

**FOR CONTRACT NO.:07-174804  
PROJECT ID: 0700000167**

# **INFORMATION HANDOUT**

## **WATER QUALITY**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SECTION 401,  
WATER QUALITY CERTIFICATION (LOS ANGELES REGION)**

**BOARD ORDER NO. 2009-0057  
NPDES PERMIT NO. CAS004002  
FILE NO. 10-035**

## **PERMITS**

**STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME  
Notification # 1600-2010-0081-R5**

**UNITED STATES ARMY CORPS OF ENGINEERS, CLEAN WATER ACT, SECTION 10,  
RIVERS AND HARBOR  
Permit # SPL-2010-00302-TS**

**COUNTY OF VENTURA PLANNING DIVISION  
CALIFORNIA COASTAL COMMISSION PERMIT  
Zone Clearance (Coastal): ZC10-0461  
File No. 10-035**

## **AGREEMENTS**

**PACIFIC UNION RAILROAD COMPANY  
Audit # 254573  
Folder No. 2582-45**

**ROUTE: 101-Ven-42.0**



# California Regional Water Quality Control Board

## Los Angeles Region



Linda S. Adams  
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013  
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger  
Governor

Ms. Stephanie White  
California Department of Transportation  
100 S. Main Street, MS 16A  
Los Angeles, CA 90012

**WATER QUALITY CERTIFICATION FOR PROPOSED VEN-101 CULVERT REPLACEMENT PROJECT (Corps' Project No. 2010-00302-TS), UNNAMED COASTAL TRIBUTARIES TO PACIFIC OCEAN, LA CONCHITA, UNINCORPORATED VENTURA COUNTY (File No. 10-035)**

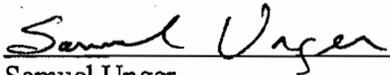
Dear Ms. White:

Board staff has reviewed your request on behalf of the California Department of Transportation (Applicant) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on May 21, 2010.

I hereby issue an order certifying that any discharge from the referenced project 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, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

The Applicant shall be liable civilly for any violations of this Certification in accordance with the California Water Code. This Certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this Certification action, please contact Valerie Carrillo, Lead, Section 401 Program, at (213) 576-6759.

  
\_\_\_\_\_  
Samuel Unger  
Interim Executive Officer

June 30, 2010  
Date

**California Environmental Protection Agency**



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

## DISTRIBUTION LIST

Bill Orme (via electronic copy)  
State Water Resources Control Board  
Division of Water Quality  
P.O. Box 944213  
Sacramento, CA 94244-2130

Jeff Humble (via electronic copy)  
California Department of Fish and Game  
Streambed Alteration Team  
4949 View Ridge Avenue  
San Diego, CA 92123

Antal Szijj  
U.S. Army Corps of Engineers  
Regulatory Branch, Ventura Field Office  
2151 Alessandro Drive, Suite 255  
Ventura, CA 93001.

Eric Raffini (via electronic copy)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Diane Noda  
U.S. Fish and Wildlife Service  
2493 Portola Road, Suite B  
Ventura, CA 93003

**ATTACHMENT A**

**Project Information**

**File No. 10-035**

1. Applicant: California Department of Transportation  
100 S. Main Street, MS 16A  
Los Angeles, CA 90012  
  
Phone: (213) 897-0098 Fax: (213) 897-2593
2. Applicant's Agent: Stephanie White
3. Project Name: VEN-101 Culvert Replacement Project
4. Project Location: Ventura County

<u>Latitude</u>	<u>Longitude</u>
34.3673	119.4520

5. Type of Project: Highway 101 Culvert Repair (La Conchita)
6. Project Purpose: The purpose of the proposed project is to replace two (2) existing culverts (constructed in 1955) under Highway 101 with new box culverts, aprons, and wingwalls to maintain drainage capacity (100-year storm peak flow) and for better management of storm debris flows.
7. Project Description: The project location is along Post Mile Markers 41.94 and 41.89, just north of the community of La Conchita. This project is also within the footprint of the forthcoming Highway 101 High Occupancy Vehicle Project, which will create additional lanes between Seacliff and Carpinteria, primarily through in-fill of the highway's open center divider.

The culvert inlets are located at the foot of the highway embankment, immediately downstream of the adjacent railroad culverts. The outlets are located within the riprap embankment on the ocean side of Highway 101, above the adjacent beach. These two (2) drainage areas provide seasonal drainage of storm-related surface water and seepage from steep mountain slopes above La Conchita toward the Ocean.

The proposed project includes the following components:

- Replacement of two (2) existing concrete box culverts (Location 1: 7' by 4'; Location 2: 6' by 4') with 12' by 6' concrete box culverts, and reconstruction of existing wingwalls to accommodate the larger box culverts.

## ATTACHMENT A

### Project Information

File No. 10-035

- Removal and replacement of approximately 240 cubic yards (cy) of existing half-ton rock revetment along the beach at the culvert outlets following completion of culvert and wingwall construction. This work will include approximately 90 cy of excavation and backfill at the toe of the revetment to key in the rock.
- Construction of a temporary access ramp to the beach. The access ramp will be approximately 60 feet long and 30 feet wide, and constructed of earthen materials. This ramp will be used by heavy equipment (backhoe, loader, truck) to repair the rock revetment and the culvert outlets.

In order to construct the culverts, approximately 9,200 square feet of beach area will be temporarily impacted (0.37 acres). Permanent impacts consist of 0.01 acres (inclusive of both culverts).

8. Federal Agency/Permit: U.S. Army Corps of Engineers  
NWP Nos. 3 & 33 (Permit No. 2010-00302-TS)
9. Other Required Regulatory Approvals: California Department of Fish and Game  
Streambed Alteration Agreement #1600-2010-0081-R5  
  
Ventura County Zoning Clearance  
(Ventura Co LCP) #ZC09-0938
10. California Environmental Quality Act Compliance: The proposed project is Categorically Exempt from CEQA pursuant to the CEQA Guidelines, Section 15302 Replacement or Reconstruction.
11. Receiving Water: Pacific Ocean (Hydrologic Unit No. 401.00)
12. Designated Beneficial Uses: IND, NAV, REC-1, REC-2, COMM, MAR, BIOL, WILD, RARE, MIGR, SPWN, SHELL
13. Impacted Waters of the United States: Non-wetland waters (streambed): 0.37 temporary and 0.01 permanent acres
14. Dredge Volume: None

## ATTACHMENT A

### Project Information

File No. 10-035

15. Related Projects  
Implemented/to be  
Implemented by the  
Applicant:

This project is within the footprint of the forthcoming VEN-101 HOV Project, which will create additional traffic lanes between Seacliff and Carpinteria, primarily through in-fill of the highway's open center divider (minimal widening of the highway footprint in select locations).

This proposed culvert replacement project is independent of, and will precede, construction for the HOV project.

16. Avoidance/  
Minimization  
Activities:

The Applicant has proposed to implement several Best Management Practices, including, but not limited to, the following:

- Temporary Gravel Bag Berm, Temporary Construction Entrance, Temporary Plastic Covers, Temporary Drainage Inlet Protection, Street Sweeping;
- Work will not occur if measurable rain is present or predicted (minimum 5 days of dry forecast), or in the presence of stormwater flows;
- Debris, petroleum products, concrete washings, or other organic or earthen material from construction or associated activity of whatever nature shall not be allowed to enter into or placed where it may be washed by rainfall or run-off into the Ocean;
- When operations are completed, excess materials or debris shall be removed from the work area. Equipment will be placed over drip pans, checked daily, and maintenance activities will be performed away from the worksite;
- Material spills will be cleaned up immediately, and RWQCB/USACE will be notified/consulted regarding cleanup.

17. Proposed  
Compensatory  
Mitigation:

The Applicant has proposed no compensatory mitigation. Invasive species shall be removed from project area, and weed-control measures will be implemented during the required monitoring period and the overlapping HOV construction project.

18. Required  
Compensatory  
Mitigation:

The Regional Board will require the Applicant to provide compensatory mitigation at a ratio of 3:1 for permanent impacts associated with the proposed project. The mitigation may take

**ATTACHMENT A**

**Project Information**  
**File No. 10-035**

place in the form of invasive species and weed removal in the project vicinity for a minimum of 0.03 acres.

See *Attachment B, Conditions of Certification, Additional Conditions* for modifications and additions to the above proposed compensatory mitigation.

## ATTACHMENT B

### Conditions of Certification File No. 10-035

#### STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and 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. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

#### ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' (ACOE) Section 404 Permit and the California Department of Fish and Game's (CDFG) Streambed Alteration Agreement. **These documents shall be submitted prior to any discharge to waters of the State.**
2. The Applicant shall adhere to the most stringent conditions indicated with either this Certification, the CDFG's Streambed Alteration Agreement, or the ACOE Section 404 Permit.
3. The Applicant shall comply with all water quality objectives, prohibitions, and policies set forth in the *Water Quality Control Plan, Los Angeles Region (1994)*, as amended.
4. The Avoidance/Minimization activities proposed by the Applicant as described in Attachment A, No. 16, are incorporated as additional conditions herein.
5. The Applicant and all contractors employed by the Applicant shall have copies of this Certification, and shall be familiar with all conditions set forth.

## ATTACHMENT B

### Conditions of Certification File No. 10-035

6. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the State. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the State.
7. All excavation, construction, or maintenance activities shall follow best management practices to minimize impacts to water quality and beneficial uses. Dust control activities shall be conducted in such a manner that will not produce downstream runoff.
8. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the State. Designated spoil and waste areas shall be visually marked prior to any excavation and/or construction activity, and storage of the materials shall be confined to these areas.
9. All waste and/or dredged material removed shall be relocated to a legal point of disposal if applicable. A legal point of disposal is defined as one for which Waste Discharge Requirements have been established by a California Regional Water Quality Control Board, and is in full compliance therewith. Please contact the Land Disposal Unit, at the Regional Board for further information.
10. The Applicant shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This Certification does not authorize the discharge by the applicant for any other activity than specifically described in the 404 Permit.
11. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses.
12. The Applicant shall allow the Regional Board and its authorized representative entry to the premises, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Certification, or as otherwise authorized by the California Water Code.
13. Application of pesticides must be supervised by a certified applicator and be in conformance with manufacturer's specifications for use. Compounds used must be appropriate to the target species and habitat. All pesticides directed toward aquatic species must be approved

## ATTACHMENT B

### Conditions of Certification File No. 10-035

by the Regional Board. Pesticide utilization shall be in accordance with State Water Resources Control Board Water Quality Order Nos. 2004-0008-DWQ and 2004-0009-DWQ.

14. The Applicant shall not conduct any construction activities within waters of the State during a rainfall event. The Applicant shall maintain a **five-day (5-day) clear weather forecast** before conducting any operations within waters of the State.
15. The Applicant shall utilize the services of a qualified biologist with expertise in riparian assessments during any vegetation clearing activities. The biologist shall be available on site during construction activities to ensure that all protected areas are marked properly and ensure that no vegetation outside the specified areas is removed. The biologist shall have the authority to stop the work, as necessary, if instructions are not followed. The biologist shall be available upon request from this Regional Board for consultation within 24 hours of request of consultation.
16. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum **5-foot** buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste. Sufficient time should be allowed to obtain any such permits (generally 180 days). If groundwater is encountered without the benefit of appropriate permits, the Applicant shall cease all activities in the areas where groundwater is present, file a Report of Waste Discharge to this Regional Board, and obtain any necessary permits prior to discharging waste.
17. All project/maintenance activities not included in this Certification, and which may require a permit, must be reported to the Regional Board for appropriate permitting. Bank stabilization and grading, as well as any other ground disturbances, are subject to restoration and revegetation requirements, and may require additional Certification action.
18. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan** (plan) to this Regional Board. The plan shall include the proposed method and duration of diversion activities, structure configuration, construction materials, equipment, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. Contingency measures shall be a part of this plan to address various flow discharge rates. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for the following shall be implemented:
  - pH

## ATTACHMENT B

### Conditions of Certification File No. 10-035

- temperature
- dissolved oxygen
- turbidity
- total suspended solids(TSS)

Analyses must be performed using approved US Environmental Protection Agency methods, where applicable. These constituents shall be measured at least once prior to diversion and then monitored for on a daily basis during the first week of diversion and/or dewatering activities, and then on a weekly basis, thereafter, until the in-stream work is complete.

Results of the analyses shall be submitted to this Regional Board by the 15th day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Downstream TSS shall be maintained at ambient levels. Where natural turbidity is between 0 and 50 Nephelometric Turbidity Units (NTU), increases shall not exceed 20%. Where natural turbidity is greater than 50 NTU, increases shall not exceed 10%. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.

19. The Applicant shall restore **all areas (0.37 acres)** of TEMPORARY IMPACTS to waters of the United States 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 at existing vegetated-coverage ratios. Restored areas shall be monitored and maintained with native species as necessary for five years. The Applicant shall implement all necessary Best Management Practices to control erosion and runoff from areas associated with this project.
20. The Applicant shall provide COMPENSATORY MITIGATION to offset the proposed permanent impacts to **0.01 acres** of vegetation within waters of the United States by enhancement with invasive species and weed removal in the project vicinity at a minimum 3:1 area replacement ratio (**0.03 acres**). The mitigation site shall be located within the project vicinity unless otherwise approved by this Regional Board. The Applicant shall submit a **Proposed Mitigation Report** which shall include:
  - (a) The boundary of the mitigation site shall be clearly identified on a map of suitable resolution and quality and shall also be defined by latitude and longitude.
  - (b) The type(s) of mitigation shall be described (e.g., removal of exotics and/or replanting with native species, etc.)
  - (c) Success criteria shall be established.

**This information shall be submitted to this Regional Board for approval prior to any disturbance within waters of the United States and shall include copies of all agreements**

## ATTACHMENT B

### Conditions of Certification File No. 10-035

made between the Applicant and a third party organization regarding compensatory mitigation efforts.

21. The Applicant shall submit to this Regional Board **Annual Mitigation Monitoring Reports** (Annual Reports) by **January 1<sup>st</sup>** of each year for a minimum period of **five (5) years** following this issuance of 401 Certification or until mitigation success has been achieved and documented. The Annual Reports shall describe in detail all of the project/construction activities performed during the previous year and all restoration and mitigation efforts; including percent survival by plant species and percent cover. At a minimum the Annual Reports shall include the following documentation:
  - (a) Color photo documentation of the pre- and post-project and mitigation site conditions;
  - (b) Geographical Positioning System (GPS) coordinates in decimal-degrees format outlining the boundary of the project and mitigation areas;
  - (c) The overall status of project including a detailed schedule of work;
  - (d) Copies of all permits revised as required in Additional Condition 1;
  - (e) Water quality monitoring results compiled in an easy to interpret format;
  - (f) A certified Statement of "no net loss" of wetlands associated with this project;
  - (g) Discussion of any monitoring activities and exotic plant control efforts; and
  - (h) A certified Statement from the permittee or his/her representative that all conditions of this Certification have been met.
  
22. Prior to any subsequent maintenance activities within the subject drainages/basin, including clearing, maintenance by-hand, and/or the application of pesticides, the Applicant shall submit to this Regional Board a NOTIFICATION of any such activity. Notification shall include: (a) the proposed schedule; (b) a description of the drainage's/basin's existing condition/capacity; (c) the area of proposed temporary impact within waters of the State; (c) a description of any existing aquatic resources (e.g., wetland/riparian vegetation); and (d) any proposed compensatory mitigation. Notifications must be submitted a minimum of **three (3) weeks** prior to commencing work activities.
  
23. All applications, reports, or information submitted to the Regional Board shall be signed:

ATTACHMENT B

Conditions of Certification  
File No. 10-035

- (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates.
  - (b) For a partnership, by a general partner.
  - (c) For a sole proprietorship, by the proprietor.
  - (d) For a municipal, State, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.
24. Each and any report submitted in accordance with this Certification shall contain the following completed declaration:

"I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Executed on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.

\_\_\_\_\_  
 \_\_\_\_\_ (Signature)  
 \_\_\_\_\_ (Title)"

- 25. All communications regarding this project and submitted to this Regional Board shall identify the Project File Number 10-035. Submittals shall be sent to the attention of the 401 Certification Unit.
- 26. Any modifications of the proposed project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application and appropriate filing fee.
- 27. The project shall comply with the local regulations associated with the Regional Board's **Municipal Stormwater Permit** issued to Ventura County and co-permittees under NPDES No. CAS004002 and Waste Discharge Requirements Order No. 2009-0057. This includes the Stormwater Quality Urban Impact Mitigation Plan (SQUIMP) and all related implementing local ordinances and regulations for the control of stormwater pollution from new development and redevelopment. The project shall also comply with all requirements of the National Pollutant Discharge Elimination System (NPDES) **General Permit** for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ. All

## ATTACHMENT B

### Conditions of Certification File No. 10-035

stormwater treatment systems shall be located outside of any water of the State and shall not be used as a wetland or riparian mitigation credit.

28. Coverage under this Certification may be transferred to the extent the underlying federal permit may legally be transferred and further provided that the Applicant notifies the Executive Officer at least 30 days before the proposed transfer date, and the notice includes a written agreement between the existing and new Applicants containing a specific date of coverage, responsibility for compliance with this Certification, and liability between them.
29. The Applicant or their agents shall report any noncompliance. Any such information shall be provided verbally to the Executive Officer within 24 hours from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
30. *Enforcement:*
  - (a) 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.
  - (b) In response to a suspected violation of any condition of this Certification, the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) 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 SWRCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
  - (c) In response to any violation of the conditions of this Certification, the SWRCB or RWQCB may add to or modify the conditions of this Certification as appropriate to ensure compliance.

**ATTACHMENT B**

**Conditions of Certification  
File No. 10-035**

31. This Certification shall expire **five (5) years** from date of this Certification. The Applicant shall submit a complete application prior to termination of this Certification if renewal is requested.



California Natural Resources Agency  
**DEPARTMENT OF FISH AND GAME**  
South Coast Region  
4949 Viewridge Avenue  
San Diego, CA 92123  
(858) 467-4201  
[www.dfg.ca.gov](http://www.dfg.ca.gov)

**ARNOLD SCHWARZENEGGER, Governor**  
**JOHN McCAMMAN, Director**



July 1, 2010

Ms. Stephanie White  
California Department of Transportation  
100 S. Main Street  
Los Angeles, California 90012

Subject: Final Lake or Streambed Alteration Agreement  
Notification No. 1600-2006-0081-R5  
VEN-101 Culvert Replacement Project

Dear Ms. Stephanie White:

Enclosed is the final Streambed Alteration Agreement (Agreement) for the VEN-101 Culvert Replacement Project near La Conchita (Project). Before the Department may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a responsible agency, determined your project is exempt from CEQA and filed a notice of exemption (NOE) on the same date it signed the Agreement.

Under CEQA, filing a NOE starts a 35-day period within which a party may challenge the filing agency's approval of the project. You may begin your project before the 35-day period expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Ms. Jamie Jackson at 626-296-3430 or [jjackson@dfg.ca.gov](mailto:jjackson@dfg.ca.gov).

Sincerely,

*Helen Birss* for

Helen Birss  
Environmental Program Manager

ec: Jamie Jackson, Staff Environmental Scientist

## NOTICE OF EXEMPTION

**To: Office of Planning and Research**  
1400 Tenth Street, Room 121  
Sacramento, California 95814  
Tel#: (916) 322-2318  
Fax#: (916) 323-3018

**From: California Department of Fish and Game**  
Region 5- South Coast Region  
4949 Viewridge Avenue  
San Diego, CA 92123  
Tel#: (858) 636-3160  
Fax#: (858) 636-4299

**PROJECT TITLE:** VEN-101 Culvert Replacement Project near La Conchita

**PROJECT LOCATION (CITY AND COUNTY):** The projects are located at two culverts that convey water from the two unnamed tributaries in the La Conchita watershed to the Pacific Ocean, near the City of La Conchita in the County of Ventura, State of California; Latitude 34 22'02.61, Longitude 119 27'07.31 or Section 1, Township 3N, Range 25W, U.S. Geological Survey (USGS) map Pitas Point, San Bernardino.

The project is limited to northern Ventura County along US Highway 101; the two culverts cross under the 101 at postmiles 41.89 and 41.94, just north of the community of La Conchita. The culvert inlets are located at the foot of the highway embankment, immediately downstream from the adjacent railroad culverts; the outlets are located within the riprap embankment on the ocean-side of US 101, above the adjacent beach.

**PROJECT DESCRIPTION:** Permittee activities shall not exceed temporary impacts to more than 0.50 acres of ephemeral streambed. The two streams carried through the culverts to be replaced are ephemeral carrying seepage and seasonal flows during storm-related events captured from the adjacent steep mountain slopes above the community of La Conchita. The culverts will be replaced with larger box culverts (and wingwalls and aprons will be reconstructed) to prevent storm-related overtopping should debris-flows occur; however no additional water flow will be directed to these culverts as part of the replacement project. The culvert inlets, and associated wingwalls and aprons, are on the mountain side of US 101 within Union Pacific Railroad (UPRR) right-of-way, and just a short distance (bare ground) from the culverts for the UPRR. When reconstructed, the wingwalls and aprons will join the existing UPRR culverts (the bare ground between culverts will remain). Culvert outfalls are on the armored (rip-rap) embankment on the ocean-side of US 101 (close to the mean high water line). During replacement of the culvert outfalls, the rip-rap will be removed and replaced in-kind (approximately 240 cubic yards (c.y.) within the existing footprint, 15' along bank (from edge of highway to the outfall), and 16' high).

Culvert replacement is proposed for staged "cut-and-cover" construction from the roadway surface during the dry season (no water diversion). Some temporary disturbance of bare ground in the flow line, and adjacent areas will be required to remove and replace the inlets, aprons, and wingwalls. The culverts will be removed and replaced as follows: 1) excavation will occur to remove the existing wingwalls, aprons, and culverts (approximately 2210 cy total for the two culverts; each approximately 200' long, 24' at base of channel, 40' across top of channel); 2) pre-cast reinforced concrete box culverts will be set in place and backfilled (approximately 1410 cy); 3) the highway roadbed and surface will be reconstructed above the culverts; and 4) wingwalls and aprons will be reconstructed (cast-in-place concrete), and will join the existing UPRR culverts.

**SAA #: 1600-2010-0081-R5**

(Rev. 6/21/99)

**NAME OF PUBLIC AGENCY APPROVING PROJECT:**

California Department of Transportation  
100 S. Main Street  
Los Angeles, California 90012

**NAME OF AGENCY CARRYING OUT PROJECT:**

California Department of Transportation  
100 S. Main Street  
Los Angeles, California 90012

**EXEMPT STATUS (CLASS AND GUIDELINES SECTION):**

15301. Existing Facilities

---

**REASONS WHY PROJECT IS EXEMPT:**

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

---

**Contact Person (lead agency):**

Ms. Stephanie White

**Phone:**

(213) 897-0098

**Contact Person (CDFG):**

Ms. Jamie Jackson

**Phone:**

(626) 296-3430

Signature: Maureen Stuhart for Date: 7-1-10

Title: Environmental Program Manager

---

**Date received for filing at OPR:**

**CALIFORNIA DEPARTMENT OF FISH AND GAME**  
SOUTH COAST REGION  
4949 Viewridge Avenue  
San Diego, CA 92123



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION NO. 1600-2010-0081-R5  
Unnamed Coastal Tributaries to the Pacific Ocean

California Department of Transportation  
VEN-101 CULVERT REPLACEMENT PROJECT NEAR LA CONCHITA

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and California Department of Transportation, (Permittee) as represented by Ms. Stephanie White acting on behalf of Permittee.

### **RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified DFG on March 16, 2010 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, DFG has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

### **PROJECT LOCATION**

The projects are located at two culverts that convey water from the two unnamed tributaries to the Pacific Ocean, near the City of La Conchita in the County of Ventura, State of California; Latitude 34 22'02.61, Longitude 119 27'07.31 or Section 1, Township 3N, Range 25W, U.S. Geological Survey (USGS) map Pitas Point, San Bernardino.

The project is limited to northern Ventura County along US Highway 101; the two culverts cross under the 101 at postmiles 41.89 and 41.94, just north of the community of La Conchita. The culvert inlets are located at the foot of the highway embankment, immediately downstream from the adjacent railroad culverts; the outlets are located within the riprap embankment on the ocean-side of US 101, above the adjacent beach.

### **PROJECT DESCRIPTION**

Caltrans activities shall not exceed temporary impacts to more than 0.50 acres of ephemeral streambed. The two streams carried through the culverts to be replaced are ephemeral carrying seepage and seasonal flows during storm-related events captured from the adjacent steep

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 2 of 14

mountain slopes above the community of La Conchita. The culverts will be replaced with larger box culverts (and wingwalls and aprons will be reconstructed) to prevent storm-related overtopping should debris-flows occur; however no additional water flow will be directed to these culverts as part of the replacement project. The culvert inlets, and associated wingwalls and aprons, are on the mountain side of US 101 within Union Pacific Railroad (UPRR) right-of-way, and just a short distance (bare ground) from the culverts for the UPRR. When reconstructed, the wingwalls and aprons will join the existing UPRR culverts (the bare ground between culverts will remain). Culvert outfalls are on the armored (rip-rap) embankment on the ocean-side of US 101 (close to the mean high water line). During replacement of the culvert outfalls, the rip-rap will be removed and replaced in-kind (approximately 240 cubic yards (c.y.) within the existing footprint, 15' along bank (from edge of highway to the outfall), and 16' high).

Culvert replacement is proposed for staged "cut-and-cover" construction from the roadway surface during the dry season (no water diversion). Some temporary disturbance of bare ground in the flow line, and adjacent areas will be required to remove and replace the inlets, aprons, and wingwalls. The culverts will be removed and replaced as follows: 1) excavation will occur to remove the existing wingwalls, aprons, and culverts (approximately 2210 cy total for the two culverts; each approximately 200' long, 24' at base of channel, 40' across top of channel); 2) pre-cast reinforced concrete box culverts will be set in place and backfilled (approximately 1410 cy); 3) the highway roadbed and surface will be reconstructed above the culverts; and 4) wingwalls and aprons will be reconstructed (cast-in-place concrete), and will join the existing UPRR culverts.

## PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: represented by Jamie Jackson on a site visit conducted June 04, 2009, and based on information received from Caltrans, has determined that Caltrans proposed project related activities may substantially adversely affect those existing fish and wildlife resources within the project site, and the vicinity of the project site, and the La Conchita watershed, specifically identified as follows: **Amphibians:** California red-legged frog (*Rana aurora*); **Reptiles:** Western fence lizard (*Sceloporus occidentalis*), coast patched-nose snake (*Salvadora hexalepis virguleta*), southwestern pond turtle (*Emys marmorata pallida*), two-striped garter snake (*Thamnophis hammondi*); **Birds:** Southwest willow flycatcher (*Empidonax traillii extimus*), yellow-breasted chat (*Icteria virens*), black phoebe (*Sayornis nigricans*), western scrub-jay (*Aphelocoma californica*), bushtit (*Psaltriparus minimus*), western bluebird (*Sialia mexicana*), California towhee (*Pipilo crissalis*), house finch (*Carpodacus mexicanus*); **Mammals:** pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), mule deer (*Odocoileus hemionus*), coyote (*Canis latrans*), striped skunk (*Mephitis mephitis*), opossum (*Didelphis virginiana*), brush rabbit (*Sylvilagus bachmani*), bobcat (*Lynx rufus*); **Native Plants:** Coast live oak (*Quercus agrifolia*), coyote bush (*Baccharis pilularis*), California sagebrush (*Artemisia californica*), poison oak (*Toxicodendron diversilobum*), mugwort (*Artemisia douglasiana*), mulefat (*Baccharis salicifolia*), coast live oak and southern coast live oak riparian woodlands, southern willow scrub and mulefat habitat and communities; and all other aquatic and wildlife resources in the area, including the riparian vegetation which provides habitat for such species in the area.

The adverse effects the project could have on the fish or wildlife resources identified above include: Temporary impacts to no more than 0.50 acres of streambed which include disturbance of bare ground in the flow line and adjacent areas, required to remove and replace the inlets, aprons, and wingwalls; this will also result in an additional temporary loss, or

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 3 of 14

reduction in cover, provided from streambed and bank vegetation removed as a result of construction related activities.

## **MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES**

### **1. Administrative Measures**

Permittee shall meet each administrative requirement described below.

1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to DFG personnel, or personnel from another state, federal, or local agency upon request.

1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.

1.3 Notification of Conflicting Provisions. Permittee shall notify DFG if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, DFG shall contact Permittee to resolve any conflict.

1.4 Project Site Entry. Permittee agrees that DFG personnel may enter the project site at any time to verify compliance with the Agreement.

1.5 Regional Water Quality Control Board. DFG believes that permit/certification(s) may be required from the Regional Water Quality Control Board for this project. Should such permits/certification(s) be required a copy shall be submitted to DFG.

1.6 Personnel Compliance On Site. If the Permittee or any employees, agents, contractors and/or subcontractors violate any of the terms or conditions of this agreement, all work shall terminate immediately and shall not proceed until DFG has taken all of its legal actions.

1.7 Pre-project briefing. A pre-maintenance meeting/briefing shall be held involving all the contractors and subcontractors, concerning the conditions in this Agreement.

1.8 Notification Prior to Work. The Permittee shall notify DFG, in writing, at least five (5) days prior to initiation of mitigation (project) activities and at least five (5) days prior to completion of mitigation (project) activities. Notification shall be sent to DFG at 4949 Viewridge Avenue, San Diego 92123, Attn: SAA. FAX Number (858) 467-4299, Reference # 1600-2010-0081-R5.

1.9 Notification Requirements. DFG requires that the Permittee:

1.9.1 Immediately notify DFG in writing if monitoring reveals that any of the protective measures were not implemented during the period indicated in this program, or if it anticipates that measures will not be implemented within the time period specified.

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 4 of 14

1.9.2 Immediately notify DFG if any of the protective measures are not providing the level of protection that is appropriate for the impact that is occurring, and recommendations, if any, for alternative protective measures.

1.9.3 DFG shall verify compliance with protective measures to ensure the accuracy of the Permittee's mitigation, monitoring and reporting efforts. DFG may, at its sole discretion, review relevant documents maintained by the Permittee, interview the Permittee's employees and agents, inspect the work site, and take other actions to assess compliance with or effectiveness of protective measures in this Agreement.

1.10 Implementation Requirements. The agreed work includes activities associated with the Project Location and Project Description that is provided above. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Permittee with the Notification Package, including and shall be implemented as proposed unless directed differently by this Agreement.

## 2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

### Aquatic and Terrestrial Species Specific Protection

2.1 Swallows. It is anticipated that swallows may nest on bridges and other structures between February 15<sup>th</sup> and September 01<sup>st</sup>. Caltrans shall take such measures as necessary to prevent nesting on portions of structures that will cause a conflict between performing necessary work and nesting swallows. Swallows shall be allowed to nest on portions of the bridges where conflicts are not anticipated. Prior to February 1<sup>st</sup>, existing nests (from previous years) shall be removed. Removal of partially completed nests (when nests are LESS than half constructed) is permitted between February 01<sup>st</sup> and February 15<sup>th</sup> to discourage nesting when maintenance activities are being implemented. If new nests are built to completion, or existing nest become occupied, then any work that would interfere with or discourage swallows from returning to their nests is not permitted.

2.2 Bats. Caltrans shall avoid work on or near bridges or other structures when it would disturb roosting bats (February 15<sup>th</sup> – September 30<sup>th</sup>). If Caltrans determines that work must be conducted during this sensitive time period for roosting bats a qualified biologist familiar with the life history of bats shall conduct, at minimum, a presence absence survey of the proposed work area and submit surveys, including negative results, to the Department for concurrence PRIOR to any work being initiated.

2.3 Presence/Absence Surveys. Due to the potential occurrence, or locally known presence of: red-legged frog, coast patched-nose snake, southwestern pond turtle (trapping surveys only in areas with annual ponded water), two-striped garter snake, southwestern willow flycatcher, yellow-breasted chat, pallid bat, and Townsend's big-eared bat; presence/absence surveys by a qualified biologist shall be conducted for these species in work areas no more than 30 days prior to any site preparation, clearing, or project related activities.

2.4 Threatened and/or Endangered Species. If the Department determines that any threatened

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 5 of 14

or endangered species, such as red-legged frog or southwestern willow flycatcher, shall be impacted by the work proposed, work at that location shall stop, and the habitat or nest site in question avoided until the species are no longer reliant on the area for survival as determined by a qualified biologist. If work needs to continue, Caltrans shall obtain the appropriate federal and state permits for take of threatened or endangered species. Caltrans shall contact the Department's Environmental Services for the South Coast Region (626) 797-3170 to obtain information on applying for the State Take Permit for State listed species.

**2.5 Non-listed Special Status Species.** A qualified environmental monitor shall be present during work in all Department jurisdictional areas during initial project related activities. To the extent feasible, non-listed special-status and/or common ground dwelling vertebrates encountered in the path of project related activities. The monitor shall make every effort to relocate the species out of harms way to the extent feasible. Exclusionary devices shall be erected to prevent the migration into or the return of species into the work areas if determined appropriate and feasible by the environmental monitor. Such exclusionary devices shall be checked by the biologist, or designee of the biologist, on a daily basis to check/ensure continued exclusionary device effectiveness. Should Department personnel visit the site during construction activities and no biological monitor be available, construction activities shall be halted.

**2.6 Special Status Species.** If special-status species are observed within harms way, the following protection measures shall be implemented at the discretion of the monitoring biologist: 1) utilize shovel, rake, or similar hand tool to gently re-direct the animal out of work area; 2) Install silt fence or other exclusionary fencing to prevent species from re-entering disturbance area; and 3) Capture/relocate species to appropriate habitat outside the disturbance area. The biological monitor shall have authority to temporarily stop construction activities until the species is determined to be out of harms way.

### **Biological Surveys and Time Restrictions**

**2.7 Nesting and/or Breeding Bird Surveys.** Caltrans shall not remove or otherwise disturb vegetation or conduct any other project activities on the Project sites from March 1<sup>st</sup> to September 15<sup>th</sup> to avoid impacts to breeding/nesting birds; OR, PRIOR to project related activities or site preparation activities, and those activities fall within the above breeding date restrictions, Caltrans shall have a qualified biologist survey breeding/nesting habitat within the project site and adjacent to the project site for breeding/nesting birds. Surveys shall be permitted between March 15<sup>th</sup> and June 01<sup>st</sup> only if work is anticipated during the nesting season. No surveys shall be permitted to begin after June 01<sup>st</sup>. Activities must be initiated within 72 hours of the conclusion of surveys. The Biologist shall provide the Department field notes or other documentation within 24 hours of completing the surveys. An email report with a letter report to follow may be used. The email/letter report should state how impacts of any nesting birds will be avoided by citing the appropriate information from these conditions.

**2.8 Active Breeding and/or Nest.** If breeding activities and/or an active bird nest is located, and concurrence has been received from the Department in writing, the breeding habitat/nest site shall be fenced and/or flagged a minimum of 300 feet for passerines (500 feet for raptors) in all directions, and this area shall not 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. If active nests are observed and the

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 6 of 14

recommended nest avoidance zones are not feasible, non-disturbance buffer zones shall be established by the qualified biologist based on, but not limited to site lines from the nest to the work site and observations of the nesting bird's reaction to project activities. Continuous monitoring of the nest site by a qualified biologist shall occur during disturbance activities, and a nest observation log shall be updated once per hour during construction activities. If the monitoring biologist determines nesting activities may fail as a result of work activities, all work shall cease (except access along re-established roadway) within the recommended avoidance area until the biologist determines the adults and young are no longer reliant on the nest site. A site-specific nest protection plan will be submitted to the Department for review and approval if additional nest protection measures are determined necessary by the monitoring biologist.

**2.9 Migratory Birds.** Be advised, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code that prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).

**2.10 Project Site Surveys.** Caltrans certifies by signing this agreement that the project site has been surveyed and that surveys indicated no rare, threatened or endangered species shall be impacted; if however threatened or endangered species are encountered within the proposed work area once project activities are implemented, or could be impacted by the work proposed, Caltrans shall consult with the Department and obtain any required state take permits.

**2.11 Observations of Threatened and/or Endangered Species.** If threatened or endangered species are observed in the area, no work shall occur from March 1<sup>st</sup> through September 15<sup>th</sup> to avoid direct or indirect (noise) take of listed species and State and/or Federal threatened/endangered species. Please note that additional state permits may be required prior to commencing project activities. This Agreement does not authorize take of species listed as Threatened and/or Endangered.

**2.12 Reporting Observations to CNDDDB.** Caltrans shall be responsible for reporting all observations of threatened/endangered species or of species of special concern to the Department's Natural Diversity Data Base within ten (10) days of sighting.

**2.13 Work Suspension.** Caltrans shall not continue work once formally listed (threatened/endangered, Candidate, or Rare) species are discovered until the Department has been notified and concurrence has been received by the Department that work may continue. The Department shall have forty-eight hours to review the circumstances and notify the Caltrans if work may continue.

### **Habitat Protection**

**2.14 Vehicle Access Where Vegetation May be Impacted.** In locations identified for project area access, or within the bank and streambed, vegetation shall be driven over only; no grubbing shall occur.

**2.15 Tree Removal.** No tree removal is allowed; coast live oak, black walnut (*Juglans nigra*), western sycamore (*Platanus occidentalis*), and Fremont cottonwood (*Populus fremontii*) tree limbs less than 3 inches at DBH may be trimmed as necessary to provide equipment access.

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 7 of 14

Any trimming of branches of trees with a DBH greater than 3 inches, other than *Salix* spp., shall require PRIOR approval from the Department.

**2.16 Alteration of Streambed.** If a stream channel has been altered during Caltrans project related activities, the streambeds low flow channel shall be returned, as nearly as possible, to pre-project conditions without creating a possible future bank erosion problem, or a flat wide channel or sluice-like area. The gradient of the streambed shall be returned to pre-project grade unless such operation is part of a restoration project; in which case, the change in grade must be approved by the Department prior to impacts.

**2.17 Substrate.** Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed and or banks of the stream, except as otherwise addressed in the project description.

**2.18 Domestic Animals.** Caltrans shall not permit pets on or adjacent to the construction site.

**2.19 Weapons.** Caltrans shall ensure that no guns/or other weapons are on-site during construction, with the exception of the security personnel and only for security type functions. No hunting shall be authorized/permitted during project related activities.

### **Fill and Spoils**

**2.20 Unauthorized Fill.** This Agreement does not authorize the use of fill.

**2.21 Sediment Control.** Sediment from project related activities shall not be placed in upland areas where it might likely be washed back into the stream, or where it is likely to have a negative impact on emergent native vegetation, or where it is likely to have a negative impact on native trees.

**2.22 Herbicide Application.** Caltrans shall apply any herbicides in accordance with state and federal law. No herbicides shall be used where Threatened or Endangered species occur. No herbicides shall be used when wind velocities are above 5 miles per hour or when nesting birds could be exposed.

**2.23 Authorized Uses of Herbicides.** No herbicides shall be used on native vegetation unless specifically authorized, in writing, by the Department. 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. All trimming shall be conducted using hand saws and hand tools.

### **Placement of In-stream Structures**

**2.24 Diversions.** No diversion, dams, or restriction of flows is authorized within this Agreement, except as provided for in Caltrans project description, and implemented as proposed.

**2.25 Unauthorized Materials.** Any materials placed in seasonally dry portions of a stream that could be washed downstream or could be deleterious to aquatic life shall be removed prior to

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 8 of 14

inundation by high flows.

**2.26 Temporary Installation of Bridges, Culverts, or Other Structures.** Temporary installation of structures shall be such that water flow (velocity and low flow channel width) is not impaired. Bottoms of temporary culverts shall be placed at or below stream channel grade.

**2.27 Temporary Dams.** Any temporary dam or other artificial obstruction shall only be built from materials such as clean gravel which will cause little or no siltation, and shall be approved by the Department prior to construction.

### **Turbidity and Siltation**

**2.28 Predicted Rain.** If measurable rain with 25% or greater probability is predicted within 72 hours during project related activities, all activities shall cease and protective measures to prevent siltation/erosion shall be implemented/maintained.

**2.29 Sediment Control Devices.** Caltrans shall install an appropriate sediment control device downstream of the work area to filter sediment created from water re-entering the creek. Acceptable materials include silt fence, straw bales, or other appropriate devices to prevent sediment runoff during rewatering activities. Silt control shall remain in place only until the water running through the work area is clear of sediment.

**2.30 Dewatering Restrictions.** 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. Caltrans ability to minimize turbidity/siltation shall be the subject of pre-construction planning and feature implementation.

**2.31 Sediment and Turbidity Levels.** 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.

**2.32 Runoff Control.** 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.

**2.33 Contaminated Site Water.** Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a flowing stream, or dry ephemeral stream, or placed in locations that may be subjected to high storm flows.

### **Equipment and Access**

**2.34 Staging and Vehicle Storage.** Staging/storage areas for equipment and materials shall be located outside of the stream.

**2.35 Authorized Vehicles.** Vehicles shall not be driven or equipment operated in water covered portions of a stream, or where wetland vegetation, riparian vegetation, or aquatic organisms may be harmed or destroyed. The Department must be notified within 24 hours by email or fax if it becomes necessary to work in a wetted stream, other than already described in Caltrans

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 9 of 14

notification.

**2.36 Vehicle Access.** Caltrans shall have a qualified biologist conduct surveys for emergent vegetation and aquatic animal species PRIOR to vehicles allowed into the stream. Results, including negative findings, shall be submitted to the Department PRIOR to impacts. Department concurrence must be received PRIOR to the commencement of any work in a wetted stream.

**2.37 Vehicle Maintenance.** Any equipment or vehicles driven and/or operated adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.

### **Pollution, Litter and Cleanup**

**2.38 Pollutants and Debris.** No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products or any other substances which could be hazardous to aquatic life, or other organic or earthen material from any logging, construction, or other associated project related activity shall be allowed to contaminate the soil and/or enter into or placed where it may be washed by rainfall or runoff into, waters of the State. Any of these materials, placed within or where they may enter a stream, by Caltrans or any party working under contract, or with the permission of Caltrans, shall be removed immediately. When project related activities are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

**2.39 Pollution Compliance.** Caltrans 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 Caltrans to insure compliance.

**2.40 Pollution Prevention.** Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream/lake shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak. Clean up equipment such as extra boom, absorbent pads, skimmers, shall be on site prior to the start of project related activities. No equipment maintenance shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow.

**2.41 Pollution Clean-up.** The clean-up of all spills shall begin immediately. The Department shall be notified immediately by Caltrans of any spills and shall be consulted regarding clean-up procedures.

**2.42 Trash Receptacles.** Caltrans shall install and use fully covered trash receptacles with secure lids (wildlife proof) that contain all food, food scrapes, food wrappers, beverage and other miscellaneous trash generated by work force personnel.

### **3. Compensatory Measures**

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 10 of 14

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each habitat enhancement measure listed below to compensate for 0.50 acres of temporary impacts.

### **Exotic Species Removal and Control**

**3.1 Wildland Pest Species.** Caltrans, whenever possible, shall remove any non-native vegetation *Arundo* (*Arundo donax*), tamarisk (*Tamarix* spp.), eucalyptus-immature 3" < (*Eucalyptus* spp.), pepper tree (*Schinus molle*), castor bean (*Ricinus communis*), African umbrella sedge (*Cyperus eragrostis*, *Nutsedge*), mustards (*Brassica* spp.), tree tobacco (*Nicotiana glauca*), periwinkle (*Littorina* spp.), and pampas grass (*Cortaderia selloana*) from the work area and shall dispose of it in a manner and a location which prevents its reestablishment.

**3.2 Arundo donax.** Giant cane (*Arundo*), if present, shall be cut to a height of 6 inches or less, and the stumps painted with an herbicide approved for aquatic use within 5 minutes of cutting. Herbicides shall be applied at least three times during the period from May 1<sup>st</sup> to October 1<sup>st</sup> to eradicate these plants. Where proposed methods for removing giant cane deviate from this procedure, Caltrans shall present the alternate methods, in writing, to the Department for review and approval, prior to implementation.

**3.3 Exotics Removal and Control Mechanisms.** Whenever possible, invasive species shall be removed by hand or by hand-operated power tools rather than by chemical means. Where control of non-native vegetation is required within the bed, bank, or channel of the stream, the use of herbicides is necessary, and there is a possibility that the herbicides could come into contact with water, Caltrans shall employ only those herbicides, such as Rodeo/Aquamaster (Glyphosate), which are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, which are approved for aquatic use.

### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

**4.1 Final Construction Mitigation and Monitoring Report.** Permittee shall provide a final construction report to DFG no later than two weeks after the project is fully completed. The construction report at a minimum shall contain pre-project photographs, total amount of area impacted post project, post-project photographs, and detailed habitat restoration (as detailed in section 3 above).

### **CONTACT INFORMATION**

Any communication that Permittee or DFG submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or DFG specifies by written notice to the other.

#### **To Permittee:**

California Department of Transportation  
Mr. Ron Kosinski  
100 S. Main Street,

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 11 of 14

Los Angeles, California, 90012  
Tel. (213) 897-0098 Fax. (213) 897-2593

To DFG:

Department of Fish and Game  
South Coast Region  
4949 Viewridge Avenue  
San Diego, California 92123]  
Attn: Lake and Streambed Alteration Program  
Notification #1600-2010-0081-R5

### **LIABILITY**

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute DFG's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

### **SUSPENSION AND REVOCATION**

DFG may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before DFG suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before DFG suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused DFG to issue the notice.

### **ENFORCEMENT**

Nothing in the Agreement precludes DFG from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects DFG's enforcement authority or that of its enforcement personnel.

### **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 12 of 14

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

### **AMENDMENT**

DFG may amend the Agreement at any time during its term if DFG determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by DFG and Permittee. To request an amendment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

### **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter DFG approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

### **EXTENSIONS**

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to DFG a completed DFG "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). DFG shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

Notification #1600-2010-0081-R5  
Streambed Alteration Agreement  
Page 13 of 14

### EFFECTIVE DATE

The Agreement becomes effective on the date of DFG's signature, which shall be: 1) after Permittee's signature; 2) after DFG complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at [http://www.dfg.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html).

### TERM

This Agreement shall expire on November 11, 2011 unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

### EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

Exhibit A: "Natural Environmental Study Culvert Replacement on US 101 from west of Punta Gorda undercrossing to east of Rincon Point north of the La Conchita community in Ventura County 07-VEN-101-PM 41.9/42.1 EA 17480" dated March 2009.

Exhibit B: "Categorical Exemption Determination Form" dated March 05, 2009.

Exhibit C: "Photo Journal" includes 8 pages of detailed photographs.

### AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

### AUTHORIZATION

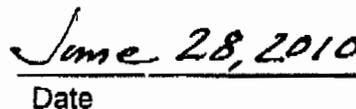
This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify DFG in accordance with FGC section 1602.

### CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR California Department of Transportation

  
Mr. Ron Kosinski

  
Date



**DEPARTMENT OF THE ARMY**  
**LOS ANGELES DISTRICT, CORPS OF ENGINEERS**  
**VENTURA FIELD OFFICE**  
**2151 ALESSANDRO DRIVE, SUITE 110**  
**VENTURA, CALIFORNIA 93001**

June 21, 2010

REPLY TO

ATTENTION OF:

Regulatory Division

**DEPARTMENT OF THE ARMY NATIONWIDE PERMIT AUTHORIZATION**

Stephanie White  
California Department of Transportation  
District 7  
100 South Main Street, MS 16-A  
Los Angeles, California 90012

Dear Ms. White:

This is in reply to your application (File No. SPL-2010-00302-TS) dated March 11, 2010, for a Department of the Army Permit to discharge fill onto waters of the U.S., in association with the U.S. 101 Culvert Replacement project in the unincorporated community of La Conchita, Ventura County, California.

Based on the information you have provided, the Corps of Engineers has determined that your proposed activity complies with the enclosed terms and conditions of Nationwide Permit No. 3 [Maintenance] and Nationwide Permit No. 33 [Temporary Construction, Access, and Dewatering], as described in Enclosure 1.

Specifically, you have requested authorization to:

1. Replace two existing concrete box culverts (Location 1: 7' x 4'; Location 2: 6' x 4') with 12' x 6' concrete box culverts, and reconstruct existing wingwalls to accommodate the larger box culverts.
2. Remove and replace approximately 240 cubic yards (cy) existing half-ton rock revetment along the beach at the culvert outlets following completion of culvert and wingwall construction. This work would include approximately 90 cy of excavation and backfill at the toe of the revetment to key in the rock.
3. Construct a temporary access ramp to the beach. The access ramp would be

approximately 60 feet long and 30 feet wide and constructed of earthen material. This ramp would be used by heavy equipment (backhoe, loader, truck) to repair the rock revetment and the culvert outlets.

4. Temporarily impact approximately 9,200 square feet on the beach to complete items described above.

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

**Special Conditions:**

1. The Permittee shall notify the Corps of Engineers Regulatory Division of the date of commencement of construction not less than five (5) calendar days prior to commencing work, and shall notify the Corps of the date of completion of operations at least five (5) calendar days prior to such completion.
2. The Permittee shall provide a copy of this permit to all Caltrans field staff, contractors, subcontractors, and equipment operators. Copies of this permit shall be readily available at the work site at all times during periods of active work, and shall be presented to any Corps personnel upon request.
3. This Corps permit does not authorize you to take any threatened or endangered species or adversely modify designated critical habitat. In order to legally take a listed species, separate authorization under the Endangered Species Act (e.g. Section 10 permit, or a Biological Opinion (BO) under Section 7, with "incidental take" provisions with which you must comply) is required.
4. This permit does not authorize you to take any migratory birds pursuant to the Migratory Bird Treaty Act. Vegetation shall not be removed from 15 February to 31 August to avoid impacts to nesting birds unless the results of a pre-project bird survey by a qualified biologist indicates no nesting birds are present in the project area. Pre-project surveys shall be conducted within two weeks of the proposed vegetation removal. Survey results shall be submitted to the Corps of Engineers Regulatory Division prior to construction activities in waters of the U.S. (electronic mail, facsimile, standard mail, are acceptable). If nesting birds are present, no work shall occur until the young have fledged and would no longer be impacted by the project.
5. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Regulatory Division

Staff (Theresa Stevens at 805- 585-2146) and Corps' Archeology Staff (Steve Dibble at 213-452-3849, or John Killeen at 213-452-3861) within 24 hours. The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume work in the area surrounding the potential cultural resources until the Corps re-authorizes project construction, per 36 C.F.R. Section 800.13.

6. Prior to initiating construction in waters of the U.S., the Permittee shall clearly mark the work area limits with flagging or similar measures to ensure mechanized equipment and personnel do not enter preserved waters of the U.S., special aquatic sites and adjacent riparian areas for the duration of construction activities in or adjacent to waters of the U.S. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial compensatory mitigation requirements.
7. No debris, soil, sand, bark, slash, sawdust, rubbish, cement or washings thereof, asphalt, oil or petroleum products, or any other material that may be harmful to fish or wildlife, that results from construction activities shall be allowed to enter or be placed where it may be washed by rainfall or runoff into waters of the U.S. When construction activities are completed, all excess materials, and/or debris shall be removed from the work area to an approved off-site disposal area, outside of waters of the U.S.
8. Exotic and invasive plant species removed during construction activities shall be disposed at an approved off-site location, outside waters of the U.S. Target species include but are not limited to: giant reed (*Arundo donax*), castor bean (*Ricinus communis*), salt cedar (*Tamarisk* sp.), tree tobacco (*Nicotiana glauca*), yellow star thistle (*Centaurea solstitialis*), artichoke thistle (*Cynara cardunculus*), pampas grass (*Cortaderia selloana*), fountain grass (*Pennisetum setaceum*), and cocklebur (*Xanthium strumarium*).
9. Staging and storage areas for equipment and materials shall be located in uplands and where possible, a minimum of 100 feet from waters of the U.S. Storage areas located less than 100 feet from waters shall be specifically authorized by the Corps, and these areas shall be shown on construction plans.
10. Temporary fills in special aquatic sites are not allowed unless specifically authorized by the Corps of Engineers Regulatory Division. Following completion of the construction activity, temporary fills must be entirely removed to an upland location, outside waters of the U.S., and the affected area must be restored to the pre-project condition.

11. The Corps project manager shall be notified of any accidental spill within 12 hours of detection. Notification may be in the form of an electronic mail message, telephone message or direct communication. Notification shall include the reason for the spill, the exact location of the spill, the type and approximate quantity of the materials spilled, and the measures taken to control and clean up the spilled materials.

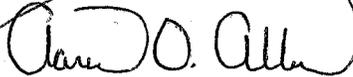
This letter of verification is valid through **March 18, 2012**. All nationwide permits expire on March 18, 2012. It is incumbent upon you to remain informed of changes to the nationwide permits. If the Corps of Engineers modifies, reissues, or revokes any nationwide permit at an earlier date, we will 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 Theresa Stevens of my staff at 805-585-2146 or via e-mail at [theresa.stevens@usace.army.mil](mailto:theresa.stevens@usace.army.mil).

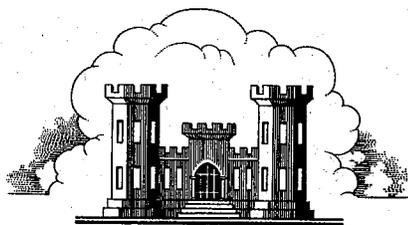
Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,



Aaron O. Allen, Ph.D.  
Chief, North 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-2010-00302-TS*

Name of Permittee: *California Department of Transportation, District 7*

Date of Issuance: *June 21, 2010*

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: Theresa Stevens, Ph.D.  
2151 Alessandro drive, Suite 110  
Ventura, CA 93001

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



# COUNTY OF VENTURA

Resource Management Agency  
Planning Division

800 South Victoria Avenue, L1740  
Ventura, CA 93009  
(805) 654-2488

Date Issued:06/04/2010

## ZONING CLEARANCE (COASTAL)ZC10-0461 Assessor's Parcel No.:

---

**PROPERTY OWNER:**

SOUTHERN PACIFIC TRA

**Mailing Address**

65 MARKET ST. RM 846  
SAN FRANCISCO CALIF

94105

Telephone:

**APPLICANT:**

SAMER MOMANI

**Mailing Address**

CALTRANS, DISTRICT 7  
100 SOUTH MAIN ST.  
LOS ANGELES CA.

90012

Telephone: 213-897-2777

---

**PROPOSED USE/STRUCTURES**

1st - Principal Upgrade (2) drainage culverts  
1st - Accessory

2nd - Principal  
2nd - Accessory

3rd - Principal  
3rd - Accessory

**EXISTING PRINCIPAL USE/STRUCTURES**

101 Freeway

**ZONING CLEARANCE TYPE**

Construction

**EXISTING ACCESSORY USE/STRUCTURES****PROJECT DESCRIPTION:**

The California Department of Transportation is requesting a new coastal zoning clearance to replace the expired clearance (ZC09-0938: issued 10/28/2009) for drainage upgrades for two culverts crossing underneath State Route 101 near the community of La Conchita in Ventura County.

The California Department of Transportation is proposing a drainage upgrade for two culverts located at Postmile 41.89 and 41.94 along State Route 101.

The project will replace "7 feet wide and 4 feet deep" and "6 feet wide and 4 feet deep" concrete box culverts with two new "12 feet wide and 6 feet wide" concrete box culverts. The project will also include replacing approximately 270 feet of existing Type 50 with Type 60s concrete barrier due to excavation requirements in the vicinity of the two concrete box culverts. The culverts will be constructed using a "cut and cover" method to minimize freeway closure during construction. No utility relocations will be required as part of this project.

The project Plans, Specification, and Estimates (PS&E) of the proposed project differs than the previously submitted draft PS&E in the following points:

1. Drainage upgrades at Location 3 (Postmile 42.13) was removed from the project's scope.
2. Structural excavation quantity was updated/corrected from 177 to 2720 cubic yards.
3. Structural backfill quantity was updated/corrected from 60 to 2150 cubic yards.
4. Finished structural concrete quantity was updated/corrected from 553.4 to 520 cubic yards.
5. Steel reinforcement bars quantity was updated/corrected from 180,030 to 58,500 lbs.

**ZONING CLEARANCE NO. ZC10-0461**

**APN:**

- 6. The wing-walls dimension was updated/corrected from 20-30 feet to 13-16 feet.
- 7. The wing-walls concrete quantity was updated/corrected from 134 to 48 cubic feet.
- 8. Temporary relocation of any utilities will not be required during construction.

The project construction phase is expected to start in May of 2011; to alleviate the need for renewals of zoning clearances within that timeframe, Caltrans is respectfully requesting to have the Zoning Clearance expiration date for the Drainage upgrades extended until June 15th, 2011.

This Zoning Clearance does not permit the extension of the drainage culverts or the associated riprap beyond their existing placement. A Coastal Development Permit is required if the facility is extended seaward. See attached project description and attached plans for details.

This Zoning Clearance was authorized by Winston Wright section manager.

**Site Address:**

**Cross Sts.:** 0.1 miles from carpinteria & 1.5 miles &

**Parent Case No:** ZC09-0938

**Violation No:** , ,

**Number:** N/A

**Legal Lot Status:** Land Division

**Lot Area:** 178596 sf

**Lot Area:** 4.1 acre

**Applicable Zoning:**

**Zoning:** COS-10AC. MIN.

**General Plan:** Open Space(10 Ac. Min.)

**Area Plan:** COASTAL AREA PLAN

**Area Plan Designation:** OS-10AC MIN.

**Split Zoning:**

**Zoning:**

**General Plan:**

**Area Plan:**

**Area Plan Designation:**

**Area Plan Max. Bldg. Coverage:** 7784 sf

**Existing Com. Max. Bldg. Coverage:** 0 sf

**General Plan Max. Bldg. Coverage:** 0 sf

**Maximum Building Coverage for accessory non-habitable structures and decks in rear setback – 40%**

**Cumulative Gross Size Allowed Ministerially**

<b>1st:</b>	<b>Qty:</b>	0
<b>2nd:</b>	<b>Qty:</b>	0
<b>3rd:</b>	<b>Qty:</b>	0

<b>Building Coverage</b>	<b>Existing</b>	<b>Proposed</b>	<b>Combined Total</b>
Prin. Structure(s) sf	0 sf	0 sf	0 sf
Accessory Structure(s) sf	0 sf	0 sf	0 sf
Total sf	0 sf	0 sf	0 sf
% of Bldg. Coverage	0 %	0 %	0 %

**DEVELOPMENT STANDARDS PROPOSED USE/STRUCTURE #1**

**Height:**

**Parking Requirements**

**Principal Dwelling:** 0

**Second Dwelling:** 0

**Farmworker/Animal Caretaker:** 0

**ZONING CLEARANCE NO. ZC10-0461**

**APN:**

Other: 0  
Parking Space Size:  
Parking Configuration:  
Parking Space Surface:  
Driveway Surface:  
Driveway Width:

**SETBACKS FROM LOT LINE OR ROAD EASEMENT**

Front Lot line/Road Easement:  
Rear Lot Line/Road Easement:  
Side Lot Line/Road Easement:  
Side Lot Line/Easement ( Adjacent to a street or Reserve Corner Lot ):  
Irregular Lot:  
Misc.:

**DEVELOPMENT STANDARDS PROPOSED USE/STRUCTURE #2**

**Height:**

**Parking Requirements**

Principal Dwelling: 0  
Second Dwelling: 0  
Farmworker/Animal Caretaker: 0  
Other: 0  
Parking Space Size:  
Parking Configuration:  
Parking Space Surface:  
Driveway Surface:  
Driveway Width:

**SETBACKS FROM LOT LINE OR ROAD EASEMENT**

Front Lot line/Road Easement:  
Rear Lot Line/Road Easement:  
Side Lot Line/Road Easement:  
Side Lot Line/Easement ( Adjacent to a street or Reserve Corner Lot ):  
Irregular Lot:  
Misc.:

**DEVELOPMENT STANDARDS PROPOSED USE/STRUCTURE #3**

**Height:**

**Parking Requirements**

Principal Dwelling: 0  
Second Dwelling: 0  
Farmworker/Animal Caretaker: 0  
Other: 0  
Parking Space Size:  
Parking Configuration:  
Parking Space Surface:  
Driveway Surface:  
Driveway Width:

**SETBACKS FROM LOT LINE OR ROAD EASEMENT**

**ZONING CLEARANCE NO. ZC10-0461**

**APN:**

- Front Lot line/Road Easement:
- Rear Lot Line/Road Easement:
- Side Lot Line/Road Easement:
- Side Lot Line/Easement ( Adjacent to a street or Reserve Corner Lot ):
- Irregular Lot:
- Misc.:

**ADDITIONAL STANDARDS**

**Setbacks Between:** Habitable Structures 10'; Habitable & Non-habitable Structures 6'; Non-habitable Structures 6'  
Other - 0

**Allowed Intrusions into Setbacks:**

- Stairways & balconies, open & unenclosed, - 2.5' front, 4' rear
- Stairways & balconies (Coastal RBH), open & enclosed, - 4' front, 3' rear
- Deck/Porches uncovered, at or below 1<sup>st</sup> floor - 6' front, 3' rear & side
- Chimneys/fireplaces, masonry - 2' into all setbacks, but keep min. 3' side setback
- Architectural Features (e.g. eaves, cornices, canopies, etc.) - 2.5' front, 2' side, 4' rear; min. 2' side/rear setback
- Other - 0

**FEES:** **Calculated Fees: \$335.00 Total Fees: \$335.00**

---

<b>ATTACHMENT(S):</b> ( Y ) Plot/site Plan ( N ) Ordinance Standards ( N ) Compliance Review ( N ) Declaration ( N ) Cross Sections	( N ) Floor Plans ( N ) Permit Conditions ( N ) Elevations ( N ) Removal and Caveats ( N ) Other -
---	--

---

**NOTES:**

1. This Zoning Clearance becomes valid once the fees are paid.
2. This Zoning Clearance will be nullified pursuant to the Zoning Ordinance if the information provided by the applicant was not full, true and correct; it was issued erroneously; or it does not comply with the terms and conditions of the permit originally granting the use.
3. This Zoning Clearance expires within 180 days of its issuance date unless a Building Permit is issued. Once a building permit is issued, construction must commence within 180 days. This Zoning Clearance expires if construction does not commence within 180 days of issuance of a building permit.
4. The property owner is responsible for identifying all property lines and ensuring that all the requirements of this permit are complied with.
5. That authorizations by other County Departments that exceed the allowable limits noted herein do not excuse the property owner from complying with the provisions of this permit. (The stricter provisions apply).
6. The proposed project will not result in the removal of more than 50% of the roof or floor area of a non-conforming structure.
7. By May 15th of each year the property owner shall submit a "verification report" and applicable fees demonstrating to the Planning Director's satisfaction that the farmworker/animal caretaker meets the Zoning Ordinances' applicable employment criteria.
8. If the parcel numbers cited in this permit are within the boundary of a Homeowner's Association, additional review and approval of the project may be required by the HOA's Conditions, Covenants & Restrictions (CC&R's). HOA review and approval is the responsibility of the property owner.

**CONDITIONS:**

**Cond: CON0011424**

This conditions alters condition no. 3 noted above. This Zoning Clearance expires on June 15th, 2011 if the work described herein has not commenced.

**Cond: CON0011422**

Prior to commencing the project, Caltrans (or their agents) must obtain a Floodplain Development Permit from the County of Ventura's Public Works Agency if it is determined to be necessary.

Prior to commencement of project, Caltrans, or their agent, must obtain an Encroachment Permit

**ZONING CLEARANCE NO. ZC10-0461**

**APN:**

and/or a Watercourse Permit from the Watershed Protection District. This requirement may be waived if the District finds it unnecessary.

Cond: CON0011423

This Zoning Clearance does not permit the extension of the drainage culverts or the associated riprap beyond their existing placement. A Coastal Development Permit is required if the facility is extended seaward. See attached project description and attached plans for details.

**DECLARATIONS:**

**BY SIGNING BELOW I CERTIFY THE FOLLOWING:**

- I am the owner of the subject property or I am the authorized agent of the property owner and have his/her permission to obtain this permit.
- I have noted on the attached plot plan all of the following applicable attributes: existing and proposed structures, Protected Trees (Oaks, Sycamores, and any 30+” dia. trees), marshes, wetlands, streams, rivers, landslides, edges and toes of slopes, abandoned or active oil wells, septic systems and leach fields.
- The information provided in this Zoning Clearance and attached plot/site plans, floor plans and elevations are full, true and correct.
- I have been informed that I am responsible for contacting the applicable Homeowners Association or Property Owners Association to ensure compliance with the CC&R's.
- I have reviewed, read and understand the terms, notes and conditions of this permit and as depicted in related attachments, and agree to abide by them and all other provisions of the Ventura County Zoning Ordinance. I further understand that the permit can be nullified for cause as noted above.

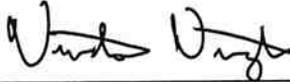


\_\_\_\_\_  
**Applicant Signature**

**FOR OFFICIAL USE ONLY**

**ISSUED BY: Wright, Winston**

**DATE ISSUED: 06/04/2010**



\_\_\_\_\_  
**Signature**

**DRAINAGE FACILITY & WATERWAY  
AGREEMENT**

Mile Post: 382.6. Santa Barbara Subdivision  
Location: La Conchita. Ventura County. California

**THIS AGREEMENT ("Agreement")** is made and entered into as of March 02, 2010, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **CALIFORNIA DEPARTMENT OF TRANSPORTATION**, a California political subdivision to be addressed at 100 S Main Street, MS-6. Los Angeles, California 90012 ("Licensee").

**RECITALS:**

In order to improve drainage conditions the Licensee desires to construct a drainage facility in the vicinity of Licensor's right of way at Mile Posts 382.6 on the Santa Barbara Subdivision, located at or near La Conchita. Ventura County, California (hereinafter the "Premises").

The drainage facilities, improving culverts and adding wingwalls. to be constructed by the Licensee. at Licensee's expense, on the Premises are hereinafter collectively referred to as the "Drainage Facility". The Drainage Facility and Premises are shown on the print dated October 20, 2009, marked Exhibit "A", hereto attached.

The Railroad is agreeable to the Licensee constructing, maintaining and using the Drainage Facility upon the terms and conditions set forth herein.

**AGREEMENT:**

**NOW, THEREFORE, IT IS AGREED** by and between the parties hereto as follows:

**Article 1. LICENSOR GRANTS RIGHT.**

In consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and use the Drainage Facility.

**Article 2. CONSTRUCTION WORK TO BE PERFORMED BY LICENSEE.**

The Licensee, at its sole expense, shall construct the Drainage Facility and perform the work described in the Recitals above and/or described in Exhibit "A".



**Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.**

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B. hereto attached.

**Article 4. DEFERRED CONSTRUCTION.**

The Licensor and Licensee acknowledge that conditions inherent in the Drainage Facility may cause the complete stabilization of Licensor's trackage supported by new cuts or fills to be deferred beyond the construction period, and that Licensor's operation over the roadbed during the seasoning period will impose extraordinary maintenance costs in the event of caving, sliding, slipping, sinking or settling, including damage to rip-rapping or protective work in connection therewith, as well as settlement and consolidation of tracks and ballast, until the seasoning period is complete. Therefore, the Licensee will pay to the Licensor, as a part of the consideration for this Agreement, all that part of the cost and expense of extraordinary maintenance (hereinafter referred to as "Deferred Construction") associated with the Drainage Facility which can be attributed to failure of subgrade, settlement, and consolidation of subballast, or roadbed, or any combination thereof, which are incurred during the period commencing immediately following completion of the work on the Drainage Facility by the Licensee or its contractor and ending five years thereafter. The Deferred Construction costs aforesaid shall include reimbursement of the extra cost, in excess of normal maintenance costs, of maintaining embankments and that portion of said tracks above subgrade in accordance with acceptable maintenance standards, and will include cost of maintaining proper alignment, proper surface and use of ballast and other necessary materials.

**Article 5. ONE-TIME PAYMENT.**

Upon execution and delivery of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Four Thousand Fifty DOLLARS (\$4,050.00)**.

**Article 6. TERM; TERMINATION.**

A. This Agreement shall take effect as of the date first herein written and, unless sooner terminated as set forth in Paragraphs (B) and (C) below, shall continue in full force and effect for so long as the Premises and Drainage Facility shall be used by the Licensee for the purposes set forth herein; provided, however, that if the Licensee shall abandon the use of the Drainage Facility and Premises, or any part thereof, for such purposes, this Agreement and the rights and privileges granted to Licensee herein as to the portion(s) so abandoned shall cease and terminate at the time such portions of the Drainage Facility and Premises are abandoned.

B. If the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith and immediately terminate this Agreement by written notice to Licensee.

C. This Agreement may be terminated by either party, with or without cause, upon six (6) months written notice to the other party. In the event of such notice of termination, the parties shall arrange for either the Drainage Facility to be removed, filled in and graded to accommodate the surrounding grade surface, or to encase the Drainage Facility to the standards and satisfaction of the Licensor.

D. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

**Article 7. IF WORK IS TO BE PERFORMED BY CONTRACTOR.**

If a contractor is to do any of the work performed on the Drainage Facility or Premises (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's Premises without first executing the Contractor's Right of Entry Agreement.

**Article 8. INSURANCE.**

A. The Licensee, at its expense, shall obtain the insurance described in Exhibit C, hereto attached. The Licensee will also provide to the Licensor a Certificate of Insurance issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

Union Pacific Railroad Company is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the Drainage Facility located on Railroad's right of way between Mile Posts 382.6 on the Santa Barbara Subdivision, located at or near Ventura, Ventura County, California.

B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit C shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Licensor.

C. All insurance correspondence shall be directed to:

Folder No.: 2582-45  
Director-Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street STOP 1690  
Omaha, Nebraska 68179-1690

**Article 9. SPECIAL PROVISION – RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES.**

A. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit 'B'. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore.

B. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

C. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

D. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.

E. Arrangements for flagging are to be made at least Ten (10) days in advance of commencing work, with the Railroad Manager of Track Maintenance.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

By: Joan Preble  
Joan Preble  
Manager Contracts

**CALIFORNIA DEPARTMENT OF  
TRANSPORTATION**

By: Lowell W. Anderson  
Printed Name: LOWELL W. ANDERSON  
Title: RAILROAD COORDINATOR - D/7

**EXHIBIT B**  
**TO DRAINAGE FACILITY & WATERWAY AGREEMENT**  
**TERMS AND CONDITIONS**

**Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

- a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment. It shall be Licensee's sole obligation to obtain such additional permission, license and grants necessary on account of any such existing rights.

**Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.**

- a) The Licensee shall submit the design of the Drainage Facility to the Licensor for Licensor's prior approval. All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Drainage Facility shall be done to the satisfaction of the Licensor and in substantial conformance to the specifications, notes and cross sections shown on Exhibit A.
- b) The Licensee, at its sole expense, shall operate, maintain and use the Drainage Facility in a good and safe condition and shall keep the Drainage Facility free and clear of debris, sediment or obstructive matter which may or could interfere with or impede the proper functioning of the Drainage Facility.
- c) The Licensee shall not cross any trackage of Licensor with any vehicles except at existing, open public crossings. The Drainage Facility shall be installed by an approved method of construction, or if by the jacking and boring method, during jacking operations, the Licensee agrees to fill voids created between the embankment and pipe by pressure grouting. The Licensee shall provide adequate barrier protection around the entire excavation area.
- d) During the performance of excavating, constructing and maintaining the Drainage Facility, or any part thereof, the Licensee shall not excavate near the toe of the track embankment of the trackbed and will protect the trackbed in the design, construction and maintenance of the Drainage Facility. In the event of any settlement of the Licensor's embankment caused by excavation of the Drainage Facility, the Licensee, at its sole expense, shall restore Licensor's embankment to its proper grade and dimensions.
- e) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Drainage Facility where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Licensor and then the work shall be

done to the satisfaction of the Vice President-Engineering Services or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Drainage Facility, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expense incurred by the Licensor in connection therewith, which expense shall include all assignable costs.

**Section 3. NOTICE OF COMMENCEMENT OF WORK.**

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Drainage Facility. All such work shall be prosecuted diligently to completion.

**Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.**

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Drainage Facility, including any and all expense which may be incurred by the Licensor in connection therewith for inspection, flagging, or otherwise.

**Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF DRAINAGE FACILITY.**

a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce or encase the Drainage Facility, or move all or any portion of the Drainage Facility to such new location, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

b) All the terms, conditions and stipulations herein expressed with reference to the Drainage Facility on property of the Licensor in the location hereinbefore described shall, so far as the Drainage Facility remains on the property, apply to the Drainage Facility as modified, changed or relocated within the contemplation of this section.

**Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.**

The Drainage Facility and all parts thereof within and outside of the limits of the property of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

**Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

a) Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and will commence no work on the right of way until all such protection or relocation has been accomplished.

b) In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Licensor's property, and (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property. Licensee shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Licensor's property or a customer or user of services of the fiber optic cable on Licensor's property.

**Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.**

a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Drainage Facility, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Drainage Facility, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Drainage Facility or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property

**Section 9. RESTORATION OF LICENSOR'S PROPERTY.**

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Drainage Facility, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence

and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

**Section 10. INDEMNITY.**

a) As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and (b) damage to or loss or destruction of property whatsoever (including Licensee's property and adjacent property and crops, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

b) To the extent it may lawfully do so, the Licensee agrees to assume the risk of loss or damage to the Drainage Facility and to indemnify and hold harmless the Licensor from any Loss which is due to or arises from (i) the installation, construction, maintenance, repair, reconstruction, removal, use or existence of the Drainage Facility and appurtenances thereto, or any part thereof, including any break in the Drainage Facility wall or structure or any leakage, flow of water or flooding from the Drainage Facility, or (ii) Licensee's failure to comply with or perform any of the terms and conditions set forth in this Agreement, except to the extent that the Loss is caused by the sole and direct negligence of the Licensor; provided, however, that the foregoing indemnification provisions shall not apply to any claims, damages, costs and expenses that have been fully compensated for through the insurance required of Licensee in Exhibit C, or required of Licensee's contractor under the separate Contractor's Right of Entry Agreement.

c) Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

**Section 11. WAIVER OF BREACH.**

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

**Section 12. AGREEMENT NOT TO BE ASSIGNED.**

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

**Section 13. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 12 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

## EXHIBIT C

### Union Pacific Railroad Insurance Requirements

Licensee shall, at its sole cost and expense, (except for Railroad Protective Liability Insurance required in Paragraph D), procure and maintain in effect during the term of this Agreement the following insurance coverage. Licensee shall procure and maintain, or cause to be procured and maintained by its contractor, at its sole cost and expense, Railroad Protective Liability Insurance coverage described in Paragraph D during any period of construction, maintenance, repair or reconstruction work.

**A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

**C. Workers Compensation and Employers Liability insurance.** Coverage must include but not be limited to:

- Licensee's and/or Licensee's contractor's statutory liability under the workers' compensation laws of the state where the Utility/Facility is located.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee, and/or Licensee's contractor, is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

**D. Railroad Protective Liability insurance.** Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Licensor before the work may be commenced and until the original policy is forwarded to Licensor.

**E. Umbrella or Excess insurance.** If Licensee, and/or Licensee's contractor, utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

### **Other Requirements**

**F.** All policy(ies) required above (except worker's compensation and employers liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Licensor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Licensor's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

**G.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

**H.** Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

**I.** Prior to commencing any work, Licensee, and/or Licensee's contractor, shall furnish Licensor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

**J.** All insurance policies must be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Utility is located.

**K.** The fact that insurance is obtained by Licensee, and/or Licensee's contractor, or by Licensor on behalf of Licensee, and/or Licensee's contractor, will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.