and 0.036 acre of riparian vegetation. Thus, the project will permanently impact a total of 0.494 acre of native vegetation and will temporarily impact a total of 0.136 acre of native vegetation.

Conservation Measures

The following general avoidance, minimization, and conservation measures will be implemented to protect the arroyo toad within the action area:

- Barrier fencing will be installed to keep arroyo toads from entering the construction area. The barrier fencing will be installed consistent with a *SR74 Safety Improvement Project Fencing and Restoration Plan* (Fencing and Restoration Plan) that will be prepared and submitted to CFWO for review and approval prior to project initiation. Toad barrier fencing will be installed at locations where the arroyo toads may enter the project area, such as around the Lower San Juan Creek Picnic Area, along the edge of the road near the picnic area, and along the road edge near drainages and culverts where toads might be dispersing.
- Blasting near the Lower San Juan Creek Picnic Area (between PM 16 and the eastern project limit) will be conducted outside the height of the arroyo toad breeding season (March 15 to July 31).
- A qualified biologist will monitor all construction-related activities with the potential to impact arroyo toads to ensure that all conservation measures are being implemented and that there are no unanticipated impacts to arroyo toad. These activities include, but are not limited to, blasting work in proximity of occupied arroyo toad habitat, clearing and grubbing of upland habitat suitable for use by arroyo toad, and staging/storage of equipment at the Lower San Juan Picnic Area during the breeding season for arroyo toad.
- Prior to any construction activities, a qualified biologist will conduct a briefing session for construction personnel. At a minimum, the briefing will cover: species and habitat identification, protective measures relating to ESA, the necessity of adhering to the terms and conditions of the consultation, and the penalties associated with violating the ESA, identifying the boundaries of the project acceptable for disturbance and review procedures if a listed species is encountered during work activity.
- Prior to the start of construction, a qualified biologist will conduct protocol surveys and identify any known occupied arroyo toad pools within San Juan Creek. These pools would be flagged/fenced as ESAs prior to the start of construction and avoided. If construction is occurring between March 1 and July 30, the pools will be monitored by a qualified biologist at least once every two weeks to ensure that there are no unanticipated impacts to arroyo toad breeding, such as excessive siltation or other disturbances.

- Following each work session, the contractor will cover grubbing spoils and other grading debris with plastic sheeting to minimize erosion and sedimentation from these piles into San Juan Creek.
- No equipment or vehicles shall be driven on access roads adjacent to occupied arroyo toad habitat after sunset or prior to dawn. If the site must be accessed during these hours, then a qualified biologist must survey in front of the vehicle to identify and relocate individuals on the road. Night work may be limited/phased upslope to occupied arroyo toad pools, within a designated buffer area, in coordination with the resource agencies.
- No construction equipment will be permitted in San Juan Creek.
- All Best Management Practices (BMPs) would be in place during construction according to the Storm Water Pollution Prevention Plan (SWPPP). BMPs will be employed to minimize erosion from the construction of project facilities and deposition of soil or sediment into San Juan Creek. The SWPPP will be implemented concurrently with commencement of the soil-disturbing activity.
- Hazardous materials would be stored at safe distances from actively flowing streams and intermittent channels in designated locations designed to contain any spills. Spills of hazardous materials shall be cleaned up immediately and contaminated soils removed to approved disposal areas. All vehicles and equipment shall be inspected to ensure they are free of any leaks of fuel, cooling, lubricating or other potentially polluting fluid.
- No fueling, lubrication, or maintenance of construction equipment within CDFG or ACOE jurisdictional areas is permitted. Spoil sites shall not be located within the CDFG or ACOE jurisdictional areas, or in areas where it could be washed into San Juan Creek or its tributaries. Storage of the project equipment would be located at the Lower San Juan Picnic Area, to minimize effects to sandy benches that may provide aestivating habitat for the toad (to avoid taking any individuals). Brush, loose soils or similar debris material shall not be stockpiled within the stream reaches or on streambanks of occupied arroyo toad habitat.
- The SWPPP will include a description of the BMPs and control practices to be used for both temporary and permanent erosion control measures.
- Silt fencing will be installed prior to construction to minimize the flow of debris entering San Juan Creek. The fencing will be installed consistent with the SWPPP for this project. This fencing is to remain in place during construction.
- Water for use in dust control should be trucked in from an offsite source. The source will be closely examined to ensure that it is not a source of potential introduced species, such as invasive plant species (e.g., arundo, tamarisk) or non-native predators (e.g., fish,

bullfrogs, African clawed frogs). Dust control measures will be implemented to minimize siltation within the creek.

- In order to avoid and minimize the effects of lighting on wildlife, construction lighting would be shielded away from natural areas, as feasible.
- As directed by the USFS, the design of the Build Alternative minimizes the use of netting. Netting is not anticipated to hinder wildlife movement as netting would be placed primarily on slopes void of vegetation, in order to stabilize them.
- Four acres of *Arundo donax* (arundo) or other invasive riparian vegetation will be removed from the San Juan Creek watershed. If feasible, the arundo removal will be accomplished through a contribution to the Arundo Removal Task Force (Task Force) for San Juan Creek or through removal of arundo or other invasive riparian vegetation on Forest Service lands. Since the Task Force and the Forest Service are still developing their arundo removal programs for this area, Caltrans will have until March 1, 2007, to accomplish this measure. If the Task Force and the Forest Service are not yet prepared to conduct the arundo removal by this time, Caltrans will work with CFWO, the U.S. Forest Service, and FHWA to amend this biological opinion by developing an alternative measure (e.g., removal of non-native riparian vegetation and/or non-native aquatic predators) that offers an equivalent conservation benefit to the arroyo toad.
- Per the requirements of the USFS, existing asphalt and structures (including the restroom, picnic tables, barbecues, and grates) will be removed from the Lower San Juan Picnic Area. The tables, barbecues, and grates will be removed by the USFS, and the asphalt and restroom will be removed by Caltrans.
- Caltrans will restore a minimum of 0.24 acre of oak woodlands, 0.39 acre of chaparral, 0.054 acre of riparian vegetation, and 0.37 acre of coastal sage scrub at the Lower San Juan Picnic Area and an area near STA 31. The restoration at these locations will be conducted consistent with the future Fencing and Restoration Plan, which will be submitted to CFWO for review and approval prior to project implementation.
- Temporarily impacted areas will be restored with the appropriate native vegetation, as determined by the habitat type prior to impacts and by the surrounding vegetation. The restoration of temporarily impacted areas with native vegetation will be conducted consistent with the future Fencing and Restoration Plan, which will be submitted to CFWO for review and approval prior to project implementation.
- Environmentally Sensitive Areas (ESAs) are to be flagged prior to the start of construction. ESAs would include areas below the ordinary high-water mark of San Juan Creek, to be avoided during construction.

STATUS OF THE SPECIES

The arroyo toad was listed as endangered on December 16, 1994 (59 FR 63264). At the time of listing, the arroyo toad was described as the arroyo southwestern toad (*Bufo microscaphus californicus*). Gergus (1998) published a genetic justification for the reclassification of the arroyo southwestern toad as a full species (*i.e.*, arroyo toad [*Bufo californicus*]). Critical habitat for the arroyo toad was designated on April 13, 2005 (69 FR 23254).

Description. The arroyo toad is a small, dark-spotted toad of the family Bufonidae. The parotoid glands, located on the top of the head, are oval-shaped and widely separated. A light/pale area or stripe is usually present on these glands and on top of the eyes. The arroyo toad's underside is buff-colored and usually without spots (Stebbins 1985). Recently metamorphosed individuals typically blend in with streamside substrates and are usually found adjacent to water. The male arroyo toad's courtship vocalization is a high trill, usually lasting 8-10 seconds per call.

Habitat Affinities. Arroyo toads breed and deposit egg masses in shallow, sandy pools which form in low-gradient sections of streams. These stream segments are usually bordered by sand-gravel flood-terraces. Stream order, elevation, and floodplain width appear to be important factors in determining habitat capability (Sweet 1992; Griffin 1999). High stream order (*i.e.*, 3rd to 6th order), low elevation (particularly below 3,000 feet), and wide floodplains seem to be positively correlated with arroyo toad population size. However, small arroyo toad populations are found along 1st and 2nd order streams at elevations up to 4,600 feet, and this species has been known to occur at up to 8,000 feet in Baja California (USFWS 1999a).

Optimal breeding habitat consists of low-gradient sections of slow-moving streams with shallow pools; also, these areas contain nearby sandbars and adjacent, undeveloped stream terraces. Outside of the breeding season, arroyo toads are essentially terrestrial and are known to utilize a variety of upland habitats, including, but not limited to, sycamore-cottonwood woodlands, oak woodlands, coastal sage scrub, chaparral, and grassland (Holland 1995; Griffin *et al.* 1999). Arroyo toads usually burrow underground during periods of inactivity; thus they tend to use upland habitats with friable soils (66 FR 9414).

The primary constituent elements of designated critical habitat include: 1) rivers or streams with hydrologic regimes that supply water to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads (specifically, the conditions necessary to allow for successful reproduction of arroyo toads are: a. breeding pools with areas less than 12 inches deep, b. areas of flowing water with current velocities less than 1.3 feet per second, and c. surface water that lasts for a minimum length of two months in most years (*i.e.*, a sufficient wet period in the spring months to allow arroyo toad larvae to hatch, mature, and metamorphose)); 2) low-gradient stream segments (typically less than 6 percent) with sandy or fine gravel substrates that support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; 3) a natural flooding regime, or one sufficiently corresponding to a natural regime, that will periodically scour riparian vegetation, rework stream channels and terraces, and redistribute sands and sediments, such that breeding pools and terrace habitats with scattered vegetation are maintained; 4) riparian and

adjacent upland habitats (*e.g.*, alluvial scrub, coastal sage scrub, chaparral, and oak woodlands, but particularly alluvial streamside terraces and adjacent valley bottomlands that include areas of loose soil where toads can burrow underground) to provide foraging, aestivation, and living areas for subadult and adult arroyo toads; and 5) stream channels and adjacent upland habitats allowing for migration between foraging, burrowing, or aestivating sites, dispersal between populations, and recolonization of areas that contain suitable habitat.

Life History/Population Dynamics. Arroyo toad larvae feed on loose organic material such as interstitial algae, bacteria, and diatoms. They do not forage on macroscopic vegetation (Sweet 1992; Jennings and Hayes 1994). Juvenile toads rely on ants almost exclusively (USFWS 1999a). By the time they reach 0.7 to 0.9 inches in length, they take more beetles, along with the ants (Sweet 1992; USFWS 1999a). Adult toads probably consume a wide variety of insects and arthropods including ants, beetles, spiders, larvae, caterpillars, and others.

Breeding typically occurs from February to July on streams with persistent water (Griffin *et al.* 1999). Female arroyo toads must feed for a minimum of approximately two months to develop the fat reserves needed to produce a clutch of eggs (Sweet 1992). Females apparently move to breeding pools for only short time periods during the breeding season (66 FR 9414). Eggs are deposited and larvae develop in shallow pools with minimal current and little or no emergent vegetation. The substrate in these pools is generally sand or fine gravel overlain with silt. Arroyo toad eggs hatch in four to five days and the larvae are essentially immobile for an additional five to six days (Sweet 1992). They then begin to disperse from the pool margin into the surrounding shallow water, where they spend an average of 10 weeks (Sweet 1992). After metamorphosis (June-July), the juvenile toads remain on the bordering gravel bars until the pool no longer persists (usually from 8 to 12 weeks depending on site and yearly conditions) (Sweet 1992). Most individuals become sexually mature by the following spring (Sweet 1992).

Arroyo toads spend much of their lives in upland habitats (66 FR 9414). Upland habitat use occurs during both the breeding and non-breeding season (66 FR 9414). This species has been observed moving approximately 1 mile within a stream reach and 0.6-1.2 miles away from the stream, into native upland habitats (Sweet 1992; Holland 1995; USFWS 1999a) or agricultural areas (Griffin *et al.* 1999). Movement distances may be regulated by topography and channel morphology. Griffin (1999) reported a female arroyo toad traveling more than 948 feet perpendicular from a stream and Holland and Sisk (2000) found arroyo toads 0.7 miles from a water course. Most arroyo toad movements and activity appears to occur between the months of January and August (Ramirez 2003). Arroyo toads tend to burrow relatively deep during the fall and winter and remain largely inactive (Sweet 1992).

Historic and Current Range. Historically, arroyo toads occurred in at least 22 river basins in southern California from the upper Salinas River system in Monterey County to San Diego County and southward to the vicinity of San Quintin, Baja California, Mexico. They have been found at elevations extending from sea level to 8,000 feet (USFWS 1999a). Arroyo toads have been extirpated from an estimated 75 percent of their former range in the United States (USFWS 1999a), and they now occur primarily in small, isolated areas in the middle to upper reaches of streams. The current distribution of the arroyo toad in the United States is from the San Antonio

River in Monterey County, south to the Tijuana River and Cottonwood Creek Basin along the Mexican border. Arroyo toads are also known from a seemingly disjunct population in the Arroyo San Simeon River System, about 10 miles southeast of San Quintin, Baja California. Although the arroyo toad occurs principally along coastal drainages, it also has been recorded at several locations on the desert slopes of the Transverse Range (Patten and Myers 1992; Jennings and Hayes 1994). There are six units of arroyo toad designated critical habitat in Santa Barbara, Ventura, Los Angeles, San Bernardino, and Riverside counties totaling about 11,695 acres (69 FR 23254).

Rangewide Trends and Current Threats. Because arroyo toad habitats (*i.e.*, broad, flat floodplains in southern California) are favored sites for flood control projects, agriculture, urbanization, and recreational facilities, such as campgrounds and OHV parks, many arroyo toad populations were reduced in size or extirpated due to extensive habitat loss from 1920 to 1980 (USFWS 1999a). The loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species, caused arroyo toads to disappear from a large portion of their previously occupied habitat in California (Jennings and Hayes 1994). Currently, the major threats to arroyo toad populations are from stream alteration, introduction of exotic species, urban and rural development, mining, recreation, grazing, drought, wildfire, and large flood events.

Several incidental take permits pursuant to Section 10(a)(1)(B) of the Act have been issued for the arroyo toad addressing the effects of urban development on this species. In 1996, the Service issued a permit for the Central and Coastal Subregion Natural Community Conservation Plan and Habitat Conservation Plan for Orange County. In 1997 and 1998, the Service issued permits to the city of San Diego and San Diego County, respectively for Multiple Species Conservation Plans. In 2004, the Service issued a permit for the Western Riverside County Multiple Species Habitat Conservation Plan. These plans are expected to provide long-term protection of core occurrences of this species in western Riverside, Orange, and San Diego counties.

ENVIRONMENTAL BASELINE

Regulations implementing the Act (50 CFR §402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area that have undergone section 7 consultation and the impacts of State and private actions which are contemporaneous with the consultation in progress.

The action area is defined to include all areas subject to direct and indirect effects of the project and includes the San Juan Creek watershed from the Riverside County line to the confluence of San Juan Creek and Bell Canyon. This incorporates the area of direct effects associated with the proposed project and the downstream area that may be affected by sedimentation, runoff, etc., associated with construction activities and road widening. It also includes the upland and riparian areas that may be enhanced by restoration activities.

The arroyo toad population in San Juan Creek is one of a cluster of arroyo toad populations remaining in southern Orange County and northern San Diego County. This cluster of populations is unique in that there a number of drainages in close proximity to one another that support relatively healthy arroyo toad populations. In addition, almost all of these populations are in close proximity to the coast, whereas most other extant populations are further inland. San Juan Creek supports the northern-most population in this cluster that exhibits consistent breeding. The San Juan Creek population may be an important link between a population that appears to breed sporadically in Silverado Canyon and Santiago Creek to the north (in the Santa Ana River watershed) and the cluster of populations to the south that exhibits more consistent breeding activity.

The arroyo toad population in San Juan Creek extends from about the Upper San Juan Campground (about 1.5 miles upstream of the project area) to where San Juan Creek crosses under Antonio Parkway and potentially down to Interstate 5 (over 10 miles downstream of the project area). Although the arroyo toad population in San Juan Creek is fairly large relative to many of the other populations, it faces a number of potential threats, including habitat degradation as a result of invasion by arundo, predation by non-native predators, runoff from adjacent nurseries and development, roadkill, and recreation activities next to and within the creek.

SR74 runs adjacent to San Juan Creek. The distance between the creek and the road generally varies between about 150 and 500 horizontal feet along the length of the proposed project footprint. In this stretch of creek, the canyon walls between the road and creek are fairly steep, making frequent crossings of the road unlikely. However, toads have been observed crossing steep terrain (Griffin 1999), and the distance between the road and creek is well within the dispersal distance of arroyo toads. In addition, there are several locations where the road is in close proximity to the creek. Therefore, it is highly likely that toads do disperse across SR74 and are sometimes killed by traffic while doing so. Although it has not been quantified, San Juan Creek and toads within the creek almost certainly experience increased pollution as a result of runoff from the road and siltation from fill material imported to create the roadbed.

EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species, together with the effects of other activities that are interrelated and interdependent with that action that will be added to the environmental baseline. Direct or indirect negative effects may occur outside but adjacent to the project footprint. The area over which direct and indirect negative effects may occur is variable and dependent on the species affected, the type of effect, and local factors such as vegetation and topography at a specific site. Indirect effects are those that are caused by the proposed action and are later in time but are still reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the proposed action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

Direct Effects

Habitat Removal

The proposed project will result in the permanent loss of an estimated 0.494 acres of potential foraging, dispersal, and aestivation habitat for the toad. Because there is substantial habitat available for the arroyo toad in close proximity to San Juan Creek and the proposed project, the loss of this habitat in the watershed is expected to have a limited, but permanent, effect on the ability of toads to forage, disperse, and aestivate.

The restoration of 1.0 acre of upland habitat, including 0.24 acre of oak woodlands, 0.39 acre of chaparral, and 0.37 acre of coastal sage scrub, consistent with the Fencing and Restoration Plan, will help minimize and offset the loss of habitat by creating and enhancing alternative locations for toads to forage, disperse, and aestivate. All temporarily impacted areas (0.136 acres) will be restored with appropriate native vegetation as well. The restoration of 0.054 acre of riparian vegetation and the removal of arundo in 4.0 acres of San Juan Creek will benefit the toad population in San Juan Creek by creating and enhancing arroyo toad breeding habitat in the watershed, potentially increasing reproductive output.

Crushing of Toads

It is possible that a small number of toads will be present in these habitat areas during project construction. Toads could also disperse onto paved areas where construction activities are taking place. If they are not excluded or removed, these individuals would likely be crushed during construction activities.

The placement of toad exclusionary fencing around construction areas, consistent with the Fencing and Restoration Plan, and the presence of a biological monitor during construction activities with the potential to impact toads will help avoid and minimize toad mortality during construction activities.

Siltation and Pollution

The proposed construction activities are likely to slightly increase pollution and siltation in the creek as a result of grading, cutting, and filling, and operating heavy equipment in close proximity to the creek. Potential threats posed by pollution are not well understood, but heavy siltation has the potential to kill arroyo toad eggs and larvae through asphyxiation (Sweet 1992).

The placement of silt fencing at specified locations, consistent with the SWPP, will help minimize effects of siltation and pollution runoff during project construction. Monitoring of arroyo toad breeding locations in San Juan Creek during project construction will ensure that silt levels in the creek are being effectively minimized and that arroyo toad eggs and tadpoles are not visibly affected by siltation and pollution. Potential effects to arroyo toad breeding habitat

associated with low levels of siltation and pollution will be partially offset by proposed removal of arundo, which will improve breeding habitat for arroyo toad in San Juan Creek.

Indirect Effects

For the first few years following project construction, there may continue to be a slight increase in silt levels over pre-construction levels as a result of the new cut and fill slopes. However, consistent with the SWPP, the project will include permanent measures to control siltation and runoff. Because the project is a safety improvement of an existing road, it is not anticipated to create new barriers to toad dispersal or to cause more than a very slight increase in road mortality.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, Tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. We have not identified any cumulative effects in the project area that may impact toads, in relation to the proposed action.

CONCLUSION

After reviewing the status of the species, the environmental baseline, the effects of the proposed action, and the cumulative effects, it is our biological opinion that implementation of the proposed project is not likely to jeopardize the continued existence of the arroyo toad. We reached this conclusion by considering the following:

1. The number of individual toads that are displaced or killed due to the proposed project will be relatively low and will not significantly reduce this species' overall numbers, distribution, or reproductive potential. Proposed fencing and monitoring will minimize the potential loss of individuals as a result of construction activity.
2. The project will impact only a small amount of upland habitat relative to the total amount of habitat available, and the proposed restoration will minimize and offset the loss of potential habitat for foraging, dispersal, and aestivation.
3. With the proposed minimization measures, the proposed project is not anticipated to substantially affect arroyo toad reproduction as a result of siltation or pollution, and removal of arundo in the watershed will enhance toad breeding habitat in the action area.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act, and Federal regulations issued pursuant to section 4(d) of the Act, prohibit take of endangered and threatened species without a special exemption. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that actually kills or injures a listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as an action that creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), such incidental taking is not considered to be a prohibited taking under the Act provided that such taking is in compliance with this Incidental Take Statement.

The measures described below are non-discretionary and must be implemented by the FHWA in order for the exemption in section 7(o)(2) to apply. The FHWA has a continuing duty to regulate the activity that is covered by this incidental take statement. If the FHWA (1) fails to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, and/or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

AMOUNT OR EXTENT OF TAKE

Total incidental take of arroyo toads will be difficult to detect or quantify, particularly in the non-breeding season, as their relatively small body size and burrowing behaviour make the finding of an animal unlikely. Therefore, quantifying the take of arroyo toads is not possible, although we anticipate that the number of individuals that may be taken will be low based on the small amount of habitat proposed to be impacted, the timing of certain project activities to avoid the breeding season, and proximity of the project site to extensive areas of more suitable habitat. Because we cannot provide a reliable estimate of the numbers of arroyo toads that are likely to be taken, we have established a take threshold that, if exceeded, will trigger reinitiation of consultation. The take threshold and limit is the capture and relocation of 5 toads and the injury or mortality of 1 toad.

EFFECT OF TAKE

In the accompanying biological opinion, we determined that this level of anticipated take is not likely to result in jeopardy to the arroyo toad.

REASONABLE AND PRUDENT MEASURES

We have not identified any additional reasonable and prudent measures beyond the minimization measures committed to by the applicant and described in the project description of this biological opinion that are necessary or appropriate to further minimize the incidental take of toads during project implementation.

TERMS AND CONDITIONS

To be exempt from the prohibitions of section 9 of the Act, the applicant must comply with the terms and conditions which implement the reasonable and prudent measures described above. Since no further reasonable and prudent measures are identified, no terms and conditions are necessary.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The recommendations provided here relate only to the proposed action and do not necessarily represent complete fulfillment of the agency's responsibility for these species, pursuant to section 7(a)(1) of the Act.

The following are general recommendations for the applicant to pursue via the 10(a)(1)(A) permitting process of the Act:

1. We recommend that Caltrans continue to work closely with the Arundo Removal Task Force for San Juan Creek to ensure that the group is successfully established and that Caltrans can accomplish the arundo removal described in this biological opinion.

REINITIATION NOTICE

This concludes formal consultation on the proposed action. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is reached; (2) new information reveals effects of the agency action that may adversely affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is reached, any operations causing such take must cease pending reinitiation.

If you have any questions concerning this biological opinion, please contact Fish and Wildlife Biologist Jonathan Snyder of this office at (760) 431-9440 x307.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen A. Goebel". The signature is fluid and cursive, with a long horizontal stroke at the end.

 Karen A. Goebel
Assistant Field Supervisor

cc:

Arianne Glagola, Caltrans, District 12, Irvine

Mary Thomas, USFS, Trabuco Ranger District, Corona

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Jonathan_D_Snyder@fws.gov

03/30/2006 02:56 PM

To: Arianne_Glagola@dot.ca.gov
cc:
Subject: Request to Amend Biological Opinion FWS-OR-1688.6

Arianne,

This is in response to your letter dated March 3, 2006, requesting to amend the Biological Opinion for the State Route 74 Safety Project in Orange County (FWS-OR-1688.6) to incorporate minor changes in the amount of proposed restoration. One of the conservation measures in the original BO stated the following:

Caltrans will restore a minimum of 0.24 acre of oak woodlands, 0.39 acre of chaparral, 0.054 acre of riparian vegetation, and 0.37 acre of coastal sage scrub at the Lower San Juan Picnic Area and an area near STA 31. The restoration at these locations will be conducted consistent with the future Fencing and Restoration Plan, which will be submitted to CFWO for review and approval prior to project implementation.

You have proposed to amend this measure to reflect Caltrans' commitment to restore 0.335 acre of chaparral and 0.444 acre of riparian vegetation and wetlands (0.414 acre of riparian and 0.03 acre of wetland). These changes reflect slight changes in anticipated impacts and requirements of CDFG's 1600 agreement and the Corps' 404 permit. Considering the minor nature of these changes, we have agreed to document the Service's approval in an electronic mail.

Your letter also noted that Caltrans was planning on entering into a cooperative agreement with USFS prior to the start of construction for the transfer of \$200,000 to complete the four acres of arundo removal identified in the BO. This approach is acceptable to the Service. We will need to work together to include sufficient detail regarding location, methodology, and assurances in the cooperative agreement or an associated arundo removal plan to ensure that the goal of complete and permanent removal of four acres of arundo is met.

Thank you for your ongoing coordination on this project, and please call or e-mail if you have any questions regarding this letter.

Sincerely,

Jonathan Snyder
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