

Appendix D

Agency Consultations

CALIFORNIA COASTAL COMMISSION

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January 4, 2016

C.D. Janke
Captain, U.S. Navy
Commanding Officer
Naval Base Ventura County
311 Main Road, Suite 1
Point Mugu, CA 93042-5033

Subject: Negative Determination ND-0039-15 (Damage Assessment Restoration Planning and Wetland Restoration at Mugu Lagoon, Naval Base Ventura County)

Dear Captain Janke:

The Coastal Commission staff has reviewed the above-referenced negative determination. The Navy proposes to implement a wetland restoration project to compensate for interim losses of wetland resources associated with a May 2011 air tanker crash into Mugu Lagoon at the end of Runway 21 and Taxiway Alpha at Naval Base Ventura County (NBVC). The Navy states that this negative determination constitutes an after-the-fact report of the accident and clean-up actions as well as for the proposed compensatory restoration project. Emergency response crews were able to limit crash, fuel, debris, and fire impacts to an area of approximately 79 acres of open water and wetlands. Cleanup, debris removal, and excavation of contaminated sediments continued for many months afterward. A multi-agency Natural Resource Damage Assessment (NRDA) team conducted an initial assessment study, a benthic macro-invertebrate study, and a habitat equivalency analysis (HEA), the latter of which quantified compensatory restoration goals.

The negative determination states that:

Due to the length of time between the initial incident and the present, primary restoration in the form of natural recovery has occurred and evidence of the incident at the crash site is nearly non-existent. However, due to the determination of damages at the site, the NRDA process determined that compensatory restoration is required. Compensatory restoration is action taken to compensate for the interim losses of natural resources and/or services pending recovery. As a result of the HEA process, compensatory restoration of 3 to 4.5 acres of wetlands was calculated to compensate for the loss of biological services over time. The proposed project addresses that restoration goal.

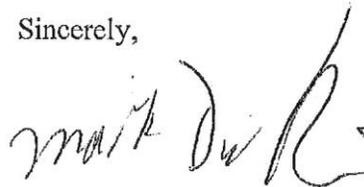
The Navy proposes to implement the wetland restoration project immediately southeast of the intersection of Laguna Road and South Mugu Road at NBVC. The project includes installation of two 60-foot-long, 8-foot x 8-foot pre-cast culverts underneath Laguna Road to connect an

existing low-functioning wetland site with an existing tidally-influenced drainage channel. The Navy would also grade and contour two new meandering 3-foot-wide and 1-foot-deep drainage swales from the road culvert terminus east across the wetland parcel. The two swales are currently planned to be 655 and 1,100 feet long respectively. Grading of the swales and culvert installation would temporarily affect 1.8 acres of the site but the project would reestablish tidal flows across the three-acre wetland site. While temporary impacts to wetland vegetation from trampling during construction are also expected to occur, the project would improve water quality on the site, improve habitat for fish and wading birds, and diversify and increase the site's population of benthic marine invertebrates and tidal vegetation. Project construction is expected to last eight weeks, and biological monitoring, maintenance, and adaptive management would extend over five years.

The project includes construction best management practices, an erosion control plan, and a storm water pollution prevention plan in order to minimize construction impacts at and adjacent to the project site. The Navy reports that Mugu Lagoon's wetlands are dominated by estuarine coastal salt marsh that provides food, nesting, breeding, and nursery grounds for numerous species of fish, wildlife, and plants. Also present are federal and state listed special status species, including the light-footed Ridgway's rail, Western snowy plover, Belding's savannah sparrow, and California least tern. The Navy states that while these listed species have not been recorded at the project site, they are present within one mile of the site and that Belding's savannah sparrow has been observed at a similar restoration site across Laguna Road. The restored wetland is expected to provide foraging habitat for Belding's savannah sparrow, Ridgway's rails, and California least tern. No impacts to listed species are anticipated as project construction will occur outside the nesting and breeding season.

In conclusion, the Commission staff **agrees** that the proposed wetland restoration project adjacent to Mugu Lagoon will not adversely affect coastal resources. We therefore **concur** with your negative determination made pursuant to 15 CFR 930.35 of the NOAA implementing regulations. Please contact Larry Simon at (415) 904-5288 should you have any questions regarding this matter.

Sincerely,



(fdr)

CHARLES LESTER
Executive Director

cc: CCC – South Central Coast District
Deb McKay, Navy Region Southwest



DEPARTMENT OF THE NAVY
NAVAL BASE VENTURA COUNTY
311 MAIN ROAD SUITE 1
POINT MUGU, CA 93042-5033

IN REPLY REFER TO:

5090

Ser N0000CV/1211

03 DEC 15

Mr. Mark Delaplaine
Federal Consistency Supervisor
California Coastal Commission
45 Fremont Street, Suites 1900 & 2000
San Francisco, CA 94105-2219

Dear Mr. Delaplaine:

SUBJECT: NEGATIVE DETERMINATION FOR DAMAGE ASSESSMENT
RESTORATION PLANNING FOR 18 MAY 2011 OMEGA AIR TANKER
CRASH AT NAVAL BASE VENTURA COUNTY, POINT MUGU, CA

The Navy is submitting this Coastal Consistency Negative Determination (CCND) for Damage Assessment Restoration Planning at Naval Base Ventura County in Point Mugu, CA. The proposed project assesses the damages resulting from the subject air tanker crash into Mugu Lagoon, describes the clean-up and primary restoration that has occurred and evaluates plans for compensatory restoration for the period of time during which wetland habitat values were lost.

This submittal is in compliance with Section 930.35 (d) of the National Oceanic and Atmospheric Administration (NOAA) Federal Consistency Regulations (15 CFR 930). The Navy has determined that the proposed action would have no effect to coastal resources for the reasons identified in the CCND.

The Navy requests your concurrence on this proposed project. When completed, email a letter of concurrence to Ms. Deb McKay, Region NEPA Coordinator, at deborah.mckay@navy.mil. If you have any questions or need further information, please contact Ms. Deb McKay at (619) 532-2284.

Sincerely,

C. D. JANKE
Captain, U.S. Navy
Commanding Officer

Enclosure: 1. Coastal Consistency Negative Determination

Coastal Consistency Negative Determination

In accordance with the Federal Coastal Zone Management Act of 1972 as amended, Section 307c(1), the United States Department of the Navy (DoN) has determined that the proposed project, Damage Assessment Restoration Planning for Naval Base Ventura County (NBVC) Point Mugu, will not affect the resources or uses of the coastal zone. Therefore, the Navy has concluded that a Coastal Consistency Determination is not required and is requesting your concurrence with this Coastal Consistency Negative Determination (CCND) in compliance with the Ocean and Coastal Resource Management regulations (15 CFR 930.35).

A Notice of Intent to Conduct Restoration Planning and To Prepare a Draft Restoration Damage Assessment Environmental Assessment (DARP/EA) was published in the Federal Register on July 17, 2015 and in the Ventura County Star newspaper on July 24-26, 2015 and solicited comments for 30 days. No comments were received. The DARP/EA addresses the injury to natural resources that occurred, assesses the resulting natural resource damages and evaluates the potential environmental impacts from two action alternatives and the no action alternative proposed to compensate for natural resource damages. The Draft DARP/EA will be made available for public review and comment in November and the public will have 21 days to review.

BACKGROUND

Naval Base Ventura County (NBVC) Point Mugu is located along the Pacific Coast in Ventura County between Oxnard and Point Mugu State Park. NBVC operates an airfield with two runways and a 36,000 square mile sea test range extending more than 180 nautical miles seaward from shore. NBVC consists of 4,490 acres of which approximately 2,000 acres are developed. It also includes Mugu Lagoon, the largest salt marsh estuary in Southern California. Mugu Lagoon is at the terminus of the Calleguas Creek watershed and includes approximately 2,100 acres of wetland habitat largely composed of estuarine coastal salt marsh. It provides food, nesting, sheltering, breeding, and nursery grounds for numerous species of fish, wildlife, and plants, including federally listed special status species. See Figure 1 for vicinity map.

On the evening of May 18, 2011, a Boeing K707 aerial refueling tanker, carrying approximately 10,000 gallons of jet fuel, operated by Omega Air, Inc., crashed during take-off on Runway 21 into Mugu Lagoon at the end of Point Mugu Taxiway Alpha at NBVC Point Mugu. Spill response crews protected most of the lagoon and were able to limit crash impacts to an area of approximately 79 acres of open water and wetlands. The crash scattered plane debris scoured tracks into the marsh, and left the remaining fuselage partially buried in mudflats. A Unified Command (UC) was instituted immediately following the incident that consisted of staff from NBVC Point Mugu, California Department of Fish and Wildlife Office of Spill Prevention and Response (CDFW-OSPR), U.S. Coast Guard, U.S. Fish and Wildlife Service (USFWS) and the aircraft owner, Omega Air, Inc. The UC oversaw the emergency response, spill containment and debris clean-up operations. On the day of the incident, darkness, fire, and a high tide limited actions to control and document fuel spread that evening, permitting initial movement of fuel through multiple portions of the estuary away from the crash site toward the ocean. See Figure 2 for crash site boundary location and photo.

Response actions continued on May 19, 2011 and were more extensive and included installation of sandbags at various culverts to reduce further transport of fuel through Mugu Lagoon and surveys to identify the presence of fuel, debris and any oiled wildlife. Dead biota observed during the initial response included crabs and snails within the areas closest to the crash and subsequent fire site. As a relatively light jet fuel, JP-8 evaporated from the water column in a fairly short time, but cleanup and excavation of contaminated sediment involving heavy machinery continued for many months.

Pursuant to the Oil Pollution Act (OPA) of 1990 (33 U.S.C. 2701 et seq.), the Natural Resources Damage Assessment (NRDA) process was initiated by the Navy. Since the incident occurred on Navy land and impacted natural resources managed by the Navy, the U.S. Navy (acting through Commander Navy Region Southwest) became the lead NRDA Trustee. Other trustees include: USFWS (due to the presence of federally listed species in the area) and CDFW-OSPR (due to their oil response and prevention role). The Trustees invited Omega Air, Inc. as the responsible party (RP), to conduct a cooperative assessment and codified roles and responsibilities in a NRDA Memorandum of Agreement (MOA) on January 18, 2012. Subsequently, the Trustees collected and analyzed data; determined that certain conditions had been met as required under the law; and decided to quantify the injuries to natural resources and to develop a restoration plan to address injuries resulting from the crash. The purpose for the restoration planning effort in the DARP/EA is to further document the injuries to natural resources and to determine the need for, type of, and scale of compensatory restoration. See Figure 3 for a map of the injury impact areas.

The air tanker crash and subsequent fire, oil spill, and cleanup action is known to have impacted aquatic organisms, vegetation, birds, wildlife, geologic resources, and hydrology. The incident exposed these resources to oil, metals, and contaminants of potential concern. The use of heavy equipment to remove debris and sandbags to contain the spill and fire retardant also caused injury to the natural resources and services of the site. Although emergency response actions were initiated soon after the spill, the nature of the incident (fire, oil spill, and physical disturbance) and the sensitivity of the environment precluded the complete prevention of injuries to natural resources; and the response actions did not address all injuries resulting from the incident.

As mentioned previously, the NRDA team took part in several activities to address the impacts from the plane crash. First was removal of plane debris. Then, the team conducted an Initial Assessment Study of the threats to human health and the environment which resulted in confirmation of contaminated sediment and a requirement to excavate the sediments to remove contamination and replace with clean wetland-consistent sediment. Prior to sedimentation removal, the team initiated a benthic macro-invertebrate study to provide a scientific and quantifiable indicator of damage to ecosystem services. Finally, the Trustees completed a habitat equivalency analysis (HEA) to quantify compensatory restoration goals. Due to the length of time between the initial incident and the present, primary restoration in the form of natural recovery, has occurred and evidence of the incident at the crash site is nearly non-existent. However, due to the determination of damages at the site, the NRDA process determined that compensatory restoration is required. Compensatory restoration is action taken to compensate for the interim losses of natural resources and/or services pending recovery. As a result of the HEA process, compensatory restoration of 3 to 4.5 acres of wetlands was calculated to compensate for the loss of biological services over time. The proposed project addresses that restoration goal.

PROJECT DESCRIPTION

Although there are two proposed restoration project site being evaluated in the DARP/EA, the preferred restoration project is to install two culverts under Laguna Road to connect an existing wetland with an existing tidally-influenced drainage channel. The effort involves installing two 60-foot (ft) long 8-ft x 8-ft x 8-ft pre-cast culverts under an existing asphalt paved road. The project would also grade and contour two new meandering 3-ft wide and 1-ft deep drainage swales from the road culvert terminus east across the adjacent wetland parcel. The swales are conceptually planned to be 655-ft long and 1,100-ft long respectively. Including 20-ft wide disturbance areas along the full width of the construction, maximum disturbance would be 1.8 acres but would reestablish tidal flows across 3.0 acres of wetlands. The action would in turn improve the system's water quality, improve habitat for the site's fish and wading birds, help diversify the population of the site's benthic marine invertebrates, and increase the site's tidal plant populations. This project would not offer NBVC any mitigation banking credits because the site already has low to moderate quality wetland habitat and requires only limited construction. See Figure 4 for aerial of the two proposed alternative sites and Figure 5 for a map of the preferred site at Laguna Road.

If approved, this project would be implemented after funding is secured and after NBVC performs technical studies including biological resource surveys for threatened and endangered species, habitat surveys, and a wetland delineation for the project site. Permitting required prior to construction would include a Clean Water Act Section 404 and 401 permit. No Endangered Species Act Section 7 consultations are expected to be required as the site is not known to support any endangered species. Specific required construction tasks would include: asphalt cutting and removal, soil excavation, channel contouring, culvert and pipe placement with a crane, backfilling soil, gravel, and riprap, compacting soil, and repaving the asphalt road. A small amount of excess sediment would be trucked to the Simi Valley Landfill and Recycling Center, an approved upland disposal facility. It is estimated that ten construction workers and two biological monitors would be required to perform the required work, which would last approximately 8 weeks. After construction it is estimated that biological monitoring and maintenance and adaptive management would be required for five years. Maintenance and culvert inspection would help ensure that the culverts remain open and functional and free flows continue. Most years a mere visual inspection will be required but occasionally, heavy equipment may be required from the roadside to reach into the culverts and clear them of debris and soil.

EFFECTS ANALYSIS

As defined in Section 304 of the CZMA, the term "coastal zone" does not include "lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government." NBVC Point Mugu, including Mugu lagoon, is owned and managed by the Navy and, therefore, is excluded from the coastal zone. The Navy recognizes that Federal actions on land excluded from the coastal zone may affect uses and resources within the coastal zone. Accordingly, the Navy analyzed the impacts of the proposed project on the coastal zone by looking at reasonable foreseeable, direct and indirect effects on the coastal uses or resources. Also analyzed were the relevant management program enforceable policies, and the Coastal Resources Planning and Management Policies (CRPMP).

Emergency response actions in 2011 were conducted under Army Corps of Engineer's Regional General Permit number 63 and included notification to all appropriate resource agencies, including the federal consistency program manager for the California Coastal Commission. This negative determination constitutes an after-the-fact report of the accident and clean-up actions as well as for the proposed compensatory restoration project.

Public Access (CRPMP Section 30210 *et seq.*) and Recreation (CRPMP Sections 30220 *et seq.*)

The proposed project would occur within the boundaries of NBVC Point Mugu where access is controlled and restricted to military personnel, Department of Defense employees and retirees, authorized contractors and official visitors. There is no public access to the project site and no public recreation opportunities located within the project site. There are public beaches up and down coast of NBVC Point Mugu, including Point Mugu State Park down coast from NBVC Point Mugu. There are no changes to access or recreational opportunity for those locations as a result of the proposed project.

Therefore, there would be no effect to public access and recreation.

Marine Environment (CRPMP Sections 30230 *et seq.*)

There are 2,139 acres of wetlands on NBVC Point Mugu representing 48 percent of the total area of the installation. The largest body of water on NBVC is Mugu Lagoon which was impacted by the air tanker crash and subsequent fire and emergency response and clean up actions. The proposed restoration site is located within the same saltmarsh wetland complex but away from the crash site. The wetlands are jurisdictional and, as such, will require an Army Corps of Engineer permit prior to restoration activities. The proposed project would temporarily impact up to 1.8 acres of wetlands during construction of the culverts and grading of the swales. To minimize the potential for impacts (e.g., an increase in turbidity), sediment fences would be installed during construction activities. In addition, the following measures would be implemented: preventing unnecessary discharge of sediments into jurisdictional wetlands and waters by place weed-free wattles at the project site perimeter, as close to the work site as possible; use sand bags, tightly butted, in one row; use silt screens as close to the work as possible in the instance that insufficient space exists between the project and jurisdictional wetland; for placement of wattles or sand bags; rubber-wheeled vehicles will be used to work in jurisdictional wetlands (tracked vehicles or other types of vehicles that kick-up sediments are not allowed); equipment would be clean and free of weed species and mud before entering the jurisdictional wetland; and matting, boards, or other plate-like structures placed in the pathway of vehicles to minimize soil damage.

At NBVC Point Mugu, Mugu Lagoon is also part of the Laguna Point to Latigo Point Area of Special Biological Significance (ASBS), which is located along the coast and in offshore waters in both Los Angeles and Ventura counties. Since no discharges of pollutants into coastal waters are expected during implementation of the restoration activities, there would be no effects to the ASBS.

The project area is also located within the 100-year floodplain of Calleguas Creek. Any potential impacts to the floodplain would be reduced as would any effects to the marine waters through implementation of standard construction Best Management Practices (BMPs); a construction National Pollutant Discharge Elimination System (NPDES) permit; a construction Storm Water Pollution Protection Plan; Erosion Control Plans and the use of catch devices and sheeting designed to minimize water quality degradation. The project would not affect the current on-site or off-site drainage or any existing drainage structures nor require modification of existing drainage structures.

Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC) are designated for Pacific Coast Groundfish and Coastal Pelagic Species in the nearshore marine and estuarine habitats at NBVC Point Mugu. Mugu Lagoon is a designated Habitat Areas of Particular Concern for groundfish. EFH is present within the proposed restoration site boundaries only at the existing tidal channel in which culverts will be connected to, bringing in tidal waters to the project site. EFH would be created, not lost as a result of the proposed restoration project. The Navy has consulted with National Marine Fisheries Service on its EFH determination and received concurrence.

No fish have been recorded nor expected to occur at the proposed restoration site due to the current lack of tidal flow. There is the potential for fish species across Laguna Road to have short-term impacts from construction activity during culvert installation (e.g. altering hydrology) and beneficial long-term impacts of increasing their range by allowing the tide to inundate the site. Fish species recorded during a similar adjacent wetland restoration at site known as LAG4 during the 2009-2011 post-construction monitoring period included California killifish (*Fundulus parvipinnis*) and longjaw mudsuckers (*Gillichthys mirabilis*) in the restoration channels (Tetra Tech 2012). Research from other restoration sites in California reveals that killifish are an opportunistic species and will often colonize new restoration sites, with populations tapering off in subsequent years.

Overall, the project is expected to enhance 3 acres of low-functioning wetland. Therefore, the project will have no adverse effects to the marine environment, water quality and has potential beneficial effects for biological productivity.

Land Resources (CRPMP Section 30240 et seq.)

Mugu Lagoon's jurisdictional wetlands are largely composed of estuarine coastal salt marsh that provides food, nesting, sheltering, breeding, and nursery grounds for numerous species of fish, wildlife, and plants, including several federal and state listed special status species: such as the light-footed Ridgway's rail (*Rallus obsoletus levipes*); western snowy plover (*Charadrius nivosus nivosus*); Belding's savannah sparrow (*Passerculus sandwichensis beldingi*); salt marsh bird's-beak (*Chloropyron maritimum subsp. maritimum*); California least tern (*Sterna antillarum browni*); and the state-listed critically imperiled wandering skipper (*Panoquina errans*) and sensitive species of tiger beetles (*Cicindela senilis frosti*, *C. hirticollis gravida*, and *C. gabbi*).

No special status species have been recorded at the proposed restoration site; however, light-footed Ridgway's rail, California least terns, western snowy plovers, and Belding's savannah sparrow have been recorded within one mile of the site. It is likely Belding's savannah sparrow

occasionally forage on site. Three out of four bird surveys (2009-2012) at a similar restoration site across Laguna Road (referred to as LAG4) observed Belding's savannah sparrow. Least terns may forage on occasion in the existing tidal creek the culverts will be connecting to, as well as may utilize the tidal creeks created for this project. Tiger beetles may have the potential to occur because they have been observed across Laguna Road in the LAG4 restoration and reference sites, but are still very unlikely due to lack of tidal mudflats. Salt marsh bird's-beak is not present at this site, however there is potential for a population to survive post-project if seeds are planted. Western snowy plovers have not been observed and are not expected due to lack of appropriate habitat. Tidewater goby would not occur at the site because of the lack of tidal influx. Marine mammals (harbor seals) are found within Mugu Lagoon, but have not and would not be found at the project site due to lack of appropriate habitat.

No wildlife surveys were conducted for this project. It is likely few shorebirds or wading birds utilize the site as there is no tidal connection. Insectivorous birds and seed eaters, such as sparrows and phoebes may be more likely to occasionally forage on the site. Common species of mammals, such as, raccoons (*Procyon lotor*) and deer mice likely move through or occur within the site. Potential impacts to wildlife from increased noise, dust, and activity could occur in association with project implementation, maintenance operations, but it would be temporary and localized. Wildlife species would likely avoid the work area temporarily and return following completion of the work, or would utilize other nearby comparable habitat.

Management of migratory birds at NBVC includes the definition that all bird species at NBVC Point Mugu, with the exception of rock pigeon (*Columba livia*), European starling (*Sturnus vulgaris*), and house sparrow (*Passer domesticus*), are protected by federal law under the MBTA (16 USC Section 703 *et seq.*) and EO 13186 (Responsibilities of Federal Agencies To Protect Migratory Birds, 10 January 2001). As the project will occur outside of the migratory bird nesting season (March 1-Sept 31), there should be no impacts to nesting migratory birds. Effects of the project on birds would include birds leaving or avoiding the project area due to construction activity. The loss of this habitat for foraging is negligible, as there is an abundance of habitat adjacent to the project site that will remain available for foraging. The effects also are temporary as the birds could forage again in the site after the construction activity has been completed. The habitat on the project site is degraded as it is cut off from the tidal prism, also limits its current value to birds for foraging opportunities, with few birds observed utilizing that site. Post-project the site will provide more foraging opportunities for shorebirds and wading birds, with migratory birds also benefiting from the project.

The plant communities on Point Mugu were mapped in 2013 and meet the classification and mapping requirements of the Federal Geographic Data Committee (See Figure XX) (HDR 2014). Those plants include: Spiny rush *Juncus acutus*, Salt grass- marsh jaumea (*Distichlis spicata* – *Jaumea carnosa*), Salt grass (*Distichlis spicata*) Naturalized Warm-Temperate Riparian and Wetland (such as yellow nutsedge (*Cyperus esculentus*), dock (*Rumex* sp.), and spiny cocklebur (*Xanthium spinosum*)), Broadleaf cattail (*Typha latifolia*), Myoporum (*Myoporum laetum*), and Salt grass – Pacific Swampfire (*Distichlis spicata* – *Salicornia pacifica*). See Figure 6 for map of the vegetation communities.

Short-term impacts to vegetation trampling would be expected from temporary disturbances during tidal channel excavation. Approximately 1.62 acres of salt grass, marsh jaumea, and Pacific swampfire would be trampled and would be expected to regenerate after excavation has ceased. Permanent, long-term impacts to vegetation include removing vegetation (mostly salt grass) and exposing the area to tidal inundation. Opening the area to tidal inundation will potentially permanently change the vegetation composition to Pacific swampfire and sea blite (*Suaeda esteroa*) and mudflats. Exposing soils and sparse vegetation would possibly allow for noxious weeds to become established. However, the five year maintenance period would promote passive recruitment of desired vegetation by treating noxious weeds and maintaining the tidal flushing which would be a long-term beneficial impact.

As for invertebrates, the LAG4 restoration site contains California horn snails (*Cerithidea californica*). No coffee bean snails (*Melampus bidentatus*) were recorded during 2012 surveys. Field data from other locations show that horn snails exhibit a preference for unvegetated areas, except in the winter, whereas coffee bean snails are typically found more frequently in areas with vegetative cover (Zedler 2001). Coffee bean snails could be expected to occur in the future at the Laguna Road restoration site, as vegetation continues to increase, providing food and cover.

Long-term impacts to the site include the movement of striped shore crabs (*Pachygrapsus crassipes*) and other invertebrates to the site. They are found at LAG4, but no yellow shore crabs (*Hemigrapsus oregonensis*) were recorded. Studies have shown that interference competition and predation by striped shore crabs may confine yellow shore crabs to lower intertidal zones (Zedler 2001). As the salt marsh vegetative cover and inundation increase, habitat for crab populations will increase.

There would be no short-term adverse impacts because no special status species have been recorded within the Project Area. Long-term beneficial impacts could be greater numbers of Belding's savannah sparrows observed within the restoration site with the introduction of tidal waters. As crabs begin to inhabit the area, the site may eventually become occupied by dispersing Ridgeway's rails. Least terns may also forage within the created tidal creeks within the project site. As tidal waters move into the site, it may lead to inundation of some of the surrounding bare soils adjacent to the site, which may lead to occupation by tiger beetles as these mudflats and salt pannes develop.

Cultural Resources. There has been one systematic inventory of Point Mugu for historic era buildings and structures (JRP Historical Consulting Services 1998: *Inventory and Evaluation of National Register of Historic Places Eligibility for Buildings and Structures at Naval Air Weapons Station (NAWS) Point Mugu, Ventura County, California*). This report applied archival research and fieldwork to evaluate buildings and structures utilizing the criteria of eligibility for listing in the National Register of Historic Places and seven buildings or structures were found to be eligible. The Area of Potential Affect (APE) for the proposed project is each culvert location and channel, with a 50-foot buffer to accommodate associated laydown areas. Laguna Road and North Mugu Road sit on elevated roadbeds consisting of manmade artificial fill. No buildings are within the APE for this undertaking. No archaeological resources are within the APE and none of the eligible buildings/structures are located within the APE for this project. Therefore, the project meets the standard for a finding of no historic properties affected, consistent with 36 CFR

800.4(d) (1). The Navy has initiated the Section 106 consultation process with the California State Historic Preservation Office (SHPO) and expects to receive SHPO concurrence prior to finalizing the NEPA process.

Therefore, there would be no effects to land resources as a result of the proposed project.

Development (CRPMP Section 30250 et seq.)

Visual Quality. The proposed restoration project would not alter the visual character of the project area. Since the culverts would be under an existing road, the change is not affecting views. Since the visual character would not be altered, there would be no effect to aesthetics from implementation of the project. Construction activities will be temporarily visible to those with base access; however, the construction activities will be short-term.

Air Quality. Project emissions would not exceed annual conformity de minimis thresholds identified for the South Central Coast Air Basin. Additionally, annual project construction emissions would not be regionally significant in the air basin, as they would be substantially less than 10 percent of the applicable conformity-related emissions limits estimated by the South Central Coast Air Basin. The Proposed Action would conform to the State Implementation Plan and would not trigger a Conformity Determination under the Clean Air Act, as amended. Therefore, the Proposed Action would have no effects to coastal resources related to air quality.

Therefore, there would be no effect to the visual, scenic, or air quality of coastal resources.

CONCLUSION

In accordance with the Federal Coastal Zone Management Act of 1972, as amended, Section 307 (c)(1), the Coastal Consistency Negative Determination demonstrates that the proposed action will be undertaken in a manner as to not affect coastal uses or resources. The Navy respectfully requests your concurrence. If you need additional information, or if you have any questions, please do not hesitate to contact Deb McKay at (619) 532-2284 or email at deborah.mckay@navy.mil.

Figure 1: Vicinity Map

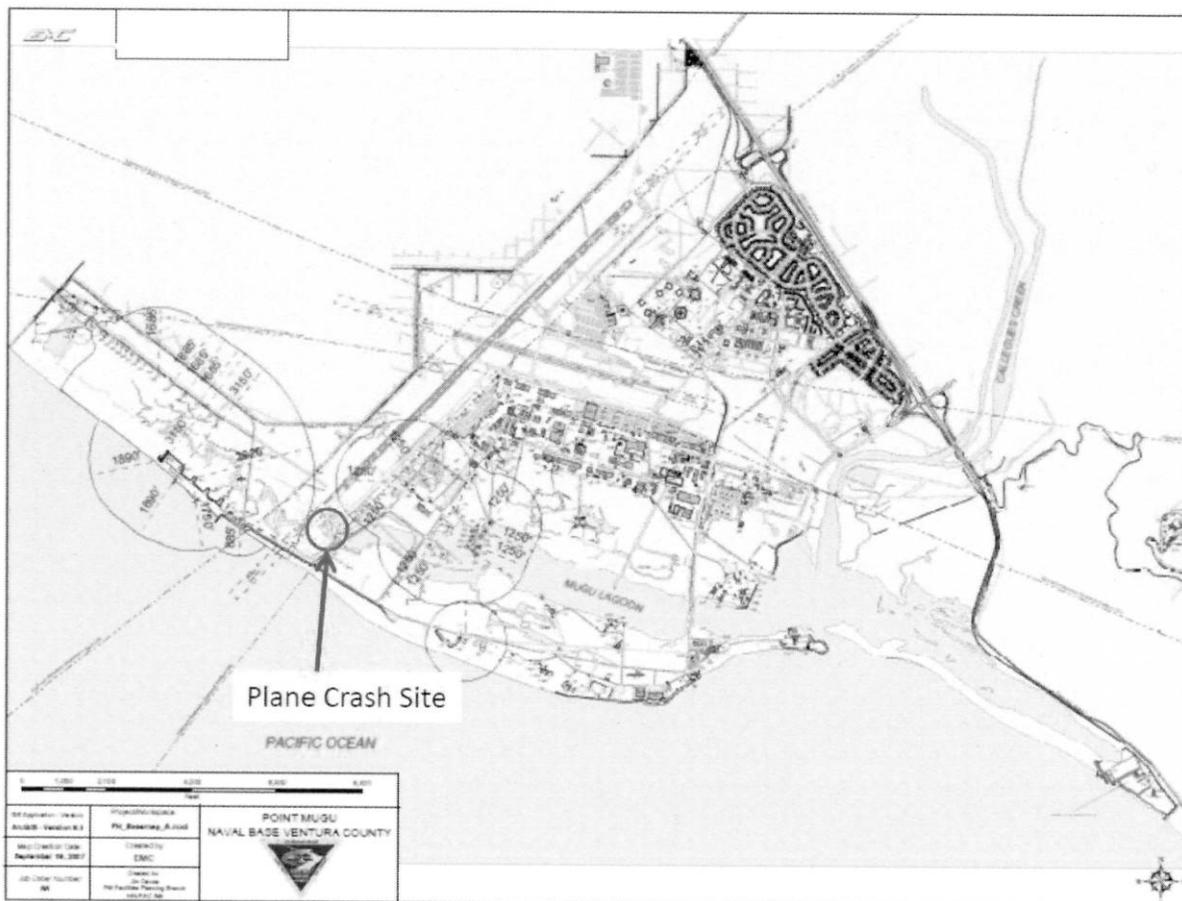


Figure 2 – Crash Site Boundary & Photo



Photo of Plane Crash
Damage Assessment and Restoration Plan
and Environmental Assessment for the
18 May 2011 Omega 707 Air Tanker Crash
At Naval Base Ventura County, Point Mugu, California

Figure 3 – Crash Site Impact Areas



Figure 1-7. Habitat Assessment Zone Map.
 Damage Assessment and Restoration Plan and Environmental Assessment for the
 18 May 2011 Omega 707 Air Tanker Crash at Naval Base Ventura County, Point Mugu, California

Figure 4 – Two Alternative Sites Aerial



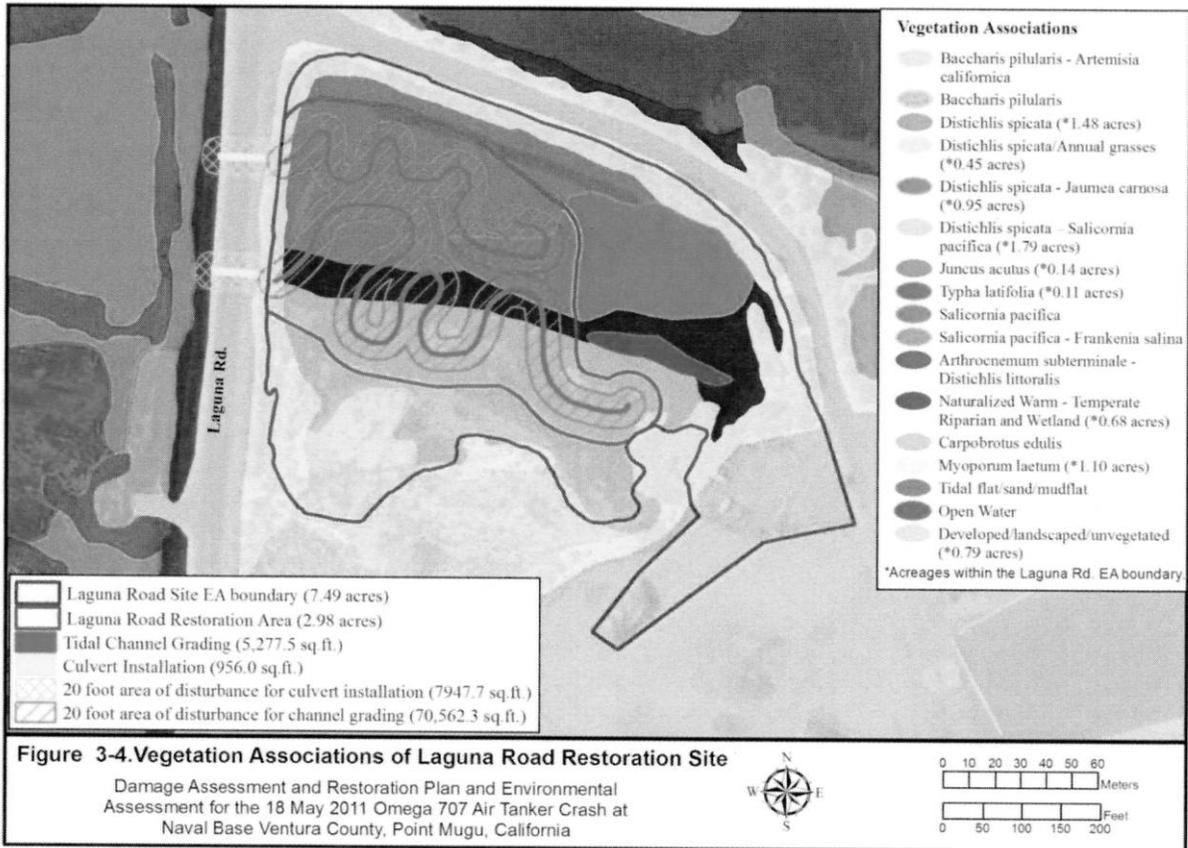
(Note: Figure originally used in DARP/EA thus different numbering)

Figure 5 – Laguna Road Site



(Note: Figure originally used in DARP/EA thus different numbering)

Figure 6 – Vegetation Communities



(Note: Figure originally used in DARP/EA thus different numbering)

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

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October 23, 2015

Reply to: USN_2015_1007_001

Captain C. D. Janke
Naval Base Ventura County
311 Main Road, Suite 1
Point Mugu, California 93042-5033

RE: Preparation of a Damage Assessment and Restoration Plan, Environmental Assessment, Naval Base Ventura, Point Mugu, (your 5090, Ser. N0000CV/1005 of October 2, 2015 and your supplemental e-mails of October 14 and 20, 2015)

Dear Captain Janke:

Thank you for requesting my comments on the above-referenced undertaking, in accordance with Section 106 of the *National Historic Preservation Act*, as amended. The United States Navy (Navy) is preparing a Damage Assessment and Restoration Plan, Environmental Assessment to address the 18 May 2011 air tanker crash, resultant fire, and Jet Propulsion Fuel spill at Naval Base Ventura County Point Mugu (Point Mugu). The proposed undertaking would connect the existing wetland at Laguna Road with a tidally influenced drainage channel by installing two 8' by 8' by 8' pre-cast culverts and 120 feet of 5 inch diameter pipe under Laguna Road. By doing so, the tidal influence would be re-established across the 2.98 acres site.

The proposed undertaking will include the following elements:

- Surface preparation would include removing the existing asphalt from Laguna Road, the road fill underneath the road, and natural sediments to an elevation that will accommodate the two pre-cast culverts and the new pipe;
- Fine grading and contouring of channels to facilitate the flow of water through the culverts and the pipe; and
- Backfilling, re-compaction of the road way and the installation of new asphalt on Laguna Road.

The Area of Potential Effects (APE) is identified as the above described area which contains 2.98 acres. Both Laguna Road and North Mugu Road (located immediately north of the APE) sit on elevated roadbeds consisting of manmade artificial fill. The roadways are 4 to 5 feet above sea level and consist of sandy soils dredged from the adjacent lagoon. During high tide events, the adjacent wetlands are completely inundated.

More than half of Point Mugu consists of reclaimed coastal wetlands subjected to extensive modification during the 1940s and 1950s, when the base was being developed as a military facility. These activities deeply buried or significantly modified

some or all of the original terrain. Further, the area of the undertaking has been heavily disturbed by the construction of the two roads.

As documentation for your finding, you stated that previous cultural resources research, records review, and pedestrian surveys did not identify any cultural resources as being located within the APE. As part of its ongoing tribal consultation process, the Navy consulted with the Santa Ynez Band of Chumash Indians about the proposed undertaking. The tribe had no comments in regards to the proposed undertaking.

The Navy has requested me to review and comment on their identification of the APE and their determination that no historic properties will be affected by the proposed undertaking. The Navy has determined that all grading activities will be monitored by a qualified archaeologist.

After reviewing the information submitted with your letter, I offer the following comments:

- I have no objections to your identification and delineation of the APE, pursuant to 36 CFR Parts 800.4(a)(1) and 800.16(d); and
- I concur with your determination that no historic properties will be affected by the proposed undertaking, as described.

Be advised that under certain circumstances, such as an unanticipated discovery or a change in project description, you may have additional responsibilities for this undertaking under 36 CFR Part 800. Should you encounter cultural artifacts during ground disturbing activities, please halt all work until a qualified archaeologist can be consulted on the nature and significance of such artifacts.

Thank you for seeking my comments and considering historic properties as part of your project planning. If you have any questions or concerns, please contact the following member of my staff: Tristan Tozer at 916-445-7027 or via e-mail at Tristan.Tozer@parks.ca.gov.

Sincerely,



Julianne Polanco
State Historic Preservation Officer



DEPARTMENT OF THE NAVY
NAVAL BASE VENTURA COUNTY
311 MAIN ROAD, SUITE 1
POINT MUGU, CA 93042-5033

IN REPLY REFER TO

5090
Ser N0000CV/1005
2 Oct 15

State Historic Preservation Officer
Attn: Ms. Julianne Polanco
Office of Historic Preservation
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001

Dear Ms. Polanco:

SUBJECT: PREPARATION OF A DAMAGE ASSESSMENT AND RESTORATION PLAN
ENVIRONMENTAL ASSESSMENT, NAVAL BASE VENTURA, POINT MUGU

The Navy is preparing a Damage Assessment and Restoration Plan Environmental Assessment (DARP EA) to address the 18 May 2011 air tanker crash, resultant fire and Jet Propulsion Fuel 8 (JP-8) oil spill at Naval Base Ventura County (NBVC) Point Mugu. The DARP EA preferred alternative is the Laguna Road Culvert Installation Alternative which would connect the existing wetland at Laguna Road with a tidally-influenced drainage channel by installing two 8' X 8' X 8' pre-cast culverts and 120 ft. of 5' diameter pre-cast pipe under the existing asphalt paved road to re-establish tidal influence across the adjacent 2.98 acre site, limited excavation and channel contouring, as depicted in the enclosed document. The proposed undertaking is the type of activity that could affect historic properties, assuming they were present. This letter initiates Section 106 consultation in accordance with 36 CFR 800.3(a), regulations implementing the National Historic Preservation Act of 1966, as amended. The Navy finds the proposed undertaking meets the standard for a finding of no historic properties affected, consistent with 36 CFR 800.4(d)(1). Per 36 CFR 800.4(d)(2), the following outside interested parties are also consulted for this undertaking: the Friends of the Bard Mansion, the Port Hueneme Historical Society, the Ventura County Cultural Heritage Board, the Heritage Trust of Oxnard, the Santa Ynez Band of Chumash Indians, and the San Buenaventura Conservancy.

The remainder of this letter is organized to present an overview of the undertaking and associated Area of Potential Effects (APE); review of identification efforts completed to date, as basis for determining whether historic properties might be affected; and discussion of the proposed project's potential to affect historic architectural and archaeological properties.

a. Description of Undertaking and APE

(1) The proposed undertaking is for the installation of two pre-cast culverts beneath the existing Laguna Road and limited excavation and channel contouring within the wetlands to the east of Laguna Road. Surface preparation will include removing the existing asphalt, road fill and natural sediments to an elevation that will accommodate the two 8' X 8' X 8' pre-cast culverts and 120 ft. of 5' diameter pre-cast pipe, vegetation and preparing a level

surface for construction. Enclosed maps include a general vicinity map and maps of the Port Hueneme area showing the location and APE. Laguna Road and North Mugu Road sit on elevated roadbeds consisting of manmade artificial fill. The roadways are 4 to 5 feet above sea level and consist of sandy soils dredged from the adjacent lagoon. During high tide events the adjacent wetlands are completely inundated.

(2) The APE is each culvert location and channel, with a 50-foot buffer to accommodate associated laydown areas.

(3) No buildings are within the APE for this undertaking.

(4) No archaeological resources are within the APE for this undertaking.

b. Identification of Historic Properties

(1) Previously completed professional cultural resources investigations and consensus determinations of eligibility provide a basis for identifying historic properties in the APE for the proposed undertaking.

(2) There has been one systematic inventory of Point Mugu for historic era buildings and structures (JRP Historical Consulting Services 1998: *Inventory and Evaluation of National Register of Historic Places Eligibility for Buildings and Structures at Naval Air Weapons Station (NAWS) Point Mugu, Ventura County, California*). This report applied archival research and fieldwork to evaluate buildings and structures utilizing the criteria of eligibility for listing in the National Register of Historic Places. Seven buildings or structures located at Point Mugu (Baker launch Complex, Building PM-36, Building PM-55, Buildings PM-354 and PM-354A, Building PM-375 and Building PM-390) were found to be eligible for the Register. None of the eligible buildings/structures are located within the APE of this undertaking.

c. Potential for Effects to Historic Architectural Resources

(1) No buildings are located within the APE for this project.

d. Potential for Effects to Archaeological Resources

(1) Ground disturbing activities include asphalt and roadway fill removal, culvert installation, fine grading and contouring of channels, backfilling and re-compaction of roadway fill. The potential to affect archaeological resources is precluded by the development history of NBVC Point Mugu. More than half of the area of NBVC Point Mugu represents reclaimed coastal wetlands subject to extensive modification during the 1940's and 1950's during the primary periods of development as a military facility. These activities deeply buried or significantly modified some or all original terrains. Further, the area of the undertaking has been

heavily disturbed for the construction of the road. All grading activities will be monitored by a qualified archaeologist. In the event previously unknown archaeological deposits are encountered, work will stop in that area until the deposits can be evaluated.

(2) The initial development of NBVC Point Mugu is described in the 1996 History of the U.S. Navy at Point Mugu: World War II ERA (1942-1945). The report applied archival research to identify the types, locations, and uses of buildings and structures constructed during World War II at NBVC Point Mugu. Photographs document construction techniques at NBVC Point Mugu. Site preparation for buildings and structures included cut or fill, grading, and trenching for utilities and footings.

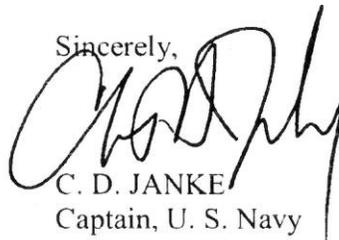
(3) Through 20 years of resident cultural resources program management and selectively applied archaeological surveys, only two archaeological sites, CA-VEN-187/256 and CA-VEN-1239H, have been documented on NBVC Point Mugu. CA-VEN-187/256 represents a prehistoric deposit on the bank of a former, now-filled slough that had been buried by early WWII-era filling and discovered in 1968 during utilities trenching. CA-VEN-1239H, the Mugu Fish Camp, began operating about 1910. Winter storms in 1995 destroyed the sea wall protecting the fish camp from the ocean. The 1996 data recovery excavation, completed on portions of the active beach, found a bathhouse floor, bait tanks, trash pits, fishing tackle, bottles, and ceramics. Neither of these archaeological sites is within an APE for this undertaking.

e. Finding of Effect

Consistent with the above considerations and 36 CFR 800.4(d)(1), Naval Base Ventura County finds that No Historic Properties will be affected by the proposed undertaking. NBVC conferred with Commander, Navy Region Southwest (CNRSW) Cultural Resources Office concerning this undertaking. CNRSW Cultural Resources Office concurs with the finding of No Historic Properties Affected. Dr. Yatsko, Lead Archeologist - CNRSW Cultural Resources Office, will provide reach-back support for this project on an as-needed basis.

The Navy respectfully requests your concurrence on the proposed delineation of the APE and its determination of no historic properties affected by the proposed undertaking within 30 days of receipt of this letter. Should you have any questions or need further information, please contact Joseph Montoya at (805) 989-3804 or joseph.l.montoya@navy.mil.

Sincerely,



C. D. JANKE
Captain, U. S. Navy
Commanding Officer

5090
Ser N0000CV/1005
2 Oct 15

- Enclosures: 1. NBVC Point Mugu Small Arms Range Vicinity, Location, and APE Maps
2. Project Description for Laguna Road Culvert Installation Alternative
3. HARP Figure 3-1, Previous Archaeological Surveys; HARP figure 3-2, Locations of Archaeological Sites at NBVC Point Mugu and HARP Figure 3-3- Archaeologically Sensitive Areas at NBVC Point Mugu

Copy to:

Commander, Navy Region Southwest, Environmental Department
Cultural Resources Management Program (w/o enclosures)
San Diego, CA 92147

Diane Silva, NARA Certified Command Records Manager
NAVFAC Southwest
1220 Pacific Highway, Code EV33
NBSD Bldg. 3519
San Diego, CA 92132

Friends of the Bard Mansion
P.O. Box 113
Port Hueneme, CA 93003

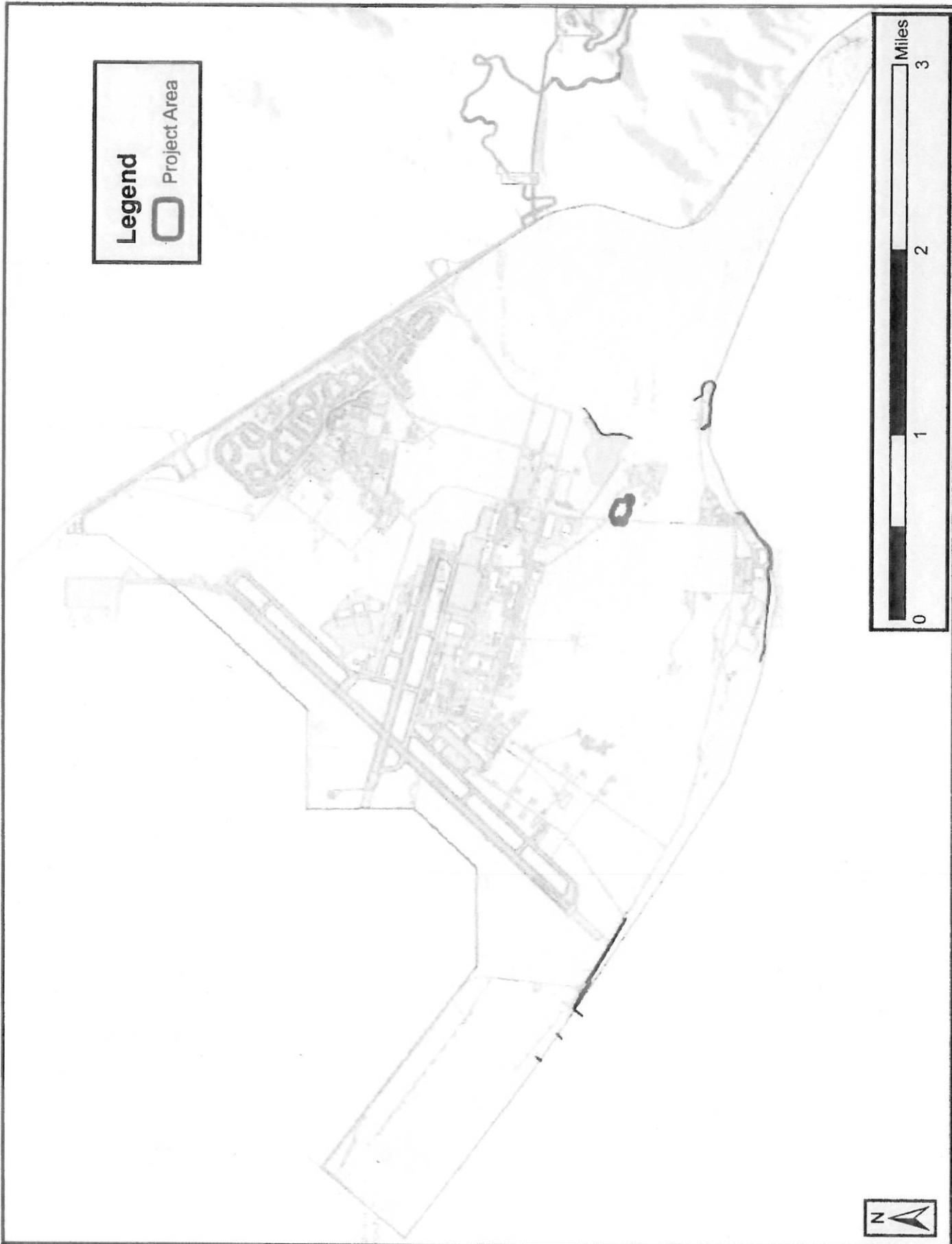
Port Hueneme Historical Society
220 Market Street
Port Hueneme, CA 93041

Ventura County Cultural Heritage Board
800 South Victoria Avenue
Ventura, CA 93009

Heritage Trust of Oxnard
Attn: Ben Moss
125 North F Street
Oxnard, CA 93030

Santa Ynez Band of Mission Indians
Attn: Vincent Armenta - Chairman
P.O. Box 517
Santa Ynez, CA 93460

San Buenaventura Conservancy
P.O. Box 23263
Ventura, CA 93002



Legend
□ Project Area

Miles
0 1 2 3



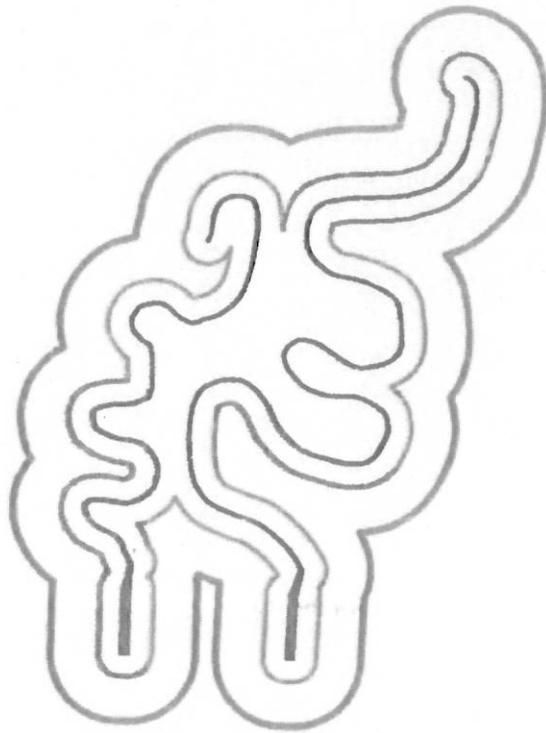
Encl (1)

Enclosure (1)

NA

Legend

-  50 ft APE
-  Subject Property
-  Excavation Areas



TR-38

5-24

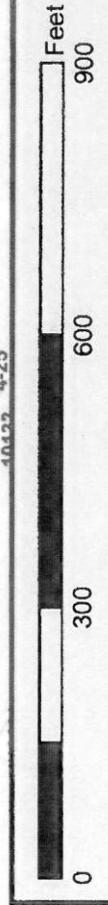
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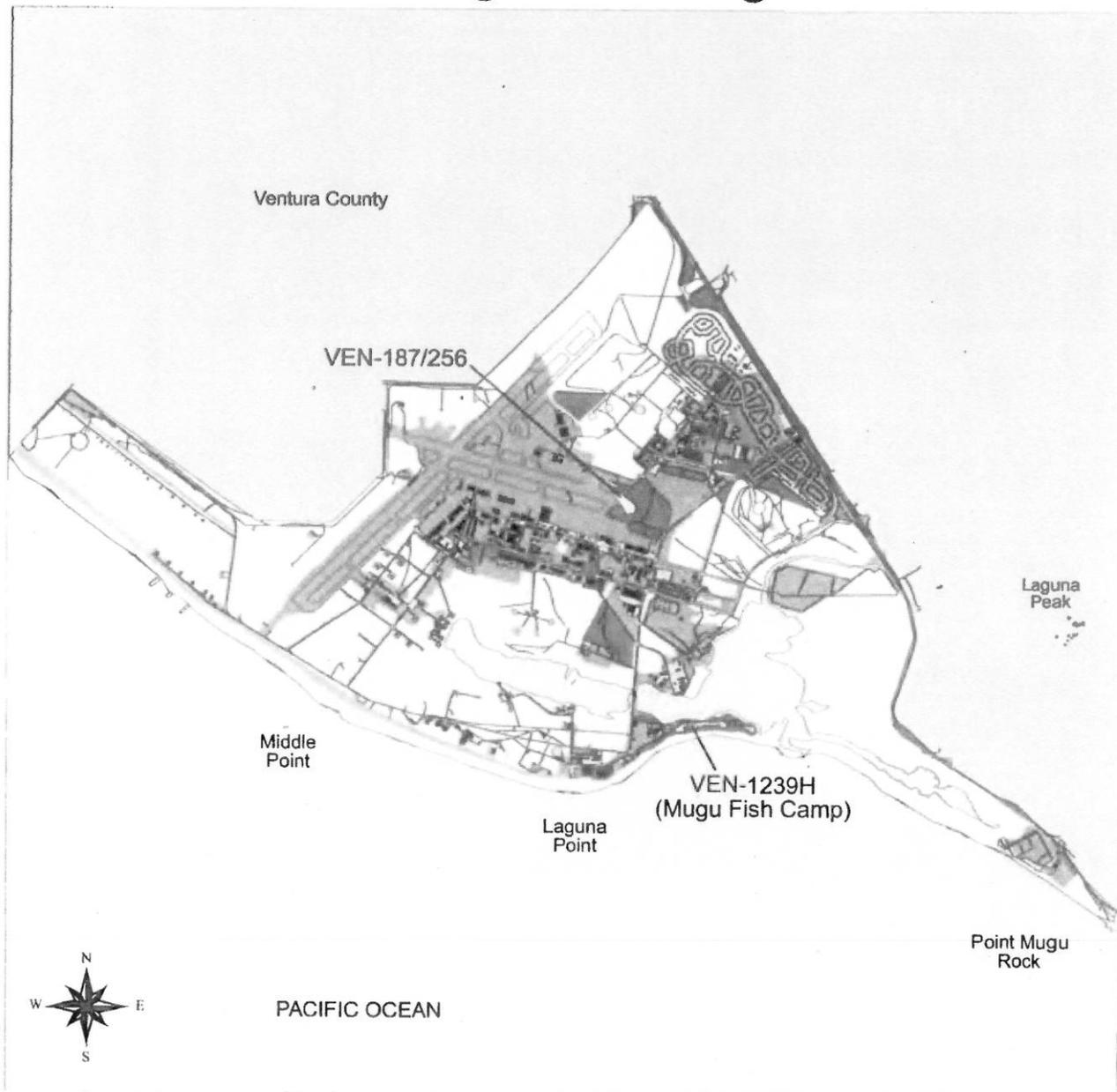


Project Description for Laguna Road Culvert Installation Alternative – Alternative 1/Preferred Alternative

The Laguna Road Culvert Installation Alternative would connect the existing wetland at Laguna Road with a tidally-influenced drainage channel by installing two 8' X 8' X 8' pre-cast culverts and 120 ft. of 5' diameter pre-cast pipe under the existing asphalt paved road to re-establish tidal influence across the adjacent 2.98 acre site. This alternative would improve the sub-surface tidal connection between the sites, improve water quality, allow for improved habitat for fish and wading birds, and would help diversify the population of benthic marine invertebrates, and increase the tidal plant populations on site. This alternative would not offer mitigation banking credits for NBVC because the site already has low to moderate quality wetland habitat and requires only limited construction. Required construction tasks would include: asphalt cutting and removal, soil excavation, channel contouring, culvert and pipe placement with a crane, backfilling soil, gravel, and riprap, compacting soil, and repaving the asphalt road. Grading and contouring would be done to reestablish tidal water flows to certain portions of the adjacent wetland in order to restore drainage swale elevations to historic levels. Current estimates are that the existing elevations are only approximately 0.6 inches lower than the lagoon.

It is estimated that construction would last approximately 8 weeks. After construction it is estimated that biological monitoring and maintenance and adaptive management would be required for five years. Maintenance and culvert inspection would help ensure that the culverts remain open and functional and free flows continue. Most years a mere visual inspection will be required but occasionally, heavy equipment may be required to be used from the roadside to reach into the culverts and clear them of debris and soil.

Locations of Previous Archaeological Investigations



- Structures
- Fill
- Roads
- Airfield
- Archaeological Sites
- VEN-187/256
- VEN-1239H

- Archaeological Surveys
- Bissell 1991
- Larson 1982
- Martz 1978
- Schwartz 1983
- Schwartz n.d.

Scale shown is: 1:50,000
 Projection: Universal Transverse Mercator, Zone 11
 North American Datum of 1927
 Source: S. Schwartz, personal communication, 1998

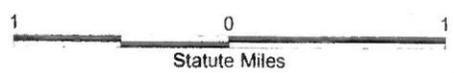
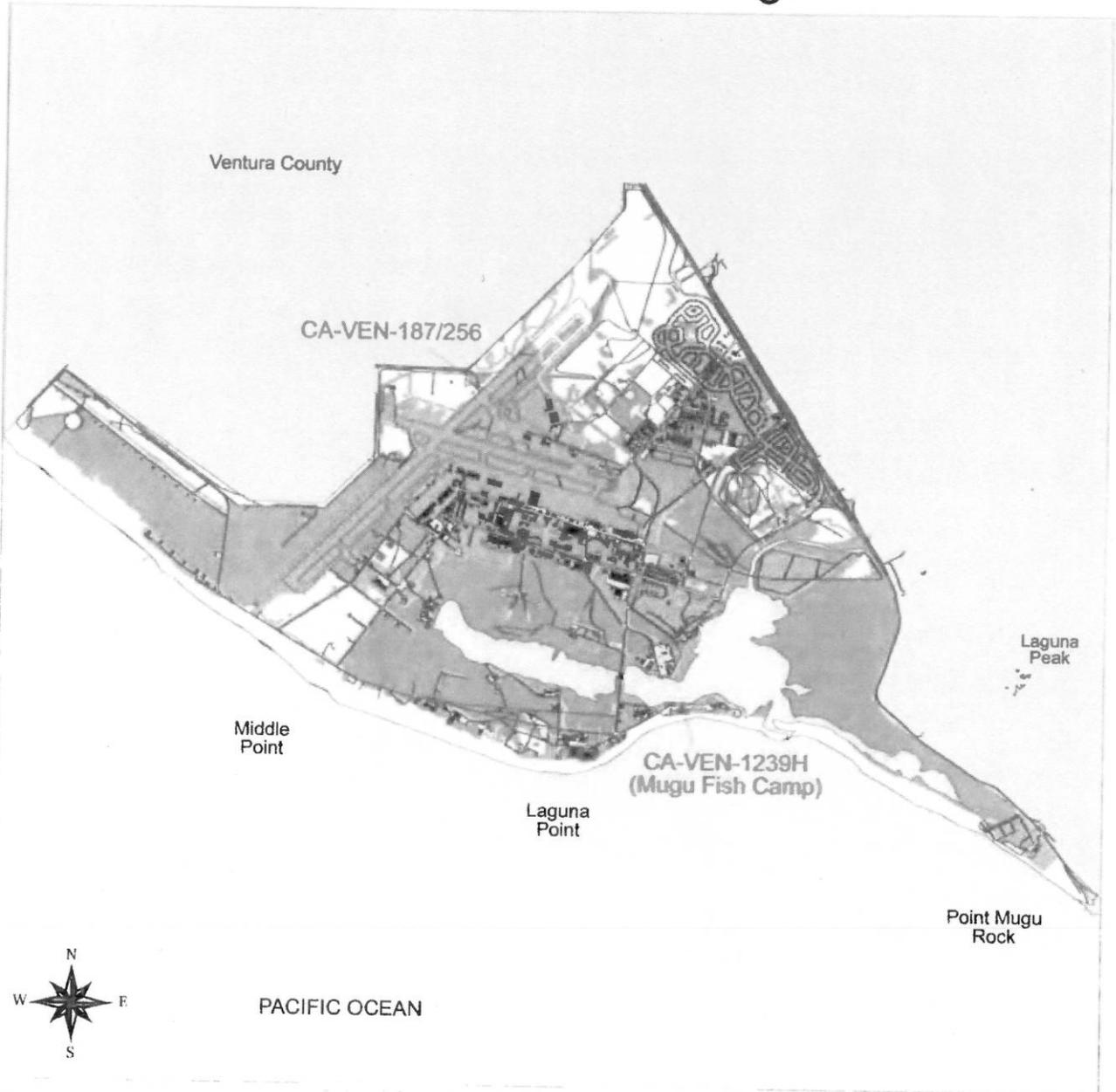


Figure
3-1

Recorded Cultural Resource Sites NBVC Point Mugu



- Wetlands
- Structures
- Fill
- Airfield
- Prehistoric Site
- Historic Archaeological Site

Scale shown is: 1:50,000
 Projection: Universal Transverse Mercator, Zone 11
 North American Datum of 1927
 Sensitive Material: NOT FOR PUBLIC DISTRIBUTION
 Source: S. Schwartz, 1992.

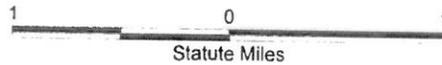
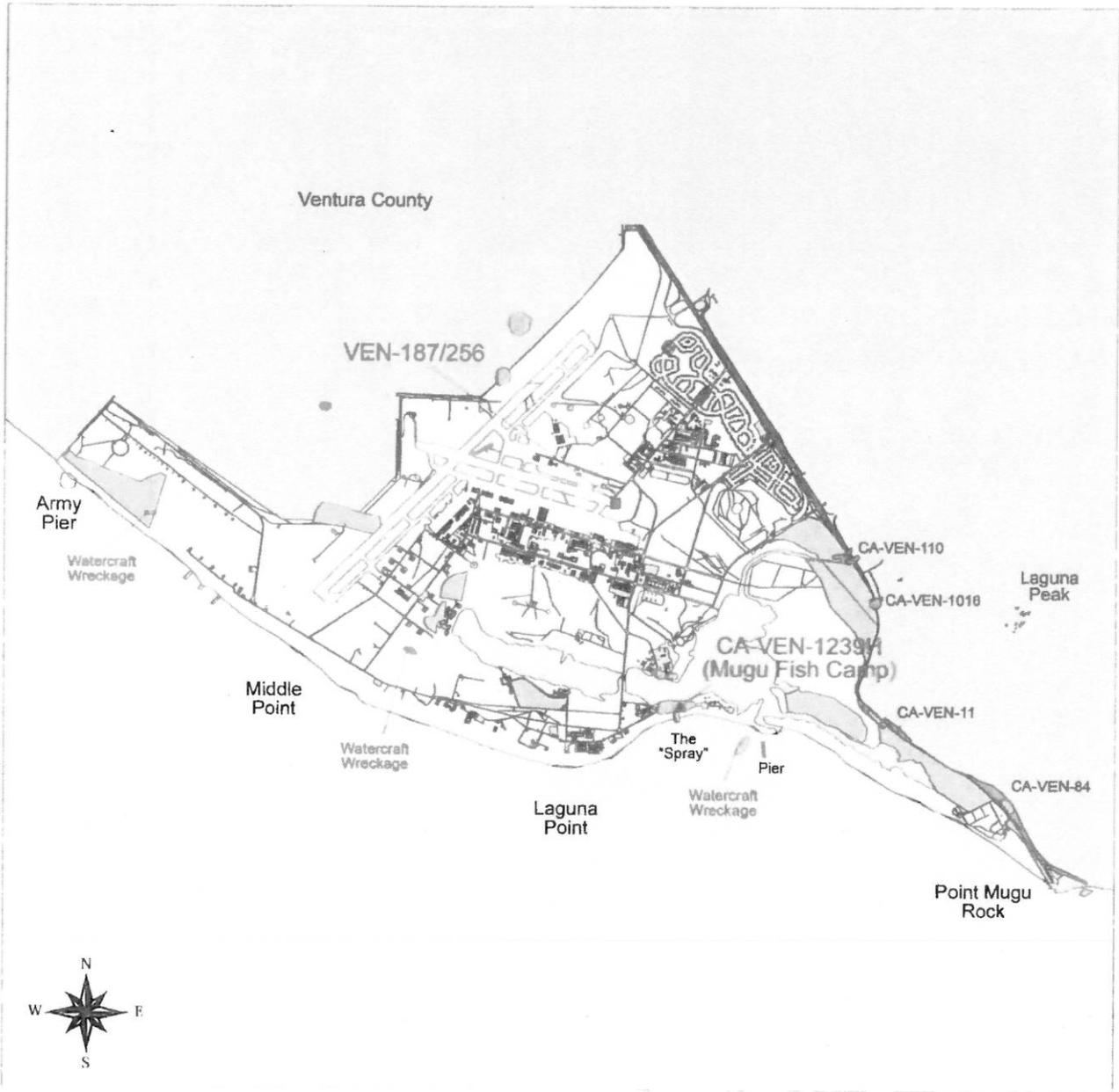


Figure
3-2

Archaeologically Sensitive Areas



- | | |
|--|--|
|  Structures |  Prehistoric Site |
|  Historic Remains |  Historic Archaeological Site |
|  Roads | |
|  Airfield | |
|  Potentially Sensitive Areas | |
|  Prehistoric Archaeological Sites Abutting Base | |

Scale shown is: 1:55,000
 Projection: Universal Transverse Mercator, Zone 11
 North American Datum of 1927
 Source: S. Schwartz, personal communication, 1998

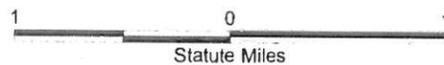


Figure
3-3

-----Original Message-----

From: Lousen, Chad A CIV NAVFAC, MUGU

Sent: Tuesday, October 06, 2015 4:35 PM

To: Tozer, Tristan@Parks (Tristan.Tozer@parks.ca.gov)

Cc: Shide, Dan T CIV NAVFAC SW, MUGU; Montoya, Joseph L CIV NAVFAC SW, PRV42; Granade, Steve S CIV NAVFAC SW, MUGU; McKay, Deborah E CIV CNRSW, N40; Seneca, Lisa A CIV NAVFAC SW, Coastal IPT

Subject: SHPO Consultation Letter - NBVC Point Mugu 2011 Omega Aircraft Mishap Damage Assessment and Restoration Plan

Tristan,

Hardcopies of the consultation letter were mailed out today for the Damage Assessment and Restoration Plan in response to Omega Aircraft Mishap that occurred in 2011 at NBVC Point Mugu. Attached is an electronic copy.

We are requesting concurrence within 30 days, in order to complete the Final Environmental Assessment for the project by December 2015.

Also, could you please email me a scanned electronic copy once the concurrence letter is signed.

v/r

Chad Lousen

NEPA Program Manager

Naval Base Ventura County

Phone: (805)989-5634

Fax: (805)989-1011

-----Original Message-----

From: Montoya, Joseph L CIV NAVFAC SW, PRV42
Sent: Wednesday, October 14, 2015 4:13 PM
To: Marti, Duane@Parks
Cc: Martinez, Rebecca K CIV NAVFAC SW, MUGU; Lousen, Chad A CIV NAVFAC, MUGU;
Tristan.Tozer@parks.ca.gov
Subject: RE: DARP EA air tanker crash

Duane,

The letters went to the stakeholders around the same time that you received our letter. We very rarely get a response regarding actions such as this. I will give the Chumash a call and/or an email to solicit comments and will provide them to you if anything is received.

V/r,

Joseph L. Montoya, CEG, CHG
Environmental Planning and Conservation Branch Manager
Naval Base Ventura County
311 Main Road,
Building 1, Code N45V
Point Mugu, CA 93042
telephone (805) 989-3804
DSN 351-3804
fax (805) 989-3804
email joseph.l.montoya@navy.mil

-----Original Message-----

From: Marti, Duane@Parks [mailto:Duane.Marti@parks.ca.gov]
Sent: Wednesday, October 14, 2015 3:59 PM
To: Montoya, Joseph L CIV NAVFAC SW, PRV42
Subject: FW: DARP EA air tanker crash

From: Marti, Duane@Parks
Sent: Wednesday, October 14, 2015 3:27 PM
To: 'joseph.1.montoya@navy.mil'
Cc: Tristan Tozer (Tristan.Tozer@parks.ca.gov)
Subject: DARP EA air tanker crash
Mr. Montoya,

I am reviewing the USN's submission for the above described action, pursuant to section 106 of NHPA. In that letter, the Navy states that it consulted with the San Ynez Band of Chumash Indians and other interested parties. What was the date of those consultations and have you received any responses from any of the groups?

Duane Marti
Archaeologist
Office of Historic Preservation
1725 23rd Street, Suite 100

Sacramento, California 95816, Telephone: 916-445-7030, Fax: 916-445-7053
Please note the new e-mail address: Duane.Marti@parks.ca.gov

From: [Adam Obaza - NOAA Affiliate](#)
To: [Ruane, Martin K NAVFAC SW, MUGU](#)
Cc: [Bryant Chesney](#)
Subject: Re: NBVC Point Mugu NRDA restoration project EFH Consultation
Date: Wednesday, September 16, 2015 8:20:51

Hi Martin,

NOAA's National Marine Fisheries Service (NMFS) has reviewed the U.S. Navy's project description for culvert creation under Laguna Road in Pt. Mugu, California. The Navy proposes to install two 8 foot by 8 foot by 8 foot pre-cast culverts and 120 feet of 5 foot diameter pre-cast pipe under the asphalt paved road to re-establish tidal influence to the adjacent 2.98 acre wetland site. This work is being completed to offset wetland damages from the Omega 707 tanker crash in 2011. Project activities would impact a 300 square foot parcel of the tidal ditch and include asphalt cutting and removal, soil excavation, channel contouring and backfilling of soil, gravel and riprap. The proposed project occurs within essential fish habitat (EFH) for various federally managed fish species within the Coastal Pelagic Species and Pacific Coast Groundfish Fishery Management Plans. To minimize impacts, the applicant would move sediment at low tide and employ silt curtains to reduce sediment transfer. The project site would also be monitored for five years following construction. The proposed project would adversely affect EFH via construction impacts to benthic habitats. However, given the benefit of returning tidal flow to an adjacent wetland and the proposed minimization measures, NMFS expects impacts to be no more than temporary and minimal and has no conservation recommendations at this time. Please provide NMFS with a copy of the 5 year monitoring plan and subsequent monitoring reports. Thank you for consulting with NMFS.

On Thu, Sep 3, 2015 at 12:36 PM, Ruane, Martin K NAVFAC SW, MUGU <martin.ruane@navy.mil> wrote:

Adam/Bryant- in efforts to mitigate the injury to the wetlands at Point Mugu from the Omega Crash in 2011, we are preparing an EA to do a restoration project to offset the injury. This project will be either paid by the Responsible Party or maybe even the Navy. Attached is the project description. We will basically be restoring flow to an isolated wetland by putting two culverts under the road to connect to a tidal ditch that parallels the road. There should be minimal and temporary impacts to EFH. The Navy wants the EFH consultation done as prior to finalizing EA, however we do not much of the specifics of how the project will be done. But I have provided hopefully enough information so you can determine no significant impacts to EFH and potentially you can provide us some additional protective measures we could include to reduce any impacts to EFH.

Thanks

Martin Ruane
Ecologist
Naval Base Ventura County
(805) 989-3808 <<tel:%28805%29%20989-3808>>

--

Adam Obaza
Protected Resources Division

Laguna Road NRDA Restoration Project Impacts to EFH at NBVC POINT MUGU

The Laguna Road Culvert Installation is a project to mitigate for the injury the wetlands suffered at Point Mugu during the Omega Fuel Tanker crash in 2011. The project would connect the existing wetland that is isolated from tidal waters with a tidally-influenced drainage channel by installing two 8' X 8' X 8' pre-cast culverts and 120 ft. of 5' diameter pre-cast pipe under the existing asphalt paved road to re-establish tidal influence across to the adjacent 2.98 acre wetland site. Construction of this alternative would cause an area of disturbance of 300sqft of the tidal ditch. There will be additional ground disturbing work in the isolated wetland to create tidal creeks, however there is no surface waters or tidal waters within that area and therefore should not be considered EFH at this time. Once culverts are functional, it will release some of the sediment from the ground disturbance work to create the tidal creeks. This project would improve the sub-surface tidal connection between the sites, improve water quality, allow for habitat for fish, wading birds, benthic marine invertebrates, and increase the tidal plant populations and health on site.

Required construction tasks would include: asphalt cutting and removal, soil excavation, tidal channel contouring, culvert and pipe placement with a crane, backfilling soil, gravel, and riprap, compacting soil, and repaving the asphalt road. Potentially the project may be done by directional drilling which would remove any disturbance to road. A small amount of excess sediment would be trucked off base. After culvert installation re-establishes the tidal connection, tidal water flows will naturally restore the site to a functioning wetland habitat. It is estimated that construction would last approximately 8 weeks. After construction biological monitoring would be required for five years.

EFH Protective Measures

1. Any significant excavating or movement of sediment adjacent to or potentially within the tidal ditch would not be done during a high-tide to reduce potential sediment transfer.
2. A silt/sediment curtain will be placed out on upper and lower sides of the ditch to capture and reduce sediment transport and reduce any fish entering the work zone when digging near or in the channel.
3. If excavating within the existing tidal ditch is required, it will be minimized to only what is needed for successfully tying in the adjacent wetland to the tidal prism.
4. Straw waddles or silt fences will be placed out if there is potential for project sediment to enter tidal ditch, to ensure no fill enters tidal ditch.

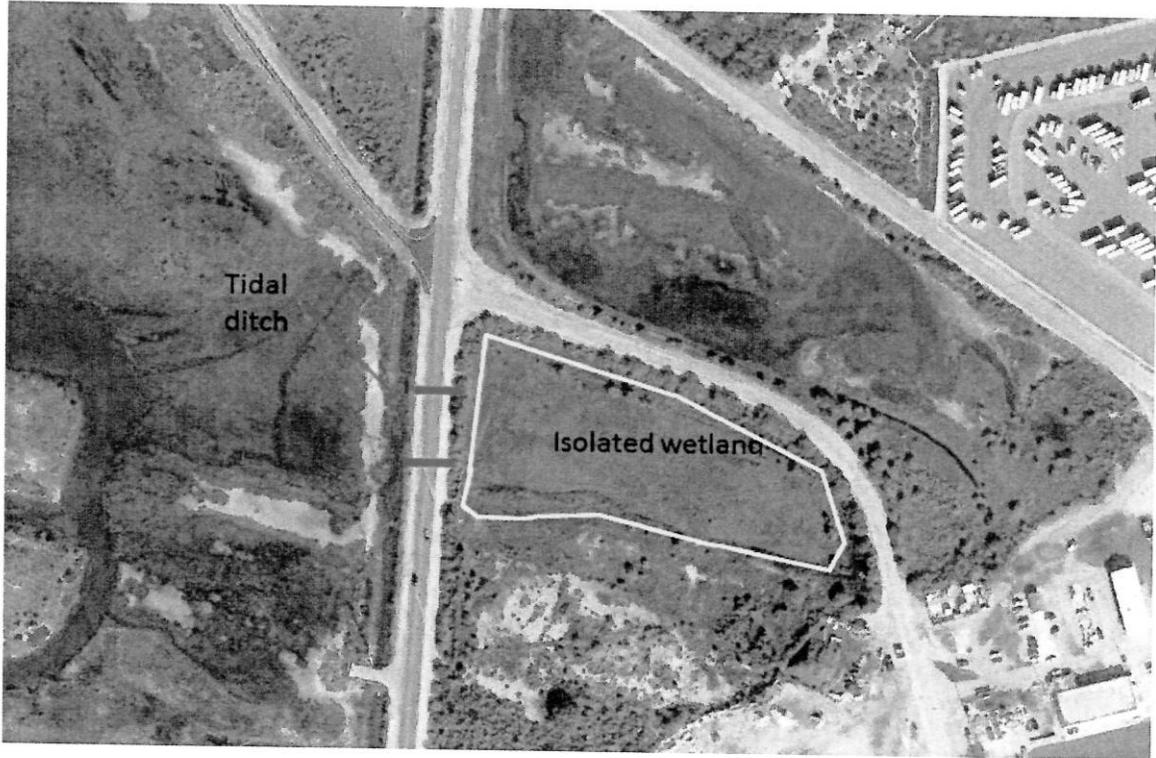


Figure 1. Laguna Rd NRDA Restoration Project Site



DEPARTMENT OF THE ARMY

Los Angeles District, Corps of Engineers
Ventura Field Office
2151 Alessandro Drive, Suite 110
Ventura, CA 93001

May 20, 2011

REPLY TO
ATTENTION OF:

Regulatory Division

Captain James J. McHugh
Commanding Officer
Naval Base Ventura County
311 Main Road, Suite 1
Point Mugu, California 93042-5033

Attn: Valerie Vartanian

Dear Captain McHugh:

This is in reply to your request (File No. SPL-2011-00482-AJS) of May 19, 2011, for a Department of the Army authorization to discharge fill material into waters of the U.S., in association with remedial actions including measures to contain spilled jet fuel resulting from the crash of an air tanker. The proposed work would take place in wetlands adjacent to Mugu Lagoon at NBVC Point Mugu, Ventura County, California.

Based on the information you have provided, the Corps of Engineers has determined that your proposed activity complies with the terms and conditions of Regional General Permit (RGP) No. 63, *Repair and Protection Activities in Emergency Situations*. A copy of RGP No. 63, including its terms and conditions, is enclosed.

As long as you comply with the general permit conditions of RGP No. 63, an individual permit is not required.

Specifically, you are authorized to conduct the following regulated activities:

1. Place clean earthen fill and containment booms at culverts located in the vicinity of the air tanker crash to contain spilled fuel as depicted in your request.

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

Special Conditions:

1. As directed in Regional General Permit (RGP) No. 63, any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction does not result in significantly increased impacts to aquatic resources and logistical concerns indicate such reconstruction is as expedient considering the condition of the project site and is limited to in-kind replacement or refurbishment.
2. The permittee shall ensure all personnel involved in containment and remediation measures associated with the crash are fully briefed on the sensitivity of the surrounding habitat, including, but not limited to potential threatened and endangered species that might be present.
3. As directed in Regional General Permit (RGP) No. 63, you shall provide a written report to this office (within 45 days of completing the project) after completion of any action conducted under this RGP. PROVIDING THIS REPORT IS MANDATORY. The report shall also be provided to the Los Angeles Regional Water Quality Control Board, Attn: Valerie Carrillo as indicated in the enclosed RGP. At a minimum the Report shall include the following:
 - A) The name, address, and telephone number of the applicant and the applicant's agent (if appropriate)
 - B) Full description of the activity including:
 - i) description of the emergency and the potential for loss of life or property
 - ii) purpose of the activity
 - iii) final goal of the entire activity
 - iv) location (e.g., latitude/longitude or UTM coordinates; section/township/range on appropriate USGS topographic map; Thomas Guide map, or other source to accurately portray project location)
 - v) size and description of project area (include maps or drawings showing the areal and lineal extent of the project, and pre- and post-construction photographs)
 - vi) quantities of materials used
 - C) information on receiving waterbody impacted including:
 - i) name of waterbody
 - ii) type of receiving waterbody (e.g., river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, wetland type, etc.)
 - iii) temporary/permanent adverse impact(s) in acres/cubic yards/linear feet
 - iv) compensatory mitigation in acres/cubic yards/linear feet
 - v) other mitigation steps (to avoid, minimize, compensate)

D) information on federally listed or proposed endangered species or designated or proposed critical habitat (notification must be provided to FWS and/or NMFS as appropriate) including:

- i) temporary/permanent adverse impacts
- ii) compensatory mitigation
- iii) other mitigation steps (to avoid, minimize, compensate)

4. To avoid adverse effects to federally listed threatened and endangered species that may be present in the work area, the permittee shall implement the following measures:

- A) Minimize time in marsh (i.e., environmentally sensitive areas) when possible;
- B) Provide education to spill responders about sensitive and federally listed species;
- C) Ensure flagging is used to delineate nests of listed avian species (e.g., Clapper Rails, etc.);
- D) When possible, maintain a distance of greater than 300 feet from nest sites;
- E) Minimize disturbance to areas that biologists deem sensitive;
- F) Note any listed plant species and flag as necessary to prevent impacts;
- G) Use approved methods for hazing birds in areas where activities are being performed or where areas are deemed impacted by the crash/spill;
- H) Remove dirt from closed culverts as soon as possible after thorough testing to allow for circulation of the wetlands with the ocean and estuary to prevent any loss of nests due to rising waters in those areas impacted;
- I) Ensure base biologists (or other approved biologists by the Navy) are present for the duration of clean-up activities; and
- J) Monitor any known nesting birds to determine effects, if any, on these species, especially species protected under the ESA.

A general 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 Antal Szijj at 805-585-2147 or via e-mail at Antal.J.Szijj@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,

A handwritten signature in black ink, appearing to read 'Antal Szijj', with a stylized flourish at the end.

Antal Szijj
Senior Project Manager
North Coast Branch

Enclosure



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

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT NUMBER 63
FOR
REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS**

SPONSOR AND ISSUING OFFICE: U.S. Army Corps of Engineers, Los Angeles District

PERMIT NUMBER: Regional General Permit No. 63 (File No. 995007000-BAH)

ISSUANCE DATE: December 22, 2008

PERMITTEE: Public agencies, businesses, or private parties (i.e., the public in general)

Note: The term "you" and its derivatives, as used in this permit, means the permittee. The term "this office" refers to the Los Angeles District office of the Corps of Engineers, which has jurisdiction over the permitted activity, or the appropriate official of this office acting under the authority of the commanding officer.

After you receive written approval that your project complies with the terms and conditions of this RGP from this office, you are authorized to perform work in accordance with the General Conditions and any project-specific conditions specified below.

PROJECT DESCRIPTION: This permit authorizes discharges of dredged or fill material into Waters of the United States, including wetlands, and/or work or structures in Navigable Waters of the United States for necessary repair and protection measures associated with an emergency situation. An "emergency situation" is present where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services (i.e., a situation that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately).

PROJECT LOCATION: Within those parts of the State of California subject to regulatory review by this office, including the coastal slopes of San Luis Obispo County, all of Santa Barbara except for the Carrizo Plain, Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego and Imperial counties, eastward of the crest of the Sierra Nevada in Inyo County, eastward of the crest of the Sierra Nevada in Mono County to the Conway Summit above Mono Lake, and the southern slopes of the Tehachapi Mountains in Kern County, and all of the State of Arizona. In the event of future modifications to District boundaries, this permit would also apply in any areas so revised.

GENERAL CONDITIONS OF THIS RGP:

1. **Time Period Covered:** The time limit for completing work authorized by this RGP ends on October 31, 2013.
2. **Notification/Communication:**
 - a. **Timing:** The applicant must notify the District Engineer (DE) as early as possible and shall not begin the activity until notified by the DE that the activity may proceed under this RGP with any site-specific special conditions imposed by the District or Division Engineer. The Corps recognizes there may be situations where imminent threats to life or property occur and the applicant has not received a notice to proceed from the DE. It is not the intention of this office to imply that one allows such threat to life or property result in actual loss. If one proceeds without such notice from the DE, one must ensure that prior notice of such a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice or other alternative means.
 - b. **Contents of Notification:** The notification should be in writing and include the following information:
 - (1) The name, address and telephone number of the applicant and the designated point of contact and their address and telephone number;
 - (2) The location of the proposed project, including the identification of the waterbody(ies) (this should include a copy of a U.S. Geologic Survey [USGS] topographic map, Thomas Guide map, or hand-drawn location map with suitable landmarks; the map should have sufficient detail to clearly indicate the location and extent of the project, as well as detailed directions to the site);
 - (3) A brief, but clear, description of the imminent threat to life or property and the proposed project's purpose and need;
 - (4) A description of methods anticipated to be used to rectify the situation ("field engineering" is not an adequate description. It is presumed if one mobilizes matériel and a particular piece of equipment to a site, then one probably has a fairly well-defined intention for that matériel and equipment. Plans, drawings or sketches showing the area to be impacted, cross sections showing details of construction, if appropriate, and a short narrative describing how the work is to be completed should be provided as a minimum); and
 - (5) A brief description of the project area's existing conditions and anticipated environmental impacts resulting from the proposed work (amount of dredge or fill material, acreage of disturbance, removal of significant vegetation, loss of habitat, etc.).
 - c. **Form of Notification:** The standard Application for Department of the Army Permit (Form ENG 4345), available from the District's website at <http://www.spl.usace.army.mil/regulatory/eng4345.pdf>, may be used as the notification and must include all of the information required in General Condition 2.b. Items (1)-(5) above. A letter or facsimile transmission may also be used. In certain situations where there is an imminent threat to life or property and the applicant is unable to make direct contact with this office, a message shall be left on voice mail or an e-mail message shall be sent. Again, those messages should include the information identified in General Condition 2.b. Items (1)-(5) above. Formal written notification should be sent to this office as soon as possible.

d. **Agency Coordination:** Upon receipt of a notification, the DE will immediately provide (i.e., by facsimile transmission, overnight mail or other expeditious manner) a copy to the offices of the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the NOAA Fisheries (NOAA), the Monterey Bay National Marine Sanctuary, the California Department of Fish and Game (CDFG), the California State Water Resources Control Board (SWRCB), the Arizona Department of Environmental Quality, the White Mountain Apache Tribe, the Navajo Nation, the Hualapai Tribe, the Hopi Tribe, the Big Pine Paiute Tribe of Owens Valley, the Bishop Paiute Tribe, or the Twenty-nine Palms Band of Mission Indians, the California Regional Water Quality Control Boards (RWQCB), the California Coastal Commission (CCC), and the State Historic Preservation Offices of California or Arizona, as appropriate. These agencies will be requested to telephone or facsimile transmit to the Corps Regulatory Branch Project Manager, as expeditiously as possible, a response indicating whether or not they intend to provide substantive, site-specific comments regarding the proposed project. If notified that comments will be provided by an agency or tribal representative, the DE will allow them to provide their comments in a short timeframe determined by the DE on a case-by-case basis to not likely result in loss of life or property before making a decision on the proposed project.

The DE will fully consider any comments received within the specified timeframe concerning the proposed activity's compliance with the conditions of their authority and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The DE will indicate the results of that consideration in the administrative record associated with the notification and will provide an informal response to the commenting agency by electronic mail, facsimile transmission or other means.

e. **Mitigation:** Discharges of dredged or fill material into Waters of the United States must be avoided or minimized to the maximum extent practicable at the project site. Compensation for unavoidable discharge of fill materials may require appropriate mitigation measures. Factors that the DE will consider when determining the suitability of appropriate and practicable mitigation will include, but are not limited to:

- (1) The approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.;
- (2) The permanence of the project's impacts on the resource; and
- (3) The potential long-term effects of the action on remaining functions and values of the impacted aquatic resource.

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; replacing the loss of aquatic resource values by creating, restoring, or enhancing similar functions and values; or using bioremediation techniques in conjunction with other methods to offset project impacts. To the extent appropriate, applicants should consider mitigation banking and other forms of mitigation, including contributions to wetland trust funds or in-lieu fees to organizations such as State, county or other governmental or non-governmental natural resource management organizations, where such fees

contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources.

- f. **District Engineer's Decision:** In reviewing the notification for the proposed activity, the DE will determine whether the activity would likely result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may, as an option, submit a proposed mitigation plan with the notification to expedite the process and the DE will consider any mitigation (See General Condition 2.e. above,) the applicant has included in the proposal in determining whether the net adverse environmental effects for the proposed work are minimal. If the DE determines the activity complies with the terms and conditions of this RGP and the adverse effects are minimal, this office will notify the applicant and include any situation-specific conditions deemed necessary.

If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will expeditiously review the proposed plan also. However, the DE may approve the mitigation proposal after the work is approved and project work has commenced.

If the DE determines the adverse effects of the proposed work are more than minimal, the DE will notify the applicant either:

- (1) That the project does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit or other general permit, or
- (2) That the project is authorized under this RGP subject to the applicant submitting a mitigation proposal that would reduce the adverse effects to the minimal level.

3. **Authorized Work:** Any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction only results in very minor additional impact to aquatic resources and logistical concerns indicate such reconstruction is as expedient considering the condition of the project site and is limited to in-kind replacement or refurbishment. Moderate upgrading would be considered if the applicant wishes to use bioremediation or other environmentally sensitive solutions. The RGP may NOT be used to upgrade an existing structure to current standards when that activity would result in additional adverse effects on aquatic resources, except in very unusual and limited circumstances. Such upgrade projects are considered separate activities for which other forms of authorization will be required.

Work not described in permit application documentation but deemed necessary after a field assessment is not authorized unless coordinated with the Regulatory project manager and acknowledged by appropriate means (i.e., e-mail or facsimile transmission, memo to the record, etc.). These coordinated permit modifications must also be described in sufficient detail in the post-project report (see RGP 63 General Condition 26). RGP 63 also does not authorize work required by property owners as *quid pro quo* for access through private or public property where such access is contingent upon work conducted by the permittee in waters of the U.S. for the benefit of the property owner. This is absolutely inappropriate and such additional activities are violations of Section 404 of the Clean Water Act unless previously authorized. If a local agency needs to acquire such access from an otherwise uncooperative property owner, existing condemnation procedures should be utilized to acquire the temporary access or permanent easement.

4. **Start Work Date:** Any projects authorized under this RGP must be initiated within seven (7) days of receiving authorization to proceed. Projects that cannot be initiated within this immediate timeframe generally would not meet the definition of an "emergency." If the project start time can be delayed for more than a week, the imminent threat of impending loss may have diminished in magnitude as well as immediacy. However, there may be limited circumstances where, after notice to and input by the agencies, logistical considerations necessitate an extension of between 1 and 7 days. Further, this RGP cannot be used to authorize long-planned-for projects, nor shall it be used for projects that are likely to have been known to the applicant but for which an application was not submitted in a timely manner. That is, the applicant's failure to act in a timely manner prior to the storm season will not obligate the Corps or other agencies to authorize work because of a self-described emergency situation unless we agree that the situation qualifies as an emergency as defined on page 1.
5. **Access to Site:** You must allow representatives from this office and other agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.
6. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
7. **Water Quality Certification:**

For California Permittees on Non-tribal Land: The California State Water Resources Control Board issued a technically conditioned certification for the RGP dated December 22, 2008. Specifically, the California SWRCB noted that California water quality certification, subject to limitations and conditions (described below), for activities under RGP 63 is subject to the following standard conditions:

1. *This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and Article 6 (commencing with section 3867) of Chapter 28, Title 23 of the California Code of Regulations (CCR 23).*
2. *This certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to subsection 3855(b) of Chapter 28, CCR 23, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.*
3. *This certification is conditioned upon total payment of any fee required under Chapter 28, CCR 23, and owed by the applicant.*

The SWRCB also included the following additional conditions:

1. Emergency definition

This certification is limited to emergency actions that meet the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) definition of an "emergency," which is defined as follows:

A sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage

to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movement, as well as such occurrences as riot, accident, or sabotage.

[Public Resources Code, § 21060.3 (emphasis added).]

Projects must meet the above definition of "emergency" and demonstrate an imminent threat to qualify for this water quality certification. For non-emergency projects, the applicant must contact either the State Water Resources Control Board (State Water Board) or the applicable Regional Water Quality Control Board (Regional Water Board) (collectively, Water Boards) to apply for an individual water quality certification.

2. Emergency exemption criteria

This certification is limited to projects that satisfy one or more of the following exemption criteria as defined by the CEQA Guidelines [California Code of Regulations, Title 14, § 15269.]:

- a. Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with section 8550 of the Government Code.*
- b. Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare.*
- c. Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.*
- d. Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This does not apply to highways designated as official State scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.*
- e. Seismic work on highways and bridges pursuant to section 180.2 of the Streets and Highways Code, section 180 et seq.*

3. Scope and Time Frame

This certification is limited only to sudden, unexpected emergency situations defined in Additional Conditions 1 and 2 above that: (1) have occurred, or (2) have a high probability of occurring in the short term as a result of recently discovered factors or events not related to known or expected conditions. Additionally, the sudden, unexpected emergency situation must have the potential to result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.

Emergency repairs and reconstruction must begin within seven (7) calendar days of receiving authorization to proceed and shall be completed within one year of enrollment pursuant to this water quality certification. There may be limited

circumstances in which, after notice to and input by the agencies, logistical considerations necessitate an extension of between 1 and 7 days. All repairs and reconstruction shall be kept to the minimum necessary to alleviate the immediate emergency and limited to in-kind replacement or refurbishment of on-site features. Minor upgrading may be considered if the applicant uses bioremediation or other environmentally sensitive solutions. Permanent restoration work other than that performed as an associated part of the emergency operations, including any minor upgrades, shall not be performed without prior approval and authorization by the Water Boards.

4. Forty-Eight Hour Notification

The prospective permittee must notify the State Water Board and the applicable Regional Water Board at least 48 hours prior to initiating the emergency project, if feasible. Feasibility is to be determined by the State Water Board or the applicable Regional Water Board. This notification must be followed within three (3) business days by submission of all of the information in the 48-hour emergency notification form, provided in **Attachment C**.

The Water Boards recognize there may be situations where imminent threats to life or property occur and the applicant has not received a notice to proceed. If immediate, specific actions, as defined in the California Code of Regulations, Title 14, section 15269(c), are required by an applicant and prior notice to the State Water Board and the applicable Regional Water Board is not possible, then the applicant must contact the State Water Board and the applicable Regional Water Board within one (1) business day of the action. As provided above, this notification must be followed within three (3) business days by submission of all of the information in the 48-hour emergency notification form, provided in **Attachment C**.

Notification may be via telephone, facsimile, e-mail, delivered written notice, or other verifiable means.

- A staff directory that includes contact information for the State and Regional Water Boards is found at:

http://unwv.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf

- For State Water Board, fax to (916) 341-5584 (Attn: DWQ 401 Unit), or leave a message at (916) 341-5506 (Regulatory Office).

- For Regional Water Board map boundaries, see

<http://maps.waterboards.ca.gov/webmap/rbbound.html>

5. Water Quality Standards Maintained

Permitted activities must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Water Quality Control Plan (Basin Plan) by a Regional Water Board or the State Water Board. The Water Boards may impose monitoring requirements in order to ensure that permitted discharges and activities comport with any applicable water quality standards and/or effluent limitations.

6. Other Permits May Be Required

This certification does not obviate the need to obtain other permits that may be required by federal, state, or local authorities.

7. California Endangered Species Act

Permitted activities shall not result in the taking of any State endangered species, threatened species, or candidate species, or the habitat of such a species unless the activity is authorized by the California Department of Fish and Game pursuant to a permit, memorandum of understanding, or other document or program in accordance with Fish and Game Code sections 2081, 2081.1, or 2086.

8. Compliance

Failure to comply with any condition of this certification shall constitute a violation of the Clean Water Act and the Porter-Cologne Water Quality Control Act. Any such certification previously granted shall immediately be revoked, and any or all discharges shall cease. The permittee may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.

9. Project Fees

The prospective permittee must provide to the State Water Board a fee for review and processing of the notice (Attachment C) in accordance with California Code of Regulations, Title 23, section 2200 (\$77 as of October, 2008; this amount is subject to change) within 48 hours of project initiation. Failure to promptly pay the correct fee amount may result in an inability to be enrolled pursuant to this water quality certification.

10. Final Report

The permittee must provide the State Water Board and the applicable Regional Water Board copies of all correspondence and reports that are submitted to the U.S. Army Corps of Engineers to satisfy the requirements of RGP 63. In addition, the permittee must fill in and submit the form provided in Attachment D. This information must be sent to the following addresses within 45 calendar days of completion of any action conducted under RGP 63:

*Bill Orme, Chief
CWA Section 401 WQC Program
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100*

*CWA Section 401 WQC Program
(Address of appropriate Regional Water Board, obtained from:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf;*

Failure to submit Attachment D within 45 calendar days of completion of any action conducted under this water quality certification may result in the imposition of administrative and/or civil liability pursuant to Water Code section 13385.

STATE WATER BOARD CONTACT PERSON:

If you have any questions, please contact State Water Board Environmental Scientist Darren Bradford at (916) 341-5558 (dbradford@waterboards.ca.gov). You may also contact Bill Orme, Chief of the 401 Certification and Wetlands Protection Unit, at (916) 341-5464 (borne@waterboards.ca.gov).

The SWRCB thereby issued an order certifying that any discharge from the referenced project will comply with the applicable provisions of Clean Water Act 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), if all of the conditions listed in the certification action are met. The discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ, which authorizes this certification to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.).

Further, the Board stated that "except insofar as may be modified by any preceding conditions, all certification actions are contingent on: (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant's project description (Attachment A) and the enclosed Project Information Sheet (Attachment B), and (b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan."

For Arizona Permittees on Non-tribal Land: The Arizona Department of Environmental Quality (ADEQ) issued a conditional Section 401 water quality certification for RGP 63 dated October 16, 2008 for all waters of the state on non-tribal lands in the State of Arizona.

The following Section 401 Water Quality Conditions apply to all projects on non-tribal areas within Arizona approved by the Corps of Engineers under RGP 63, provided the remediation/repair activity is started within 30 days of event causing damage. (See RGP 63 General Condition 4 above) Otherwise, an individual 401 certification would be required unless the project would be authorized by other Nationwide Permit and verified by the Corps of Engineers.

1. *Any discharge occurring as a result of activities certified for the subject project shall not cause a violation of surface water quality standards. Applicability of this condition is as defined in A.A.C. R18-11-102.*
2. *This certification does not authorize the discharge of wastewater, process residues or other waste to any WUS ["Waters of the United States"].*
3. *Runoff and seepage from project activities shall not cause a violation of Arizona Surface Water Quality Standards for any WUS.*
4. *Work shall be conducted and monitored to ensure that pollution from the project activities including, but not limited to: earthwork, concrete mixing and placement and*

equipment maintenance and washing does not cause an exceedence of Arizona Surface Water Quality Standards in any WUS

5. *Work shall be conducted and monitored to ensure that pollution from project activities including, but not limited to: earthwork, concrete mixing and placement, detention ponds, and equipment maintenance and washing does not drain into any WUS.*
6. *The applicant is responsible for ensuring construction material and/or fill (other than replacement of native fill or that necessary to support revegetation) including, but not limited to: rock, gabion fill or other uncemented channel-lining materials, placed within the Ordinary High Water Mark (OHWM) of any WUS, shall not include materials, e.g. pollutant-contaminated soil, that can cause or contribute to pollution of a surface water. Material used to support vegetation rooting or growth shall be protected from erosion. Any fill material washing must occur outside of the OHWM of any WUS prior to placement and the runoff from such washing shall be contained and treated, or otherwise prevented from contributing sediment or causing erosion to any WUS. Other than replacement of native fill or material used to support vegetation rooting or growth, fill placed in locations subject to scour shall contain not more than ten percent (10%) on a dry weight basis of particles finer than 0.25 mm diameter (passing a No. 60 sieve).*
7. *Any dredged material is to be placed and retained in areas outside the OHWM of any WUS. Runoff from this material/area is to be settled, filtered or otherwise treated to prevent escape of pollutants (including sediment) to any WUS.*
8. *Upon completion of construction the applicant shall ensure no adverse change due to the subject project has occurred in the stability (with respect to stream hydraulics, erosion and sedimentation) of any WUS including upstream and downstream from the project. If such change has occurred, the applicant shall take steps to restore the pre project stability of any impacted segments.*
9. *All disturbed areas shall be restored and (re)vegetated as soon as possible. Vegetation shall be maintained on unarmored banks and slopes to stabilize soil and prevent erosion.*
10. *Permanent and temporary access roadways, staging areas and material stockpiles shall be designed or located to allow storm flows to pass unimpeded. Culverted and unculverted crossings and pads shall be constructed so as to accommodate the overtopping of the fill by streamflow and armored to prevent erosion of the fill.*
11. *Silt laden or turbid water resulting from construction activity shall be settled, filtered or otherwise treated prior to discharge to ensure no violation of Arizona Surface Water Quality Standards in any WUS.*
12. *Acceptable construction materials that will or may contact water in any WUS are: crushed stone, native fill (meeting the requirements in condition 6), concrete, steel, plastic, or aluminum and other materials specifically approved in writing by ADEQ.*

13. Upon completion of the project activities, areas within the OHWM of all WUS at the project site shall be promptly cleared of all forms, piling, construction residues, equipment, debris or other obstructions. Any debris including, but not limited to: soil, silt, sand, rubbish, cement, bituminous material, oil or petroleum products, organic materials, tires or batteries, derived from project activities shall not be stored at any site where it may be washed into a WUS and shall be properly disposed of after completion of the work.
14. The applicant must designate area(s) for equipment staging and storage located entirely outside of the OHWM of any WUS. Any equipment maintenance, washing or fueling that cannot be done offsite will be done here with the following exceptions: limited mobility equipment; e.g., large cranes, are allowed to be maintained and fueled within the OHWM. Material specifically manufactured and sold as spill adsorbent/absorbent will be on hand to control small spills. All equipment and workboats shall be inspected for leaks daily and prior to use within the OHWM of any WUS. All leaks shall be repaired immediately. All equipment and workboats will be steam cleaned prior to use in any WUS with flow.
15. The applicant shall have a spill containment plan onsite to ensure that pollutants are contained, removed and properly disposed of. In addition, the applicant must designate areas, located entirely outside of the OHWM of any WUS, for chemical and petroleum storage, and solid waste containment. All materials stored onsite will be stored in appropriate containers or packaging. Any pollutant produced by project activities shall be properly disposed of in accordance with applicable regulations. A spill response kit will be maintained in this (these) area(s) to mitigate a potential spill. The kit will include material specifically manufactured and sold as spill adsorbent/absorbent including booms. The applicant will ensure that whenever there is activity on the site, that there are personnel on site trained in the proper response to spills and the use of spill response equipment.
16. Permanent and temporary pipes, and culverted crossings and pads shall be adequately sized to handle expected flow and properly set with end section, splash pads, or headwalls that dissipate water energy to control erosion. Culverted and uncultivated crossings and pads shall be constructed so as to accommodate the overtopping of the fill by streamflow and armored to prevent erosion of the fill.
17. If fully, partially or occasionally submerged structures are constructed of cast-in-place concrete instead of pre-cast concrete planks or slabs, applicant will take steps; e.g., sheet piling or temporary dams (earth-filled cofferdams are not allowed), to prevent contact between water (instream and runoff) and the concrete until it cures and until any curing agents have evaporated or otherwise cease to be available, i.e., are no longer a pollutant threat.

ADEQ contact information:

Mailing address:

Arizona Department of Environmental Quality

Surface Water Section, 401 Certifications, mailstop 5475A 1

1110 W. Washington St.

Phoenix, AZ 85007

Telephone:

(602) 771-4502

For Permittees on Tribal Lands, water quality certification must be received from the appropriate certifying agency or tribal representative. In Los Angeles District, seven Native American tribes have been approved by the U.S. Environmental Protection Agency (EPA) for "treatment as states" regarding administration of the Water Quality Standards (WQS) program:

- The Navajo Nation in Arizona;
- The Hualapai Indian Tribe of the Hualapai Indian Nation, Arizona;
- The White Mountain Apache Tribe of the Fort Apache Reservation, Arizona;
- The Hopi Tribe of Arizona;
- The Big Pine Band of Owens Valley Paiute Shoshone Indians of Big Pine Reservation, California;
- The Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; and
- The Twenty-Nine Palms Band of Luiseño Mission Indians of California.

For projects on tribal lands of these identified tribes, the prospective permittee must receive individual Section 401 certification to ensure that proposed actions do not exceed tribal water quality standards.

The U.S. Environmental Protection Agency issued a conditioned Section 401 certification for all other tribal lands in Los Angeles District on November 20, 2008. However, inclusion of restrictions in the certification on the Corps' implementation of the RGP unrelated to water quality considerations requires the Corps to consider it a denial of certification pursuant to regulations at 33 C.F.R. § 330.4(c)(2) and (3) and Regulatory Guidance Letter 92-04. Therefore, for all projects on tribal lands in Los Angeles District other than those of the seven tribes noted above must be individually certified by the EPA pursuant to Section 401 of the Clean Water Act. Requests for Section 401 water quality certification must be sent to the appropriate EPA Section 404 Permit Review staff (list below) for the county in which the project would occur, and to:

David W. Smith, Chief
Wetland Regulatory Office (WTR-8)
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
smith.davidw@epa.gov
(415) 972-3464 phone
(415) 947-3537 fax

EPA Section 404 Permit Review Personnel

California

Santa Barbara, Ventura and Los Angeles Counties

Eric Raffini 415-972-3544 raffini.eric@epa.gov

Kern County

Erin Kleeman 916-557-5253 foresman.erin@epa.gov

San Diego and Imperial Counties

Elizabeth Goldmann 415-972-3398 goldmann.elizabeth@epa.gov

San Luis Obispo County

Rob Leidy 415-972-3463 leidy.robert@epa.gov

Mono, Inyo, San Bernardino, Riverside and Orange Counties

Jorine Campopiano 213-244-1808 campopiano.jorine@epa.gov

Arizona

Mohave, La Paz, Yuma, Pima, Santa Cruz and Cochise Counties

Elizabeth Goldmann 415-972-3398 goldmann.elizabeth@epa.gov

Coconino, Yavapai, Maricopa, Pinal, Gila, Navajo, Apache, Greenlee and
Graham Counties

Melissa Scianni 415-972-3821 scianni.melissa@epa.gov

8. **Coastal Zone Management:** For those projects affecting uses or resources of the coastal zone, the Federal Coastal Zone Management Act (CZMA) requires that the permittee obtain concurrence from the California Coastal Commission that the project is consistent with the State's certified Coastal Management Program. For activities within the coastal zone that require a coastal development permit from the commission, the permittees should contact the Commission office to request an emergency permit, and no additional federal consistency review is necessary. For activities within the coastal zone that require a coastal development permit from a local government with a certified local coastal program, the permittee should contact the appropriate local government. Because a coastal permit issued by a local agency does not satisfy the federal consistency requirements of the CZMA, the permittee should also contact Mark Delaplaine, (415) 904-5289, Federal Consistency Coordinator for the Commission to determine the appropriate emergency procedures. For any activity outside the coastal zone, but with the potential to affect coastal uses or resources, or for any activity conducted by a federal agency, the permittee should contact Mark Delaplaine, (415) 904-5289, Federal Consistency Coordinator for the Commission to determine the appropriate emergency procedures.

Due to the often limited time constraints with emergency actions, the Corps would not require the permittee to provide proof of review by the Commission, if such an action would result in undue harm to life or property. However, the Corps will require the permittee to provide evidence of consistency upon completion of the project unless the Corps is already

aware that a particular project, class of projects, or projects in a particular area described by the Commission, have received such determinations or waivers.

Disposal of flood-delivered sediments into the marine environment is not authorized under RGP 63 due to potential adverse effects to the habitat and water quality. If such activity is proposed, it shall be addressed through other permitting procedures.

9. **Endangered Species:** No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat as identified under the Federal Endangered Species Act (ESA). Authorization of an activity by the RGP does NOT authorize the "take" of a listed threatened or endangered species, as defined under the Federal ESA. The U.S. Fish and Wildlife Service and/or National Marine Fisheries Service may provide project-specific recommendations to avoid or minimize potential take of listed species or adverse modification of designated critical habitat. The Corps would remain the final arbiter regarding the degree to which the recommendations would be incorporated into the emergency authorization.

Information on the location of listed or proposed threatened or endangered species and their designated or proposed critical habitat can be obtained directly from the FWS or NOAA or from their websites at:

USFWS - <http://www.fws.gov/Endangered/>

NOAA - <http://www.nmfs.noaa.gov/pr/species/>

10. **Historic Properties:** Impacts to historic properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places will be avoided to the maximum extent practicable. If such resources are impacted because of actions authorized under this RGP, the permittee shall provide a full report of the action and the impacts incurred by the resource to this office within 45 days after completion of the action. The Corps, the SHPO and/or the Advisory Council for Historic Preservation will then jointly make a determination as to appropriate procedures and/or mitigation to be addressed.

If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this RGP, you must immediately notify the Corps Regulatory Branch who will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

11. **Regional and Case-by-Case Conditions:** The activity must comply with any regional conditions added by the Division Engineer (see CFR Part 330.4(e)) and with any case-specific conditions added by the District Engineer.
12. **Erosion and Siltation Controls:** Every effort must be made to ensure any material dredged or excavated from Waters of the United States is not likely to be washed back into any Waters of the United States. When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or straw bales or other means designed to minimize turbidity in the watercourse above background levels existing at the time of construction, shall be used and maintained in effective operating condition during construction unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must

be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.

13. **Equipment:** When feasible, and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance, such as use of wide-treaded equipment or floatation devices.
14. **Suitable Material:** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act)
15. **Wild and Scenic Rivers:** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while that river is in an official study status, unless the appropriate Federal agency with direct management responsibility for that river has determined in writing that the proposed activity would not adversely effect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., FWS, National Park Service, USDA Forest Service, Bureau of Land Management). Currently the only designated Wild and Scenic River systems in the Los Angeles District are the main stem of Sespe Creek from its confluence with Rock Creek and Howard Creek downstream to where it leaves Section 26, T5N, R20W, and the Sisquoc River from its origin to the Los Padres National Forest boundary in California; and the Verde River from the section line between Sections 26 and 27, T13N, R5E, Gila-Salt River meridian to the confluence of Red Creek with the Verde River within Section 34, T9 1/2N, R6E.
16. **Aquatic Life Movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Culverts placed in streams must be installed to maintain low flow conditions.

For coastal watersheds in Los Angeles District known to harbor one or more life stages of anadromous salmonid fishes (e.g., steelhead or salmon), all projects requiring replacement of culverts under road crossings shall consider a bridge crossing design that ensures passage and/or spawning of these species is not hindered in any way. In these areas, bridge designs that span the stream or river, including designs for pier- or pile-supported spans, or designs based on use of a bottomless arch culvert simulating the natural stream bed (i.e., substrate and streamflow conditions in the culvert are similar to undisturbed stream bed channel conditions) shall be employed unless it can be demonstrated the stream or river does not support resources important to anadromous salmonids, including migration of adults and smolts, or rearing and spawning.
17. **Shellfish Production:** No discharge of dredged or fill material may occur in areas of concentrated natural or commercial shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by the Corps' Nationwide Permit (NWP) 4.

18. **Spawning Areas:** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
19. **Waterfowl Breeding Areas:** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
20. **Navigation:** No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water. The permittee shall agree that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expenses to the United States. No claim shall be made against the United States on account of any such removal or alteration.
21. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.
22. **Obstruction of High Flows:** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water except within the existing river plain (unless the primary purpose of the fill is to impound waters).
23. **Adverse Effects from Impoundments:** If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
24. **Proper Maintenance:** Any structure or fill authorized by this RGP shall be maintained, including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to private or public property. In such situations, corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original emergency corrective action, or appropriate mitigation as determined through coordination with you and the appropriate Federal and State agencies. Temporary levees constructed to control flows shall not be maintained beyond the current storm season (i.e., maintenance of temporary levees is not authorized after the storm season in which the need arose).
25. **Removal of Temporary Fills:** Temporary fills shall be removed in their entirety and the affected areas returned to pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation common to the area. If an area impacted by such a temporary fill is considered likely to naturally re-establish native riparian or wetland vegetation to a level similar to pre-project or pre-event conditions within two years, you will not be required to do so.

26. **Reports:** You shall provide a concise written report to this office as soon as practicable (within 45 days of completing the project) after completion of any action conducted under this RGP. **PROVIDING THIS REPORT IS MANDATORY.** This office has additional responsibilities pursuant to consultation with the FWS and NOAA under Section 7 of the ESA. Further, these reports enable us to track the use of this RGP to verify that the minimal effects determination is being met as required by Section 404(e) of the CWA. Failure to provide timely reports following responses to emergencies is non-compliance with the General Conditions of this RGP and would be considered a violation (33 CFR Part 326.4(d)).

At a minimum the Report shall include the following:

- I. The name, address, and telephone number of:
 - (a) the applicant
 - (b) the applicant's agent (if appropriate)
- II. Full description of the activity including:
 1. description of the emergency and the potential for loss of life or property;
 2. purpose of the activity;
 3. final goal of the entire activity;
 4. location (e.g., latitude/longitude or UTM coordinates; section/township/range on appropriate USGS topo map; Thomas Guide map, or other source to accurately portray project location);
 5. size and description of project area (include maps or drawings showing the areal and lineal extent of the project, and pre- and post-construction photographs);
 6. quantities of materials used;
 7. information on receiving waterbody impacted including:
 - a) name of waterbody
 - b) type of receiving waterbody (e.g., river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, wetland type, etc.)
 - c) temporary/permanent adverse impact(s) in acres/cubic yards/linear feet
 - d) compensatory mitigation in acres/cubic yards/linear feet
 - e) other mitigation steps (to avoid, minimize, compensate); and
 8. information on federally listed or proposed endangered species or designated or proposed critical habitat (notification must be provided to FWS and/or NOAA as appropriate) including:
 - a) temporary/permanent adverse impacts
 - b) compensatory mitigation
 - c) other mitigation steps (to avoid, minimize, compensate).

If there are a substantial number of projects and this requirement would consume large quantities of your staff resources, you may, as an option, submit a comprehensive report providing all of the information required in the notification condition (Item 2.b.) above. The report shall include a description of the emergency and the potential for loss of life or property, maps to the project location, maps or drawings showing the areal and lineal extent of the project, quantities of material used, and pre- and post-construction photographs, if available. If the project was conducted in an area known to harbor Federally listed or proposed endangered species or designated or proposed critical habitat, you must include a list of measures taken to minimize harm to the species and/or habitat and include an additional a copy of the report for the FWS and/or the NOAA, as appropriate. If mitigation was determined to be appropriate for

a specific project or group of projects, a mitigation proposal must be submitted to this office for review and approval.

FURTHER INFORMATION:

1. **Congressional Authorities:** Activities conducted under this RGP are authorized pursuant to:
 - (X) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. **Limits of authorization under RGP 63:**
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.

3. **Limits of Federal Liability:** In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.

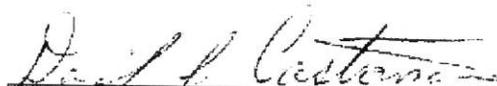
4. **Reliance on Applicant's Data:** The determination of this office that issuance of verification under RGP 63 is not contrary to the public interest was made in reliance on the information provided by the permittee.

5. **Reevaluation:** This office may reevaluate its decision to issue this RGP, or on the verification that any particular activity qualifies for this RGP, at any time circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit verification request or after-action report proves to have been false, incomplete, or inaccurate. See Item 4 above.
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to

comply with such directive, this office may, in certain situations (such as those specified in 33 CFR 209.170), accomplish the corrective measures by contract or otherwise and bill you for the cost.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



DAVID J. CASTANON
Chief, Regulatory Division

12-22-08

DATE