



City Council Staff Report

Date: January 13, 2016

CONSENT CALENDAR

Subject: AUTHORIZE PAYMENT TO COACHELLA VALLEY CONSERVATION COMMISSION (CVCC) IN LIEU FEE PROGRAM (ILFP) IN THE AMOUNT OF \$78,487.50 RELATED TO THE RAMON ROAD WIDENING (SAN LUIS REY DR. TO LANDAU BLVD.) INCLUDING THE WHITEWATER RIVER BRIDGE WIDENING, CITY PROJECT NO. 08-25, FEDERAL-AID PROJECT NO. BHLS-5282 (040)

From: David H. Ready, City Manager

Initiated by: Department of Public Works & Engineering

SUMMARY

The requested action will authorize payment to the Coachella Valley Conservation Commission In Lieu Fee Program in the amount of \$78,487.50 to purchase restoration credits equivalent to 0.35 acres as compensatory mitigation associated with the United States Army Corps of Engineers Nationwide Section 404 Permit required for the Ramon Road Widening (San Luis Rey Dr. to Landau Blvd.) including the Whitewater Bridge Widening, City Project No. 08-25, Federal-Aid Project No. BHLS -5282 (040).

RECOMMENDATION:

1. Authorize Payment to the Coachella Valley Conservation Commission In Lieu Fee Program ("CVCC-ILFP") in the amount of \$78,487.50 for 0.35 acres of compensatory mitigation associated with the Ramon Road Widening (San Luis Rey Dr. to Landau Blvd.) including the Whitewater Bridge Widening, City Project No. 08-25, Federal-Aid Project No. BHLS -5282 (040); and
2. Authorize the City Manager to execute all necessary documents.

BACKGROUND:

Clean Water Act ("CWA") permits issued under the jurisdiction of the United States Army Corps of Engineers ("USACE") is often one of the most challenging regulatory processes to undertake in compliance with environmental mitigation measures where construction occurs within "Waters of the U.S." and a permit to disturb these "waters" is required from USACE pursuant to Section 404 of the CWA. These Section 404

regulatory permit requirements, and any related mitigation measures, are not currently covered by the Coachella Valley Multiple Species Habitat Conservation Plan ("CVMSHCP"). The CVMSHCP was established for and provides coverage for certain impacts to biological resources, but not to water resources protected under the CWA; therefore, each project undertaken that has "coverage" under the CVMSHCP must also obtain coverage from the USACE through their issuance of a Section 404 Permit to satisfy their specific mitigation requirements. This process represents a piecemeal approach to environmental mitigation, with potentially questionable ecological benefits, and is implemented without any systematic effort to ensure greater benefits through coordination with other efforts, such as the CVMSHCP.

In light of these facts, the Coachella Valley Conservation Commission ("CVCC") has coordinated with the USACE to develop an In-Lieu Fee Program ("ILFP") to provide a mechanism for mitigation to be accomplished in a way that is complementary to the CVMSHCP. The CVCC-ILFP is a program established to obtain and satisfy any required compensatory mitigation for (1) unavoidable Impacts to Waters of the U.S. that result from activities authorized under a Section 404 CWA permit, and pursuant to a Section 401 CWA water quality certification, or (2) completed enforcement actions under the auspices of Sections 401 and 404 of the CWA. The objectives of the CVCC-ILFP are: (1) to provide an alternative to individual permittee responsible compensatory mitigation by implementing In-Lieu Fee ("ILF") Projects adequate to meet current and expected demand for credits in the Service Area; (2) create a program that has a level of accountability commensurate with mitigation banks as specified in 33 C.F.R. 332; (3) restore and protect aquatic resources on a watershed-basis by siting ILF Projects using the best available decision support tools, and (4) by integrating ILF Projects with ongoing conservation activities in the Coachella Valley, especially in ways that complement and support the CVMSHCP.

The CVMSHCP is a regional landscape-scale plan which provides for conservation of biological diversity and ecosystem processes to meet the requirements of federal and state endangered species laws, while allowing for balanced growth and development. The CVMSHCP provides for conservation, monitoring and management of 27 species in an area of approximately 1.1 million acres in eastern Riverside County. The CVMSHCP is regulated by permits from the state and federal wildlife agencies ("Wildlife Agencies"), the California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service ("USFWS").

The CVCC is the Program Sponsor for the CVCC-ILFP, and is a joint powers authority responsible for implementing the CVMSHCP on behalf of the "Local Permittees," the cities of Cathedral City, Coachella, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, Rancho Mirage, the County of Riverside, Riverside County Flood Control and Water Conservation District, Riverside County Waste Resources Management District, Riverside County Regional Parks and Open Space District, Coachella Valley Water District, Imperial Irrigation District and a portion of the City of Desert Hot Springs. The

Coachella Valley Association of Governments ("CVAG") provides administrative support and staffing for the CVCC.

STAFF ANALYSIS:

Since 2008, the City has commenced environmental and engineering design to widen Ramon Road to its 6-lane full arterial width from San Luis Rey Drive to Landau Boulevard, including widening the existing bridge over the Whitewater River. The project is entitled, the Ramon Road Widening (San Luis Rey Dr. to Landau Blvd.) including the Whitewater Bridge Widening, City Project No. 08-25, Federal-Aid Project No. BHLS - 5282 (040), (the "Project"). A vicinity map showing the location of the Project is included as **Attachment 1**.

On May 7, 2014, the City Council, pursuant to the California Environmental Quality Act, considered the potential environmental impacts associated with the Project, and approved the adoption and ordered the filing of a Mitigated Negative Declaration ("MND"). A copy of the May 7, 2014, staff report is included as **Attachment 2**. In accordance with the MND, a mitigation measure was adopted to address impacts to Waters of the U.S., which stated:

In compliance with Section 404 of the Clean Water Act, any site disturbance on jurisdictional waters will be required to comply with the USACE permitting process and regulations as they relate to the discharge or dredged or fill materials and as set forth in Section 404 of the Clean Water Act.

Construction of the Project requires permanent fill material for subsurface scour protection of the widened bridge structure which affects 0.35 acres of the Whitewater River, considered by the USACE as a non-wetland Waters of the U.S. The discharge of dredged and/or fill material into Waters of the U.S. requires a permit from the USACE pursuant to Section 404 of the Clean Water Act (33 USC 1344; 33 CFR parts 323 and 330). The City has applied for and received a Section 404 Permit for the Project from the USACE, which requires the City to compensate for the 0.35 acres of disturbed area of Waters of the U.S., by purchasing credit for the rehabilitation of non-wetland Waters of the U.S. through the CVCC-ILFP. A copy of the Section 404 Permit is included as **Attachment 3**.

On September 10, 2015, the CVCC approved the sale of and established a Cost Schedule for Advance Credits for the CVCC-ILFP; a copy of the September 10, 2015, CVCC staff report is included as **Attachment 4**. In accordance with the actions of the CVCC, the current cost to purchase Advance Credits for restoration or rehabilitation impacts is \$224,250 per acre. Therefore, the City's obligation to satisfy the mitigation measures adopted for the Project requires the purchase of \$78,487.50 from the CVCC through the CVCC-ILFP.

ENVIRONMENTAL IMPACT:

Section 21084 of the California Public Resources Code requires Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). In accordance with the CEQA Guidelines, the City acting as "Lead Agency" pursuant to CEQA, previously completed an environmental analysis of the potential impacts resulting from construction of the Project. On May 7, 2014, the City Council adopted Resolution No. 23544, adopting and ordering the filing of a Mitigated Negative Declaration for the Project. Subsequently, on May 15, 2014, staff filed a Notice of Determination with the Riverside County Clerk and State Clearing House; a copy of the Notice of Determination is included as **Attachment 5**.

The Project is funded, in part, by federal funds, requiring local oversight by the State of California, Department of Transportation ("Caltrans"). As a federally funded project, the Project is subject to environmental review pursuant to the National Environmental Policy Act ("NEPA"). On June 9, 2014, Caltrans, acting as the lead agency pursuant to NEPA, made an environmental determination that the Project does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS"), and that it qualifies for a Categorical Exclusion in accordance with 23 USC 327. A copy of the Categorical Exclusion issued by Caltrans is included as **Attachment 6**.

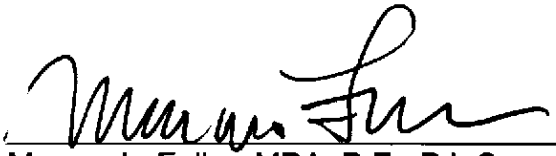
FISCAL IMPACT:

The cost of the mitigation measure is currently established at \$224,250 per acre for Restoration/Rehabilitation Credits for the CVCC-ILFP established in a September 10, 2015. The Project will require 0.35 acres of credit resulting in payment in the amount of \$78,487.50 to the CVCC-ILFP to satisfy the compensatory mitigation required by the Section 404 Permit issued by the USACE to the City for the Project.

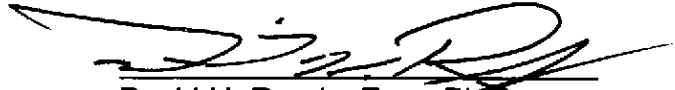
Sufficient funding is available to approve the requested action. All costs for the Project are funded from Local Measure A (Fund 134), Regional Measure A (Fund 134), the Federal Highway Bridge Program ("HBP") Grant, and reimbursement from Cathedral City (CC), received in the Capital Project Fund, (Fund 261). The payment of \$78,487.50 to CVCC will be funded from the following accounts:

Fund Type	Account No.	Amount	Percentage
Capital Project Fund (HBP)	261-4491-50245	\$57,162.44	72.83%
Regional Measure A (CVAG)	134-4497-50245	\$15,987.90	20.37%
Capital Project Fund (CC)	261-4491-50304	\$2,668.58	3.40%
Local Measure A Fund (RCTC)	134-4498-50245	\$2,668.58	3.40%
	Total	\$78,487.50	100%

SUBMITTED:



Marcus L. Fuller, MPA, P.E., P.L.S.
Assistant City Manager/City Engineer



David H. Ready, Esq., Ph.D.
City Manager

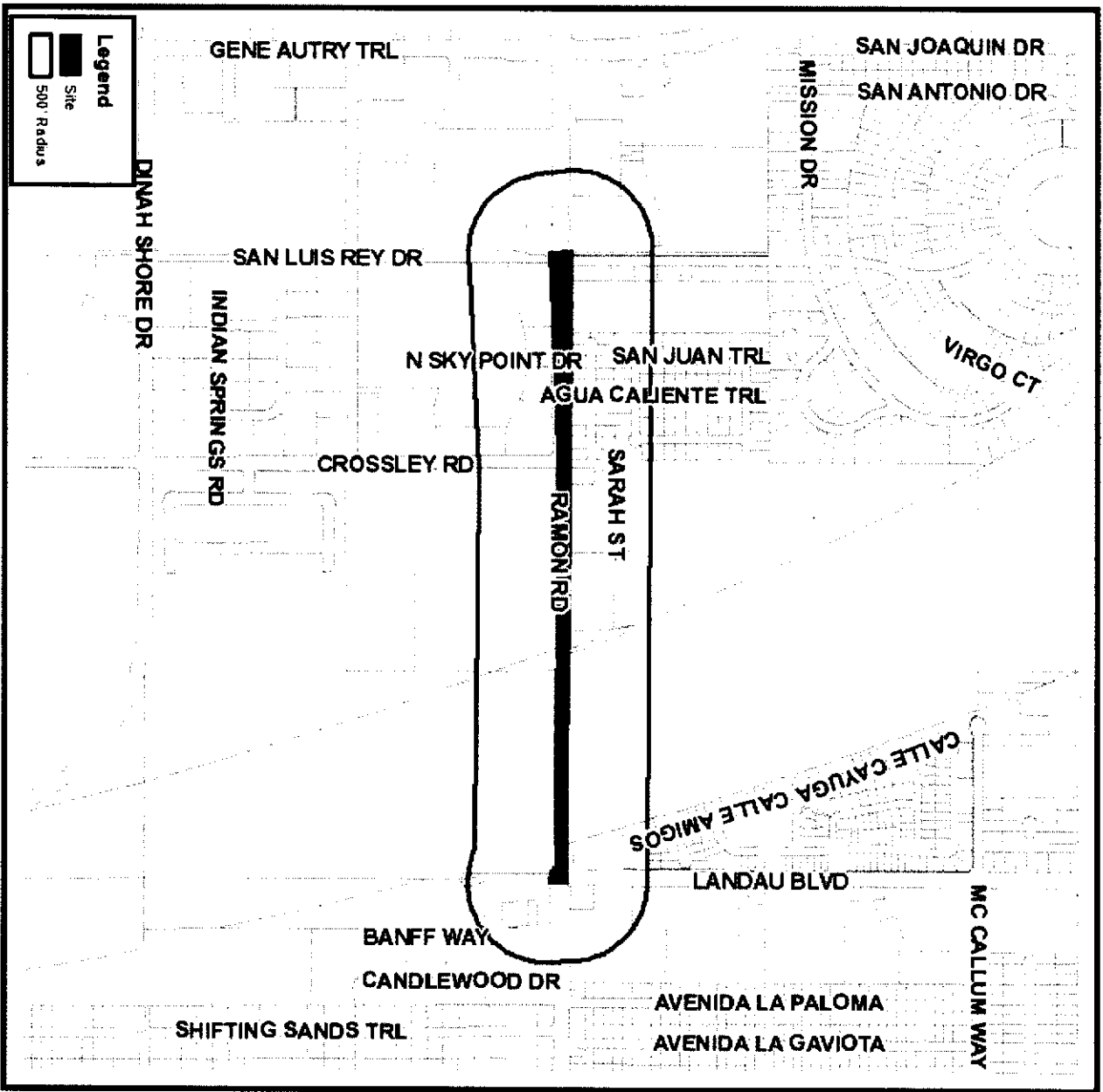
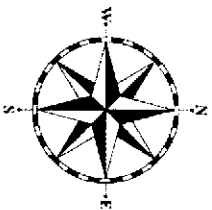
Attachments:

1. Vicinity Map
2. May 7, 2014, staff report
3. USACE Section 404 Nationwide Permit
4. September 10, 2015, CVCC staff report
5. Notice of Determination
6. Categorical Exclusion

ATTACHMENT 1



Department of Public Works and Engineering
Vicinity Map



CITY OF PALM SPRINGS

ATTACHMENT 2



City Council Staff Report

Date: May 7, 2014

CONSENT CALENDAR

Subject: ADOPTION OF MITIGATED NEGATIVE DECLARATION FOR THE RAMON ROAD WIDENING PROJECT BETWEEN SAN LUIS REY DRIVE AND LANDAU BOULEVARD, CITY PROJECT NO. 08-25

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

Staff has completed a lengthy process to prepare a comprehensive environmental review of the Ramon Road Widening Project, pursuant to California Environmental Quality Act (CEQA). The proposed project extends from San Luis Rey Drive to just east of Landau Boulevard in the City of Cathedral City. The Project also includes the widening of the Ramon Road bridge over the Whitewater River. The City of Palm Springs is the CEQA Lead Agency for this project, with the City of Cathedral City serving as a Responsible Agency. A draft CEQA Initial Study/Mitigated Negative Declaration (IS/MND) and associated technical studies have been prepared and a 30-day public review period has been completed. The IS/MND is ready for consideration and, if appropriate, adoption by the City Council.

Completion of this process allows the City to move forward with final design, right-of-way acquisition, and ultimately, construction of the project. During the public review process, there were no requests for a Public Hearing, therefore, none is required in the City's approval of the final IS/MND and adoption of the Mitigated Negative Declaration

RECOMMENDATION:

Adopt Resolution No. _____ "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADOPTING AND ORDERING THE FILING OF A MITIGATED NEGATIVE DECLARATION FOR THE RAMON ROAD WIDENING PROJECT, CITY PROJECT NO. 08-25".

ITEM NO. 20
09

STAFF ANALYSIS:

Project History

On January 30, 2008, the City of Palm Springs ("City"), the City of Cathedral City and the Agua Caliente Band of Cahuilla Indians submitted a request for funding from the Coachella Valley Association of Governments (CVAG) to prepare a Project Study Report (PSR) for the Ramon Road Widening Project Between San Luis Rey Drive and Landau Boulevard. On January 30, 2009, the City initiated conceptual engineering design for the subject Ramon Road Widening Project, in cooperation and coordination with the City of Cathedral City. A funding application was prepared and submitted to Caltrans to request federal funds on January 5, 2010. On April 28, 2010, Caltrans accepted the project for programming into the 2011 Federal Transportation Improvement Program (FTIP). Caltrans subsequently authorized Phase 1, preliminary engineering and environmental clearance, of the project on June 7, 2011. Phase 1 is equivalent to the 30 percent design of the project, which serves as the basis for the subject CEQA review.

Major project funding is from the federal Highway Bridge Program (HBP), which will fund 70.1% of the total project costs. The cities will be responsible for the remaining local match of the bridge costs and the roadway portions that do not qualify for HBP funds. The local match and roadway costs not funded by the HBP funds are expected to come from CVAG's Regional Measure "A", City of Palm Springs' Local Measure "A", and Cathedral City's fair share of the costs. Total project costs are estimated to be approximately \$36,000,000 as summarized in the following table:

Phase	HBP Federal Funding	CVAG Regional Measure A	Palm Springs Local Measure A	Cathedral City Fair Share	Totals
Preliminary Engineering	\$2,453,000	\$686,250	\$114,375	\$114,375	\$3,368,000
Right of Way	\$1,030,000	\$1,302,000	\$188,356	\$245,644	\$2,766,000
Construction	\$21,753,000	\$6,083,250	\$880,044	\$1,147,706	\$29,864,000
Totals	\$25,236,000	\$8,071,500	\$1,182,775	\$1,507,725	\$35,998,000

With the completion of the Phase I design and preliminary environmental scoping, the City initiated Phase II of this project in January of 2012 to provide 30% design of the Project. Phase II design and associated engineering serves as the basis for the subject CEQA review.

Project Description

The proposed project will result in the widening of Ramon Road from a 4-lane arterial to a 6-lane arterial (3 lanes in each direction) between San Luis Rey Dr. and Landau Blvd., including the widening and seismic retrofitting of the Ramon Road Bridge over the Whitewater River. In addition to bridge widening, the project will also include new

guardrails, bridge supports within the Whitewater River Channel, installation of a median, reconstruction of gutters, curbs, and driveways, restriping of travel lanes and crosswalks, roadway rehabilitation, utilities relocation, drainage improvements, landscaping, and all appurtenant work. The project also includes a 5-foot sidewalk on the north side of the bridge and a 10-foot wide multi-purpose trail, protected by a physical barrier that also accommodates bicyclists, across the south side of the bridge. Per a letter dated February 24, 2014, Cathedral City designated only a Class III bike route for the north side of the bridge, within their City limits.

In addition to the roadway and bridge improvements, the project also includes the construction of scour countermeasures in the channel bottom to protect the bridge piers during major flood events. Temporary dirt channel access ramps will be constructed at the southwest and southeast corners of Ramon Road and the wash and will be removed once construction is completed. Additional temporary access into the channel may also occur at the northeast and northwest corners.

The Project also proposes eastbound and westbound travel lane adjustments in order to allow for bridge approach widening. Westbound adjustments include construction of a variable-width median island up to 14-foot wide, and dual 350-foot exclusive westbound left turn pockets east of Crossley Road. At the intersection of Ramon Road and Landau Boulevard, plans also call for a 270-foot westbound right turn pocket, and eastbound adjustments which include a 500-foot eastbound lane transition, and a 380-foot exclusive dual left turn pocket. A reconstructed raised median is also proposed within Ramon Road just east of Landau Blvd.

Plans also call for a new eastbound SunLine bus stop at the southeast corner of Ramon Road and Crossley Road. In addition, the existing westbound bus stop and turnout at the northeast corner of Ramon Road and Landau Boulevard will be relocated immediately west of Landau Boulevard. The existing eastbound bus stop and turnout at the southeast corner of Ramon Road and Landau Boulevard will be upgraded. Landau Boulevard will be extended south of Ramon Road, will provide a new access drive into the adjoining bowling alley, and compensates for the loss of the bowling alley's existing access drive on Ramon Road and immediately east of Landau Boulevard.

Traffic controllers and signals will be upgraded to accommodate the roadway expansion. The project will construct curbs, ramps, and sidewalks along the said segment of Ramon Road per current Americans with Disabilities Act (ADA) standards.

Currently, the subject roadway is generally composed of asphalt concrete over an aggregate base, and surface conditions range from fair to good. The proposed project will result in a gap closure by providing a continuous 6-lane arterial to correct a bottleneck that occurs due to the narrowing of lanes across the bridge. The project is intended to enhance traffic flows and safety, and augment pedestrian and bicycle access.

Environmental Analysis

An environmental document, consisting of a CEQA Initial Study/Mitigated Negative Declaration (IS/MND) was required for this project. The purpose of this IS/MND is to evaluate the potential environmental impacts associated with implementation of the proposed Ramon Road Widening Project. This document has been prepared to fulfill the requirements of the California Environmental Quality Act (CEQA) and the City's Rules to Implement CEQA.

The IS/MND evaluated the full range of analysis as set forth in Appendix G of the CEQA Guidelines, including but not limited to the following areas:

- Human Environment
- Physical Environment
- Biological Environment
- Cumulative Impacts
- Air Quality and Climate Change

Environmental Setting and Surrounding Land Uses

The proposed project is primarily located within the existing roadway right-of-way in an urban environment surrounded by commercial and residential land uses, as well as the Whitewater River and open space and golf course uses. The existing Ramon Road bridge over the Whitewater River is bordered by the existing Cimarron golf course to the north and a natural flood control channel to the south. East of San Luis Rey on the south side of Ramon Road the land use designation is "Regional Commercial" and this use is mostly built out.

The Whitewater River is designated as "Watercourse". West of the river and north of Ramon Road these lands are also designated "General Commercial". Just east of San Luis Rey on the north side of Ramon Road, the land use designation is "Medium Density Residential" allowing 4.5 to 10 dwelling units to the acre.

The proposed project is located in the cities of Palm Springs and Cathedral City, within Riverside County. The Ramon Road Widening Project is primarily contained within the Ramon Road right-of-way between San Luis Rey and just east of Landau Boulevard. The project is located within an urban setting surrounded by commercial, residential, and watercourse land uses. Land uses surrounding the site include:

North: Whitewater River channel, golf course (Cimarron Golf Resort), single- and multi-family housing, storage

South: Regional shopping center, vacant swap meet site, Whitewater River channel, vacant land.

East: Commercial retail (shopping center, bowling alley etc.)

West: Regional and community commercial, general office buildings

Public Participation

Early and continuing coordination with the general public and appropriate public agencies was an essential part of the environmental process for this project, as a way to determine the scope of environmental documentation, the level of analysis, potential impacts and mitigation measures and related environmental requirements. Agency consultation and public participation for this project have been accomplished through a variety of formal and informal methods, including project development team meetings, interagency coordination meetings, public scoping meetings, formal meetings of the Palm Springs and Cathedral City Public Arts Commissions, and coordination with resource agencies and Native American individuals and organizations.

A public scoping meeting was sponsored by the City and held at City Hall on June 26, 2013, to allow the public to learn of the details of this project and for the environmental team to receive input and comments regarding potential impacts this project may have on the environment and surrounding area. At that time, several members of the public from surrounding neighborhoods attended the meeting, and voiced their concerns with the impacts the new road segment will have to the adjacent neighborhoods, sidewalks and bike paths, design aesthetics, traffic noise, lighting, birds and wildlife, and existing signage. The comments were collected and responses were prepared and communicated back to those who made the comments.

Consultation with several agencies occurred as part of preparing the project technical reports and the IS/MND. These agencies are identified in the various technical reports and include:

- Native American Heritage Commission
- United States Fish and Wildlife Service
- California Department of Fish and Wildlife
- Caltrans
- US Army Corps of Engineers
- Agua Caliente Tribal Historic Preservation Officer
- Southern California Association of Governments
- Coachella Valley Association of Governments
- United States Environmental Protection Agency (USEPA)
- California Regional Water Quality Control Board
- Coachella Valley Water District
- Riverside County Flood Control & Water Conservation District

The Draft Initial Study/Mitigated Negative Declaration was circulated for public comment from March 19 through April 19, 2014. A public notice announcing circulation and availability of the document was published in the Desert Sun on March 19, 2014. The Draft IS/MND was also available for review at the City of Palm Springs, Department of Public Works Office (3200 East Tahquitz Canyon Way) and the Palm Springs Public Library (300 South Sunrise Way).

A total of three (3) project/comment letters were received during the availability period for the Draft IS/MND. These include a letter from the State Clearinghouse indicating that there were no comments on the IS/MND from state agencies. Letters were received from the following:

- Scott Morgan, Director, Governor's Office of Planning and Research, State Clearinghouse and Planning Unit
- Nena McCullough, Local Public Affairs Manager, Southern California Edison (SCE)
- Steve Bigley, Dir. of Environmental Services, Coachella valley Water District (CVWD)

Comments from SCE request that the Final IS/MND cite that certain SCE facilities will be relocated in order to allow construction of planned roadway and associated improvements, as shown on project improvement plans. Copies of the comment letters are included in the final IS/MND.

Findings

The IS/MND prepared for this project has concluded, and following public review, it has been determined that the proposed project, with mitigation measures set forth in the IS/MND, will not have a significant effect on the environment. The project will have no effect on aesthetic or visual resources, biological or cultural resources, hazards, public services or utilities, agricultural resources, area hydrology or water quality, noise, air quality or climate change, soils or geology, transportation, or area housing or population.

A Mitigated Negative Declaration has been prepared that identifies various avoidance and mitigation measures related to aesthetic or visual resources, air quality/climate change, biological resources, cultural resources, geotechnical conditions, hazardous materials, hydrology and water quality, noise, public services, transportation/traffic, and utility and service systems.

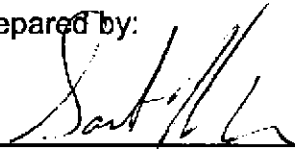
Implementation of the avoidance and mitigation measures, as identified in the Mitigation Monitoring and Reporting Programs set forth in the IS/MND will ensure that the proposed project will have no significant effect on the environment.

FISCAL IMPACT:

None.


SUBMITTED:

Prepared by:



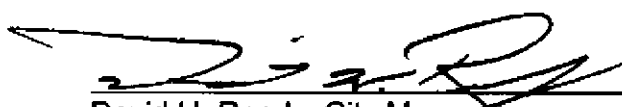
Savat Khamphou
Assistant Director of Public Works/
Assistant City Engineer

Recommended by:



David J. Barakian
Director of Public Works/City Engineer

Approved by:



David H. Ready, City Manager

ATTACHMENTS:

1. Resolution
2. Final Initial Study/Mitigated Negative Declaration

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADOPTING AND ORDERING THE FILING OF A MITIGATED NEGATIVE DECLARATION FOR THE RAMON ROAD WIDENING PROJECT BETWEEN SAN LUIS REY DRIVE AND LANDAU BOULEVARD, CITY PROJECT NO. 08-25

WHEREAS, On January 30, 2008, the City of Palm Springs ("City"), the City of Cathedral City and the Agua Caliente Band of Cahuilla Indians submitted a request for funding from the Coachella Valley Association of Governments (CVAG) to prepare a Project Study Report (PSR) for the Ramon Road Widening Project Between San Luis Rey Drive and Landau Boulevard, City Project No. 08-25; and

WHEREAS, the Project is listed on the 2010 Transportation Project Prioritization Study (TPPS) and is therein listed as a backbone project; and

WHEREAS, the Project will result in the widening of Ramon Road from a 4-lane arterial to a 6-lane arterial (3 lanes in each direction) between San Luis Rey Dr. and Landau Blvd., including the widening and seismic retrofitting of the Ramon Road Bridge over the Whitewater River (Bridge No. 56C0287). The project will also include new guardrails, bridge supports within the Whitewater River Channel, installation of a median, reconstruction of gutters, curbs, and driveways, restriping of travel lanes and crosswalks, roadway rehabilitation, new and relocated bus stops, sidewalks and multi-purpose trail, utilities relocation, drainage improvements, landscaping, and all appurtenant work. The project also includes sidewalks across the bridge, including a 10-foot wide multi-purpose trail; and

WHEREAS, the Project is consistent with the Circulation Element of the 2007 Palm Springs General Plan Update, which identifies Ramon Road as a "Major Thoroughfare" and the 2009 Cathedral City General Plan, which identifies Ramon Road as an "Arterial Highway"; and

WHEREAS, the Project is listed on the Southern California Association of Governments ("SCAG") 2013 Federal Transportation Improvement Program ("FTIP") as Project ID# RIV110124, approved by the Federal Highway Administration and Federal Transit Administration on December 14, 2012; and

WHEREAS, the Project implements the goals and policies of the General Plans of the Cities of Palm Springs and Cathedral City; and

WHEREAS, an Initial Study was prepared pursuant to the provisions of the California Environmental Quality Act ("CEQA"), Division 13 of the Public Resources Code of the State of California, beginning with §21000 (hereinafter "Act"); and

WHEREAS, pursuant to Section 21152 of the Act, a public notice announcing circulation and availability of the document and intent to Adopt a Mitigated Negative Declaration was published in the Desert Sun on March 19, 2014, and Notice of Opportunity for Public Hearing, was filed with the Riverside County Clerk; and

WHEREAS, the Initial Study/Mitigated Negative Declaration ("IS/MND") was circulated for public comment from March 19 through April 19, 2014; and

WHEREAS, pursuant to Section 15202 of the CEQA Guidelines, Title 14, Division 6, Chapter 3, Article 13 "Review and Evaluation of EIRs and Negative Declarations", of the California Code of Regulations, CEQA does not require formal hearings at any stage of the environmental review process, and public comments may be restricted to written communications; and

WHEREAS, the IS/MND prepared for this project has concluded, and following public review, it has been determined that the Project will not have a significant effect on the environment with the adoption of avoidance and mitigation measures identified in the MND; and

WHEREAS, the City Council has carefully reviewed and considered all of the evidence presented in connection with the Project, including, but not limited to, the staff report, the IS/MND, and all written and oral testimony presented.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1: The above recitals are all true and correct.

Section 2: The City Clerk of the City of Palm Springs, is hereby designated the custodian of the documents and other materials which constitute the record of proceedings upon which the City Council has based its decision. The custodian of the documents is located at 3200 E. Tahquitz Canyon Way, Palm Springs, California.

Section 3: Pursuant to Section 15063 of the CEQA Guidelines, a Mitigated Negative Declaration ("MND") of environmental impact was prepared and circulated for a 30-day public review period ending on April 19, 2014. The Mitigated Negative Declaration adequately analyzes the general environmental setting of the Project, its potentially significant environmental impacts, and mitigation measures related to each potentially significant environmental impact on the Project, and has determined that there are no potentially significant impacts associated with the Project.

Section 4: The Project implements the following goals and policies of the City of Palm Springs General Plan:

Goal CR1: *Establish and maintain an efficient, interconnected circulation system that accommodates vehicular travel, walking, bicycling, public transit, and other forms of transportation.*

Goal CR2: *Establish improved levels of service for efficient traffic flow and provide a safe circulation system.*

As stated in the Project's Statement of Purpose of Need, the Project will accomplish the following:

- Provide a gap-closure and improved regional roadway access between the Cities of Palm Springs and Cathedral City;
- Provide expanded all-weather access across the Whitewater River Stormwater Channel between the Cities of Palm Springs and Cathedral City.

Policy CR2.2: Make street improvements at problem intersections and bottleneck locations to improve specific traffic operations and safety, with all such improvements to be considered selectively on the basis of specific studies of the affected intersection and streets, and the impacts on the surrounding area and on pedestrian activity.

As stated in the Project's Statement of Need, the Project will resolve the following:

- **Design Inadequacies:** The majority of Ramon Road between Gene Autry Trail in the City of Palm Springs and Da Vall Drive in the City of Cathedral City consists of 6 traffic lanes (3 lanes in each direction). However, the arterial within the project area between San Luis Rey Drive and Landau Boulevard consists of only 4 to 5 lanes including the Ramon Road Bridge, which consists of only 4 lanes;
- **Safety Deficiencies:** The proposed project will improve traffic safety and traffic flow on the existing river crossing by widening the narrow bridge and improving its roadway approaches. It will improve access to the Palm Springs International Airport, which is located approximately 2 miles west of the proposed roadway and bridge widening. The widening of the bridge will also enhance public health by improving access through the bridge to reduce response time of the Emergency Response Centers
- **Capacity Deficiencies:** The four-lane roadway and bridge currently creates a traffic bottleneck situation as Ramon Road narrows from a 6-lane roadway to a 4-lane roadway over the Whitewater River and bridge approaches. As a result, the project area experiences undesirable traffic congestion during peak hours and intermittently throughout the day especially from San Luis Rey Drive to Landau Boulevard.

Section 5: The City Council has carefully reviewed and considered all of the evidence presented in connection with the Project, including, but not limited to, the staff report, the Initial Study and public comments received, the proposed Mitigated Negative Declaration, the proposed Mitigation Monitoring and Reporting Program, and all written and oral testimony presented. The City Council further finds that on the basis of the entire Project record, there is no substantial evidence that the Project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the City's independent judgment and analysis.

ATTACHMENT 3



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1451 RESEARCH PARK DRIVE, SUITE 100
RIVERSIDE, CALIFORNIA 92507-2154

October 6, 2015

John Criste
Terra Nova Planning & Research, Inc
42-635 Melanie Place Suite 101
Palm Desert, California 92211

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT VERIFICATION

Dear Mr. Criste:

I am responding to your request on behalf of the City of Palm Springs (SPL-2014-00114), received on February 11, 2014, for a Department of the Army permit for the Ramon Road Widening Project (project). The proposed project includes widening the bridge where Ramon Road crosses the Whitewater River, between San Luis Rey and Landau Boulevard, located in the City of Palm Springs, Riverside County, California. The proposed bridge widening would increase the traffic lanes from four to six (three in each direction), including expanding the bridge support structure to accommodate the widening, and would require the permanent discharge of fill material into 0.35 acre of waters of the United States.

Because this project would result in a discharge of dredged and/or fill material into waters of the United States a Department of the Army permit is required pursuant to Section 404 of the Clean Water Act (33 USC 1344; 33 CFR parts 323 and 330).

I have determined construction of the proposed project, if constructed as described in the revised application, would comply with Nationwide Permit (NWP) 14 Linear Transportation Projects. Specifically, and as shown in the revised application, you are authorized to:

1. Discharge permanent fill material (subsurface scour protection) onto 0.35 acre of non-wetland waters of the United States.

For this NWP verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the non-discretionary Special Conditions listed below:

1. Prior to initiating construction in waters of the U.S., and to mitigate for permanent impacts to 0.35 acre of non-wetland waters of the U.S., the Permittee shall provide documentation verifying purchase of 0.35 credit for the rehabilitation of non-wetland waters of the U.S. from the Coachella Valley Conservation Commission In-Lieu Fee Program (CVCC-ILFP). The Permittee shall not initiate work in waters of the U.S. prior to receiving written confirmation (by letter or e-mail) from the Corps Regulatory Division (POC: James Mace) as to compliance with this special condition. The Permittee retains responsibility for

providing the compensatory mitigation until the number and resource type of credits described above have been secured from the sponsor and the district engineer (POC: James Mace) has received documentation that confirms that the sponsor has accepted the responsibility for providing the required compensatory mitigation. This documentation may consist of a letter or form signed by the sponsor, with the permit number and a statement indicating the number and resource type of credits that have been secured from the sponsor.

2. This permit is contingent upon the issuance of a section 401 Water Quality Certification (WQC). Because this project includes both tribal and non-tribal lands, two WQCs are required; one from the local Regional Water Quality Control Board, and one from the U.S. Environmental Protection Agency (EPA) for the portion on tribal lands. It is the understanding of the Corps the WQC from the Colorado River Basin Regional Water Quality Control Board (local) has been obtained, but the WQC for the portion on tribal lands (with U.S. EPA) is still being processed. The Permittee shall abide by the terms and conditions of both Clean Water Act section 401 WQCs. The Permittee shall submit the section 401 WQC from U.S. EPA to the Corps Regulatory Division (POC: James Mace, preferably via email) within two weeks of receipt from U.S. EPA. The Permittee shall not proceed with construction until receiving an e-mail or other written notification from Corps Regulatory Division (POC: James Mace) acknowledging the U.S. EPA Clean Water Act 401 WQC has been received, reviewed, and determined to be acceptable.
3. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff within 24 hours (John Killeen at 213-452-3861). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

This verification is valid through March 18, 2017. If on March 18, 2017 you have commenced or are under contract to commence the permitted activity you will have an additional twelve (12) months to complete the activity under the present NWP terms and conditions. However, if I discover noncompliance or unauthorized activities associated with the permitted activity I may request the use of discretionary authority in accordance with procedures in 33 CFR § 330.4(e) and 33 CFR § 330.5(c) or (d) to modify, suspend, or revoke this specific verification at an earlier date. Additionally, at the national level the Chief of Engineers, any time prior to March 18, 2017, may chose to modify, suspend, or revoke the nationwide use of a NWP after following procedures set forth in 33 CFR § 330.5. It is incumbent upon you to comply with all of the terms and conditions of this NWP verification and to remain informed of any change to the NWPs.

A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it 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 the regulatory program. If you have any questions, please contact me at 951-276-6624 x263 or via e-mail at James.E.Mace@usace.army.mil. Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Sincerely,

James E. Mace
Senior Project Manager
South Coast Branch
Regulatory Division

Enclosures



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

**CERTIFICATE OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT**

Permit Number: *SPL-2014-00114*

Name of Permittee: *City of Palm Springs*

Date of Issuance: *October 6, 2015*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it by **ONE** of the following methods;

1) Email a digital scan of the signed certificate to James.E.Mace@usace.army.mil
OR

2) Mail the signed certificate to
U.S. Army Corps of Engineers
ATTN: Regulatory Division SPL-2014-00114
1451 RESEARCH PARK DRIVE, SUITE 100
RIVERSIDE, CALIFORNIA 92507-2154

I hereby certify that the authorized work and any required compensatory mitigation has been completed in accordance with the NWP authorization, including all general, regional, or activity-specific conditions. Furthermore, if credits from a mitigation bank or in-lieu fee program were used to satisfy compensatory mitigation requirements I have attached the documentation required by 33 CFR 332.3(l)(3) to confirm that the appropriate number and resource type of credits have been secured.

Signature of Permittee

Date

Enclosure 1: NATIONWIDE PERMIT NUMBER(S) NWP 14 Linear Transportation Projects. TERMS AND CONDITIONS

1. Nationwide Permit(s) NWP 14 Linear Transportation Projects. Terms:

Your activity is authorized under Nationwide Permit Number(s) NWP 14 Linear Transportation Projects subject to the following terms:

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project. This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars. Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404) Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

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

2. Nationwide Permit General Conditions:

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

1. *Navigation.*
 - (a) No activity may cause more than a minimal adverse effect on navigation.
 - (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
 - (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must

be avoided to the maximum extent practicable.

5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP's 4 and 48.
6. *Suitable Material.* No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. *Management of Water Flows.* To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
13. *Removal of Temporary Fills.* Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.
15. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
16. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
17. *Endangered Species.*
 - (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
 - (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

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

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

18. *Historic Properties.*

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete preconstruction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any

historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. *Designated Critical Resource Waters.* Critical resource waters include: NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.
 - (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
 - (b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.
20. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:
 - (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
 - (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
 - (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require preconstruction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
 - (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.
 - (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP's. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP's.
 - (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
 - (g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory

mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

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

21. *Water Quality.* Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
22. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
23. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
24. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
25. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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

(Transferee)

(Date)

26. *Compliance Certification.* Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:
 - (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
 - (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
 - (c) The signature of the permittee certifying the completion of the work and mitigation.
27. *Pre-Construction Notification.*
 - (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information,

then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity:

- (1) Until notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) If 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

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

(d) *Agency Coordination:*

- (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

- (2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring preconstruction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each preconstruction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
- (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
- (4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.
- (5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

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

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

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

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

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

3. Regional Conditions for the Los Angeles District:

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

1. For coastal watersheds from the southern reach of the Santa Monica Mountains in Los Angeles County to the San Luis Obispo County/Monterey County boundary, all road crossings must employ a bridge crossing design that ensures passage and/or spawning of steelhead (*Oncorhynchus mykiss*) is not hindered in any way. In these areas, bridge designs that span the stream or river, including designs for pier- or pile-supported spans, or designs based on use of a bottomless arch culvert simulating the natural stream bed (i.e., substrate and streamflow conditions in the culvert are similar to undisturbed stream bed channel conditions) shall be employed unless it can be demonstrated the stream or river does not support resources conducive to the recovery of federally listed anadromous salmonids, including migration of adults and smolts, or rearing and spawning. This proposal also excludes approach embankments into the channel unless they are determined to have no detectable effect on steelhead.
2. For the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), no nationwide permit, except Nationwide Permits 1 (Aids to Navigation), 2 (Structures in Artificial Canals), 3 (Maintenance), 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities), 5 (Scientific Measurement Devices), 6 (Survey Activities), 9 (Structures in Fleeting and Anchorage Areas), 10 (Mooring Buoys), 11 (Temporary Recreational Structures), 20 (Oil Spill Cleanup), 22 (Removal of Vessels), 27 (Stream and Wetland Restoration Activities), 30 (Moist Soil Management for Wildlife), 31 (Maintenance of Existing Flood Control Projects), 32 (Completed Enforcement Actions), 35 (Maintenance Dredging of Existing Basins), 37 (Emergency Watershed Protection and Rehabilitation), 38 (Cleanup of Hazardous and Toxic Waste) and 47 (Pipeline Safety Program Designated Time Sensitive Inspections and Repairs), or other nationwide or regional general permits that specifically authorize maintenance of previously authorized structures or fill, can be used to authorize the discharge of dredged or fill material into a jurisdictional special aquatic site as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes).
3. For all projects proposed for authorization by nationwide or regional general permits where prior notification to the district engineer is required, applicants must provide color photographs or color photocopies of the project area taken from representative points documented on a site map. Pre-project photographs and the site map would be provided with the permit application. Photographs should represent conditions typical or indicative of the resources before impacts.
4. Notification pursuant to general condition 27 shall be required for projects in all special aquatic sites as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes), and in all perennial waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), excluding the Colorado River from Davis Dam downstream to the north end of Topock and downstream of Imperial Dam (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification do not apply to Nationwide Permit 47).
5. Notification pursuant to general condition 27 shall be required for projects in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092), regional conditions requiring notification do not apply to Nationwide Permit 47).
6. Notification pursuant to general condition 27 shall be required for projects in all watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification do not apply to Nationwide Permit 47).
7. Individual permits shall be required for all discharges of fill material in jurisdictional vernal pools.
8. Individual permits shall be required in Murrieta Creek and Temecula Creek watersheds in Riverside County for new

permanent fills in perennial and intermittent watercourses otherwise authorized under NWP 29, 39, 42 and 43, and in ephemeral watercourses for these NWPs for projects that impact greater than 0.1 acre of waters of the United States. In addition, when NWP 14 is used in conjunction with residential, commercial, or industrial developments the 0.1 acre limit would also apply.

9. Individual permits shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.
10. Notification pursuant to general condition 27 shall be required for projects in the Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the mainstem of the Santa Clara River (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification do not apply to Nationwide Permit 47).

4. Further information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - (a) This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - (b) This permit does not grant any property rights or exclusive privileges.
 - (c) This permit does not authorize any injury to the property or rights of others.
 - (d) This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - (a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - (b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - (c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - (d) Design or construction deficiencies associated with the permitted work.
 - (e) Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - (a) You fail to comply with the terms and conditions of this permit.
 - (b) The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - (c) Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time.
7. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition H below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
8. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

ATTACHMENT 4

ITEM 8A

Coachella Valley Conservation Commission

September 10, 2015



Staff Report

Subject: Sale of Advance Credits and Creation of Development Plan for In-Lieu Fee Program with U.S. Army Corps of Engineers

Contact: Jim Sullivan, jsullivan@cvag.org

RECOMMENDATION:

- 1) Approve the sale of and set a Cost Schedule for Advance Credits for the Coachella Valley In-Lieu Fee Program;
- 2) Ratify establishing a new Union Bank account for the Coachella Valley In-Lieu Fee Program;
- 3) Authorize release of the attached Request for Proposals (RFP) to create the Development Plan; authorize the Executive Director to make minor changes to the RFP with review by CVCC legal counsel and approval by the Chair.

BACKGROUND: Clean Water Act (CWA) permits under the jurisdiction of the Army Corps of Engineers (USACE) can be one of the most difficult aspects of regulatory compliance for both private developers and government projects. The process of determining and completing mitigation requirements can be time consuming and challenging. These are regulatory requirements not currently covered by the CVMSHCP. Projects including land development, public works, and energy development projects may have mitigation requirements, but project by project approval is currently the only option for satisfying USACE mitigation requirements. The result is that at present, small piecemeal mitigation sites often present high costs for project applicants, questionable ecological benefits, and are implemented without any systematic effort to ensure greater benefits through coordination with other efforts, such as the CVMSHCP. Staff has worked with the Army Corps to develop an In-Lieu Fee Program to provide a mechanism for mitigation to be accomplished in a way that is complementary to the CVMSHCP.

CVCC is the Program Sponsor for an In-Lieu Fee Program (ILFP) that would allow organizations that need to mitigate for unavoidable Impacts to Waters of the U.S. that result from activities authorized under section 404 of the CWA and section 401 of the CWA water quality certifications to do so by paying a fee to CVCC. In the simplest terms, CVCC will perform restoration projects that are pre-approved as mitigation by USACE and the cost of these projects, including endowment, contingency, planning and staff time would be paid from the In-Lieu Fee Program. CVCC would not be involved in determining mitigation requirements or any other regulatory aspects of a 404/401 permit, CVCC is providing an efficient means for an organization to meet mitigation requirements determined by USACE. The habitat restoration and enhancement projects performed under the ILFP will support the goals of the Coachella Valley Multiple Species Habitat Conservation Plan.

CVCC has an executed ILFP Enabling Instrument that provides 50 Advance Credits that may be sold before a credit generating Development Project is approved by USACE. It is intentionally broad and sets the framework under which CVCC sponsored ILFP Development Projects will be

identified, funded, operated, maintained and managed. The Instrument provides the authorization for the ILFP to provide credits to be used as Compensatory Mitigation for USACE permits. The funding of the ILFP is completely separate from the CVCC budget.

CVCC needs to establish a cost schedule for the sale of Advance Credits and proceed with the creation of a Development Plan to generate future credits. For the price of credits, until the CVCC Development Plan is approved it is difficult to determine the cost of implementing habitat rehabilitation or enhancement. Staff suggests using the cost schedule of the Riverside-Corona Resource Conservation District which has an existing In-Lieu Fee Program, plus 15%:

<u>Type of Credit</u>	<u>Cost per acre</u>
Restoration/Rehabilitation Credits	\$224,250
Enhancement Credits	\$187,450
Buffer Credits	\$144,900

In connection with the In-Lieu Fee Program, Federal Policy requires that the funds be kept in a separate account. Also, the account must be established at a financial institution that is a member of the Federal Deposit Insurance Corporation. This account must be established prior to CVCC accepting any fees from project applicants. As such, staff has opened an interest bearing account with Union Bank for the sake of convenience since CVCC is already banking with Union Bank. The signers on the newly established account are identical to the current checking account with Union Bank, i.e. Mr. Richard W. Kite, Mr. Tom Kirk, Mr. Gary Leong, Ms. Katherine Barrows and Ms. Joanna Stueckle.

A Request for Proposals (RFP) for a consultant to create a Development Plan is attached. The Development Plan will identify sites where habitat restoration, establishment, or enhancement will occur to satisfy the requirements of the ILFP. The Development Plan will describe the implementation of habitat restoration and enhancement project(s), provide a budget for the work, cost of credits, and include interim and long-term management plans. Like all aspects of the ILFP, the consultant would be funded through the sale of Advance Credits.

FISCAL ANALYSIS: All costs associated with the ILFP, including creation of the Development Plan, will be paid from the sale of credits.

ATTACHMENTS:

- 1) Draft RFP for In-Lieu Fee Program Development Plan



73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260
(760) 346-1127

REQUEST FOR PROPOSALS
IN-LIEU FEE PROGRAM DEVELOPMENT PLAN
COACHELLA VALLEY CONSERVATION COMMISSION

The Coachella Valley Conservation Commission (CVCC) has issued the attached
Request for Proposals
for preparation of Coachella Valley In-Lieu Fee Program Development Plan

Interested bidders should submit proposals to:

COACHELLA VALLEY CONSERVATION COMMISSION
ATTN: Jim Sullivan

Proposals must be received by the CVCC by 3:00 pm (local time)
Friday October 2, 2015
Late proposals will not be accepted.

Technical questions regarding this Request for Proposals should be directed to Jim Sullivan, 760-346-1127, jsullivan@cvag.org.

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Attachment A: Sample Services Contract

Documents Available on CVCC Website:

- In-Lieu Fee Enabling Instrument for the Coachella Valley In-Lieu Fee Program
- Final Recirculated Coachella Valley Multiple Species Habitat Conservation Plan, September 2007.

COACHELLA VALLEY CONSERVATION COMMISSION

REQUEST FOR PROPOSALS

Preparation of Coachella Valley In-Lieu Fee Program Development Plan

I. INVITATION

The Coachella Valley Conservation Commission (CVCC) is seeking proposals from professionals to complete the Coachella Valley In-Lieu Fee Program Development Plan (Development Plan). This will require creation of site-specific Development Plans, including Interim and Long-Range Management and Monitoring Plans, for submission to the United States Army Corps of Engineers ("USACE") for review and approval as modifications to the Coachella Valley In-Lieu Fee Program Enabling Instrument.

Please submit your proposal by email no later than 3 pm on Friday October 2, 2015. Proposals should be submitted to the attention of Jim Sullivan, jsullivan@cvag.org. You will receive a return email confirming receipt so please allow adequate time for your submittal to be received and confirmed.

II. BACKGROUND

The Coachella Valley In-Lieu Fee Program (Program) will be used for Compensatory Mitigation for (1) unavoidable Impacts to Waters of the U.S. that result from activities authorized under section 404 of the Clean Water Act (CWA) and section 401 of the CWA water quality certifications or (2) completed enforcement actions under the auspices of section 404 and 401 of the CWA. The objectives of the Program are (1) to provide an alternative to permittee-responsible Compensatory Mitigation by implementing In-Lieu Fee ("ILF") Projects adequate to meet current and expected demand for Credits in the Service Area; (2) create a Program that has a level of accountability commensurate with mitigation banks as specified in 33 C.F.R. 332; (3) restore and protect aquatic resources on a watershed-basis by siting ILF Projects using the best available decision support tools, and (4) by integrating ILF Projects with ongoing conservation activities in the Coachella Valley, especially in ways that complement and support the Coachella Valley Multiple Species Habitat Conservation Plan ("CVMSHCP").

The CVMSHCP is a regional landscape-scale plan which provides for conservation of biological diversity and ecosystem processes to meet the requirements of federal and state endangered species laws, while allowing for balanced growth and development. The CVMSHCP provides for conservation, monitoring and management of 27 species in an area of approximately 1.1 million acres in eastern Riverside County. The CVMSHCP is regulated by permits from the state and federal wildlife agencies ("Wildlife Agencies"), the California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS).

The Coachella Valley Conservation Commission (CVCC) is the Program Sponsor for the Program. The CVCC is a joint powers authority responsible for implementing the CVMSHCP on behalf of the Local Permittees. The Local Permittees consist of the cities of Cathedral City, Coachella, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, Rancho Mirage, the County of Riverside, Riverside County Flood Control and Water Conservation District, Riverside County

Waste Resources Management District, Riverside County Regional Parks and Open Space District, Coachella Valley Water District, Imperial Irrigation District and a portion of the City of Desert Hot Springs. The full City of Desert Hot Springs and Mission Springs Water District are in the process of becoming Permittees. The Coachella Valley Association of Governments (CVAG) provides administrative support and staffing for the CVCC.

III. DESCRIPTION OF PROJECT

Through this RFP process CVCC will select a consultant(s) to prepare the Development Plan in accordance with the process detailed in the Enabling Instrument. Additional information on the CVMSHCP, including all Plan documents, can be found at the CVMSHCP website, www.cvmshcp.org.

IV. SCOPE OF WORK

The selected consultant will, in accordance with the process detailed in the Enabling Instrument and in coordination with CVCC staff:

- 1) Select site(s) for the ILF Program Development Plan Project in association with the Interagency Review Team ("IRT") and likely Credit users (e.g. land developers, energy companies, infrastructure and utility agencies including the Coachella Valley Water District), and resource and conservation agencies, including members of the Reserve Management Oversight Committee (RMOC) and Reserve Management Unit Committees (RMUCs) established by the CVMSHCP. The IRT consists of CVCC, the Los Angeles District of the USACE, Region IX of the U.S. Environmental Protection Agency ("USEPA"), Region 8 of the USFWS, Region 6 of the CDFW, and California Regional Water Quality Control Plan, Region 8 ("RWQCB"). The RMOC and RMUCs are described in Section 6.1.3 and 6.1.4 of the CVMSHCP. ILF Project proposals will follow ordinary requirements for public notice, comment, and are subject to approval by the IRT, as required.
- 2) Determine an appropriate Development Plan for the selected site(s), a budget and the cost of Credits.
- 3) Provide Interim and Long-term Management and Monitoring Plans.
- 4) Provide a Remedial Action Plan.
- 5) Provide an electronic template to simplify preparation of the annual report.

IV. TENTATIVE PROJECT SCHEDULE

Distribution of RFP	September 11, 2015
Latest Date for Questions on RFP	September 18, 2015
Closing Date for RFP	October 2, 2015
Notification of Short List Selection (on or after date listed, if necessary)	October 9, 2015
Interviews (if necessary)	October 19-24, 2015
Notification of Final Selection (pending CVCC approval)	October 27, 2015
Approval of Contract and Notice to Proceed	On or after November 12, 2015

V. PROPOSAL REQUIREMENTS

You are encouraged to keep your proposal brief and relevant to the specific work required.

The RFP document and the Enabling Instrument, as well as any addenda, may be downloaded from the CVMSHCP website at www.cvmshcp.org. The RFP is also available at www.cvag.org.

Proposals should include, as appropriate, the following:

- A. Cover Letter including:
 - 1. The name, address and phone number of the contact person for the remainder of the selection process.
 - 2. Any qualifying statements or comments regarding the credentials and relevant experience of consultant.
 - 3. Identification of sub-consultants, description of their roles, credentials and relevant experience.

- B. Project Understanding
Degree of understanding of the project, the work to be done, and In-Lieu Fee Programs. Firms should not simply restate the information contained in the RFP. The proposal should provide additional information regarding the project which supports the applicant's ability to perform.

- C. Description of Work to be Performed:
The proposal should describe:
 - 1. Approach to preparation of Development Plan including necessary steps.
 - 2. Outline of tasks and estimated schedule for completion of scope of work.

- D. Firm, Project Manager and Key Staff Qualifications
Qualifications of the firm, project manager and key staff assigned to the project, their experience with similar projects, and experience with federal and state wildlife agencies. Recently performed relevant projects that clearly and accurately demonstrate the past performances and the abilities of the proposed project team. Include a key client contact person for the projects listed with their phone number and email address.

- E. Budget
Provide a Budget that includes all costs associated with the tasks identified in the scope of work. The Budget must identify the costs, including time and materials, associated with each individual task. The Budget shall also include a fully loaded rate sheet for all personnel assigned to the project and a rate for all direct, indirect, and overhead costs.

VI. SELECTION PROCESS

- A. Each proposal will be reviewed by an evaluation group to determine if it meets the proposal requirements. Failure to meet the requirements of the Request for Proposals will be cause for rejection of the proposal.

- B. The evaluation group may ask for an interview and oral presentation by the selected applicants. Those selected will then proceed to contract negotiation. The details of the scope and consultant's fee for the project will be developed and negotiated with the selected firm.

- C. The prospective applicant(s) is advised that should this Request for Proposal result in award of a contract, the contract will not be in force until it is approved and fully executed by the CVCC.
- D. The consultant(s) will be selected for final negotiation of a contract based upon the following criteria:
- Project understanding
 - Description of Qualifications, experience and approach and Scope of Work/Description of Work to be Performed
 - Firm/Project Managers/Staff Qualifications
 - Budget/Hourly Rate/Project Cost

VII. DEADLINE FOR SUBMISSION OF PROPOSALS:

All proposals must be received by CVCC by 3:00 pm, local time, Friday October 2, 2015. Proposals must be submitted by email as a PDF file. Emails are limited to 5 MB. Incomplete or late submittals will be rejected. Proposals must be submitted to Jim Sullivan at jsullivan@cvag.org.

Proof of receipt before the deadline is a time and date receipt on the email. It is the responsibility of the firm replying to this RFP to see that any proposal shall have sufficient time to be received by CVCC.

VIII. INQUIRIES

All inquiries and responses to this RFP should be submitted to:

Jim Sullivan
Coachella Valley Conservation Commission
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260
(760) 346-1127
jsullivan@cvag.org

Prospective consulting firms are encouraged to promptly notify CVCC of any apparent inconsistencies, problems, and/or ambiguities in this RFP. Consultants may submit questions via email to jsullivan@cvag.org no later than September 18, 2015. All inquiries shall be made only through this email address. Telephone calls will not be accepted. If deemed necessary, CVCC may call for a pre-proposal meeting to discuss issues raised. All notices, clarifications, and addenda to this RFP will be posted on CVMSHCP website at <http://www.cvmshcp.org>. Please monitor the website for all information regarding this RFP. CVCC will not be sending individual notifications of changes or updates. It is the sole responsibility of the prospective consultants to remain apprised of changes to the RFP.

This RFP does not commit CVCC to award a contract or pay any costs associated with the preparation of a proposal. CVCC reserves the right to cancel, in part or in its entirety, this solicitation should this be in the best interest of CVCC. CVCC reserves the right to split or award the contract in any manner determined to be the most advantageous to CVCC.

No proposer, or anyone representing a proposer, is to discuss this RFP with any official or employee of CVCC, other than the person named in this RFP. Neither proposers, nor anyone representing a proposer, is to discuss this RFP with any consultant engaged by CVCC for assistance in preparing the RFP documents or any cost estimate associated with this procurement. Violation of this prohibition may result in disqualification of the consultant even if the contract has already been awarded.

SERVICES CONTRACT

between

COACHELLA VALLEY CONSERVATION COMMISSION (CVCC)
and
XXXX

THIS AGREEMENT is made and effective as of _____, 20__ between the COACHELLA VALLEY CONSERVATION COMMISSION ("CVCC") and XXXX ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on _____, 20__ and shall remain and continue in effect until tasks described herein are completed, but in no event later than _____, 20__ unless sooner terminated or extended pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform services consistent with the provisions of the Request for Proposals released on _____, 20__, (the "RFP,") and any modification thereto adopted in writing by the parties and identified herein as an exhibit to this Agreement, upon issuance by CVCC of written authority to proceed (a "Work Order") as to either (a) a portion of the work if separate and independent tasks are contemplated or (b) all work if it constitutes a single project.

Except as amended by the exhibits hereto, Consultant is bound by the contents of the RFP and Consultant's response thereto. In the event of conflict, the requirements of this Agreement, including any exhibits, then the Request for Proposals, shall take precedence over those contained in Consultant's response.

The following exhibit(s), which amend or modify the RFP and/or Consultant's response thereto, are attached and incorporated herein by reference:

Exhibit A: Scope of Work

Exhibit B: Price Formula

3. PRICE FORMULA

CVCC agrees to pay Consultant at the rates set forth in Exhibit B, the Price Formula.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all tasks required hereunder. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

Consultant shall submit informal progress reports to CVCC's Project Manager by telephone, e-mail or in person, on a weekly basis, in a form acceptable to CVCC, describing the state of work performed. The purpose of the reports is to allow CVCC to determine if the contract objectives and activities are being completed in accordance with the agreed upon schedule, and to afford occasions for airing difficulties or special problems encountered.

The Consultant's Project Manager shall meet with the CVCC Project Manager as needed.

5. PAYMENT

(a) If independent and separate Work Orders are contemplated, CVCC shall pay Consultant upon satisfactory completion of each Work Order; and, unless Consultant provides a performance bond, progress payments will not be made on individual or a collection of Work Orders. If all the work constitutes a single project, Consultant shall submit invoices for work completed on a periodic basis, no more frequently than monthly.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth in a duly issued Work Order.

(c) Consultant shall submit invoices for services performed in accordance with the payment rates and terms set forth in Exhibit A. The invoice shall be in a form approved by CVCC.

(d) A formal report of tasks performed and tasks in process, in a form acceptable to CVCC, shall be attached to each invoice.

(e) All invoices shall be consistent with current progress reports as well as the budget and work schedule set out in the RFP and, if modified or supplemented thereby, the exhibits to this Agreement.

(f) Upon approval by CVCC's Project Manager, payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If CVCC disputes any of Consultant's invoiced fees it shall give written notice to Consultant within thirty (30) days of receipt of the invoice.

6. INSPECTION OF WORK

Consultant shall permit CVCC the opportunity to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

1. SCOPE OF WORK CHANGES

The scope of work shall be subject to change by additions, deletions or revisions by CVCC. Consultant shall be advised of any such changes by written notice. Consultant shall promptly perform and strictly comply with each such notice. If Consultant believes that performance of any change would justify modification of the Agreement price or time for performance, Consultant shall comply with the provisions for dispute resolution set out herein below.

8. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) CVCC may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon Consultant seven (7) days prior written notice. Upon

tender of said notice, Consultant shall immediately cease all work under this Agreement, unless further work is authorized by CVCC. If CVCC suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, CVCC shall pay Consultant only for work that has been accepted by CVCC. Work in process will not be paid unless CVCC agrees in writing to accept the partial work, in which case, prorated fees may be authorized. Upon termination of the Agreement pursuant to this Section, Consultant will submit a final invoice to CVCC. Payment of the final invoice shall be subject to approval by the CVCC Project Manager as set out above.

9. DEFAULT OF CONSULTANT

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, CVCC shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to Consultant. Provided, however, if such failure by Consultant to make progress in the performance of work hereunder arises out of causes beyond Consultant's control, and without fault or negligence of Consultant, it shall not be considered a default.

(b) As an alternative to notice of immediate termination, the CVCC Executive Director or his/her delegate may cause to be served upon Consultant a written notice of the default. Consultant shall then have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, CVCC shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

10. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to work performed, costs, expenses, receipts, and other such information that relates to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of CVCC or its designees at reasonable times to such books and records; shall give CVCC the right to examine and audit said books and records; shall permit CVCC to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Unless the RFP or exhibits hereto expressly provide otherwise, upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of CVCC and may be used, reused, or otherwise disposed of by CVCC without the permission of Consultant. With respect to computer files, Consultant shall make available to CVCC, at Consultant's office and upon reasonable written request by CVCC, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

11. INDEMNIFICATION FOR PROFESSIONAL LIABILITY

To the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless CVCC, its members and any and all of their officials, employees and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs, which arise out of, pertain to, or relate to Consultant's alleged act(s) or failure(s) to act.

12. INSURANCE

(a) Throughout the term of this Agreement, Consultant shall procure and maintain insurance, including Workers' Compensation as required by law for its personnel, and a one million dollar (\$1,000,000.00) commercial general liability policy. Consultant shall include CVCC, its member agencies and any other interested and related party designated by CVCC, as additional insureds on this commercial liability policy for liabilities caused by Consultant in its performance of services under this Agreement and shall provide CVCC with a certificate verifying such coverage. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least five (5) days notice prior to said expiration date and, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for no less than the remainder of the term of the Agreement, or for a total period of not less than one (1) year. New certificates of insurance are subject to the approval of CVCC. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, CVCC may, in addition to any other remedies it may have, terminate this Agreement.

(b) CVCC, member agencies and any other interested and related party designated by CVCC are to be covered as additional insured as respects liability arising out of automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the said additional insureds. Minimum requirements are \$100,000/\$300,000/\$25,000.

(c) Consultant's insurance coverage shall be primary insurance as respects CVCC, its member agencies, and any other interested and related party designated by CVCC as additional insureds. Any insurance or self-insurance maintained by said additional insureds shall be in excess of Consultant's insurance and shall not contribute with it and, to the extent obtainable, such coverage shall be payable notwithstanding any act of negligence of CVCC, its members, or any other additional insured, that might otherwise result in forfeiture of coverage. Any failure to comply with reporting or other provisions of the policies, including breach of warranties, shall not affect coverage provided to said additional insureds. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by any party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to CVCC.

(d) Consultant shall provide worker's compensation insurance or a California Department of Insurance-approved self-insurance program in an amount and form that meets all applicable Labor Code requirements, covering all persons or entities providing services on behalf of Consultant and all risks to such persons or entities.

(e) Said insurance policy or policies shall be issued by a responsible insurance company with a minimum A. M. Best Rating of "A-" Financial Category "X", and authorized and admitted to do business in, and regulated by, the State of California.

(f) Evidence of all insurance coverage shall be provided to CVCC prior to issuance of the first Work Order. Consultant acknowledges and agrees that such insurance is in addition to Consultant's obligation to fully indemnify and hold CVCC, its members and any other additional insureds free and harmless from and against any and all claims arising out of an injury or damage to property or persons caused by the acts or omissions of Consultant.

13. INDEPENDENT CONTRACTOR

(a) Consultant is and shall at all times remain as to CVCC a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither CVCC, its members, nor any of their officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of CVCC or its members. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against CVCC or its members, or bind CVCC or its members in any manner except as expressly authorized by CVCC.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, CVCC shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder. CVCC shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

14. LEGAL RESPONSIBILITIES

Consultant shall keep itself informed of State, Federal and local laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations. CVCC, its members, and their officers and employees, shall not be liable at law or in equity for any liability occasioned by failure of Consultant to comply with this Section.

Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin, or any other unlawful basis.

15. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was or will be used against or in concert with any officer or employee of CVCC in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of CVCC will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling CVCC to any and all remedies at law or in equity.

16. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of CVCC, nor its designees or agents, and no public official who exercises authority over or responsibilities with respect to the subject of this Agreement during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or

sub-agreement, or the proceeds thereof, for work to be performed in connection with the services performed under this Agreement.

17. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without CVCC's prior written authorization. Consultant, its officers, employees, agents, or sub-consultants, shall not without written authorization from the CVCC Task Manager or unless requested by the CVCC Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property of CVCC. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives CVCC notice of such court order or subpoena.

(b) Consultant shall promptly notify CVCC should Consultant, its officers, employees, agents, or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property of CVCC or its members. CVCC retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with CVCC and to provide the opportunity to review any response to discovery requests provided by Consultant. However, CVCC's right to review any such response does not imply or mean the right by CVCC to control, direct, or rewrite said response.

(c) Consultant covenants that neither it nor any officer or principal of Consultant's firm has any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by Consultant as an officer, employee, agent, or subcontractor.

18. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To CVCC: Executive Director
COACHELLA VALLEY CONSERVATION
COMMISSION
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

To Consultant: XXXX
XXXX
XXXX

19. ASSIGNMENT/PERSONNEL

Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of CVCC.

Because of the personal nature of the services to be rendered pursuant to this Agreement, there shall be no change in Consultant's Project Manager or members of the project team without prior written approval by CVCC.

20. MANAGEMENT

CVCC's Executive Director shall represent CVCC in all matters pertaining to the administration of this Agreement, review and approval of all services submitted by Consultant.

During the term of this Agreement, Consultant shall provide sufficient executive and administrative personnel as shall be necessary and required to perform its duties and obligations under the terms hereof.

21. SUBCONTRACTS

Unless expressly permitted in the RFP or the exhibits hereto, Consultant shall obtain the prior written approval of CVCC before subcontracting any services related to this Agreement. CVCC reserves the right to contract directly with any necessary subcontractors in the unlikely event it becomes necessary.

22. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses required of it by law for the performance of the services described in this Agreement.

23. GOVERNING LAW

CVCC and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the Riverside County Superior Court, Indio Branch.

Any dispute arising under this Agreement shall first be decided by the CVCC Executive Director or designee. Consultant shall give CVCC written notice within seven (7) days after any event which Consultant believes may give rise to a claim for an increase in compensation or a change in the performance schedule. Within fourteen (14) days thereafter, Consultant shall supply CVCC with a statement supporting the claim. CVCC shall not be liable for and Consultant hereby waives any claim or potential claim which Consultant knew or should have known about and which was not reported in accordance with the provisions of this paragraph. Consultant agrees to continue performance of the services during the time any claim is pending. No claim shall be allowed if asserted after final payment.

24. FINAL PAYMENT CERTIFICATION AND RELEASE

CVCC shall not be obligated to make final payment to Consultant until Consultant has fully performed under this Agreement and has provided CVCC written assurances that Consultant has paid in full all outstanding obligations incurred as a result of Consultant's performance hereunder. All

obligations owing by CVCC to Consultant shall be deemed satisfied upon Consultant's acceptance of the final payment. Thereafter, no property of CVCC shall be subject to any unsatisfied lien or claim arising out of this Agreement.

25. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

26. FORCE MAJEURE

Neither party hereto shall be liable to the other for its failure to perform under this Agreement when such failure is caused by strikes, accidents, acts of God, fire, war, flood, governmental restrictions, or any other cause beyond the control of the party charged with performance; provided that the party so unable to perform shall promptly advise the other party of the extent of its inability to perform. Any suspension of performance by reason of this paragraph shall be limited to the period during which such cause of failure exists.

27. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.


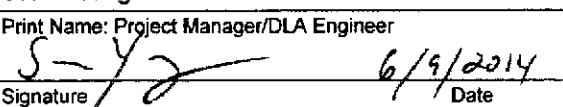
COACHELLA VALLEY CONSERVATION COMMISSION

By: _____
Richard W. Kite, Chair

CONSULTANT

ATTACHMENT 5

CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM

08/RIV/Palm Springs	BHLS 5282 (040)
Dist.-Co.-Rte. (or Local Agency) P.M./P.M.	E.A/Project No. Federal-Aid Project No. (Local Project)/Project No.
PROJECT DESCRIPTION: (Briefly describe project including need, purpose, location, limits, right-of-way requirements, and activities involved in this box. Use Continuation Sheet, if necessary.)	
The proposed improvements consist of widening Ramon Road between San Luis Rey Drive and Landau Boulevard. The widening of Ramon Road will be from a four-lane arterial to a six-lane arterial (three lanes in each direction), including widening/replacement of the Whitewater River Bridge (BR No. 56C0287), seismic retrofit and scour countermeasures as necessary. In addition, installation of new guard rails, bridge supports within the Whitewater River Channel, curb and gutter improvements, installation of a median and sidewalks across the bridge, restriping of travel lanes and crosswalks, and the reconstruction of a median east of Landau Boulevard. The project will require the acquisition of partial parcels to accommodate for improvements and relocation of utilities as needed.	
CEQA COMPLIANCE (for State Projects only)	
Based on an examination of this proposal and supporting information, the following statements are true and exceptions do not apply (See 14 CCR 15300 et seq.):	
<ul style="list-style-type: none"> • If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law. • There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time. • There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances. • This project does not damage a scenic resource within an officially designated state scenic highway. • This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 ("Cortese List"). • This project does not cause a substantial adverse change in the significance of a historical resource. 	
CALTRANS CEQA DETERMINATION (Check one)	
<input type="checkbox"/> Exempt by Statute. (PRC 21080[b]; 14 CCR 15260 et seq.)	
Based on an examination of this proposal, supporting information, and the above statements, the project is:	
<input type="checkbox"/> Categorically Exempt Class . (PRC 21084; 14 CCR 15300 et seq.)	
<input type="checkbox"/> Categorically Exempt General Rule exemption. [This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CCR 15061[b][3].)]	
N/A	N/A
Print Name: Environmental Branch Chief	Print Name: Project Manager/DLA Engineer
N/A	N/A
Signature	Date
Signature	Date
NEPA COMPLIANCE	
In accordance with 23 CFR 771.117, and based on an examination of this proposal and supporting information, the State has determined that this project:	
<ul style="list-style-type: none"> • does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and • has considered unusual circumstances pursuant to 23 CFR 771.117(b). 	
CALTRANS NEPA DETERMINATION (Check one)	
<input type="checkbox"/> 23 USC 326: The State has determined that this project has no significant impacts on the environment as defined by NEPA, and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. The State has been assigned, and hereby certifies that it has carried out the responsibility to make this determination pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding dated June 07, 2013, executed between the FHWA and the State. The State has determined that the project is a Categorical Exclusion under:	
<input type="checkbox"/> 23 CFR 771.117(c): activity (c)()	
<input type="checkbox"/> 23 CFR 771.117(d): activity (d)()	
<input type="checkbox"/> Activity ___ listed in Appendix A of the MOU between FHWA and the State	
<input checked="" type="checkbox"/> 23 USC 327: Based on an examination of this proposal and supporting information, the State has determined that the project is a CE under 23 USC 327.	
Aaron Burton	Sean Yeung
Print Name: Environmental Branch Chief	Print Name: Project Manager/DLA Engineer
	
Signature	Signature
Date	Date
6-9-2014	6/9/2014
Date of Categorical Exclusion Checklist completion: 5/19/14	
Date of ECR or equivalent : 5/19/14	

Briefly list environmental commitments on continuation sheet. Reference additional information, as appropriate (e.g., CE checklist, additional studies and design conditions).

CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM
Continuation Sheet

08/RIV/Palm Springs			BHLS 5282 (040)
Dist.-Co.-Rte. (or Local Agency)	P.M./P.M.	E.A/Project No.	Federal-Aid Project No. (Local Project)/Project No.

Continued from page 1:

Project Description:
The proposed improvements consist of widening Ramon Road between San Luis Rey Drive and Landau Boulevard. The widening of Ramon Road will be from a four-lane arterial to a six-lane arterial (three lanes in each direction), including widening/replacement of the Whitewater River Bridge (BR No. 56C0287), seismic retrofit and scour countermeasures as necessary. In addition, installation of new guard rails, bridge supports within the Whitewater River Channel, curb and gutter improvements, installation of a median and sidewalks across the bridge, restriping of travel lanes and crosswalks, and the reconstruction of a median east of Landau Boulevard. The project will require the acquisition of partial parcels to accommodate for improvements and relocation of utilities as needed.

Air Quality:
A-1—A dust control plan shall be prepared and implemented during all construction activities, include ground disturbance, grubbing, grading, and soil export.
A-2—The project shall adhere to all requirements set forth in Caltrans Standard Specifications Sections 14 and 18.
A-3—During all bridge expansion work including any necessary demolition and all renovation, SCAQMD rule 1403 shall be adhere to.
A-4—The disturbance of asbestos containing material will be conducted in accordance to Title 8 CCR Section 1529. Writent notification to the nearest Cal/OSHA district office is required at least 24 hours prior to certain asbestos-related work.
A-5—The project shall adhere to the nuisance odor requirement by not discharging air quality contaminants that could affect a substantial number of people, businesses or properties. SCAQMD Rule 402.

Noise:
N-1—A proposed barrier falls under the Caltrans reasonable and feasible criteria as presented in the NSR, as such, all affected property owners must support the proposed noise abatement measure, location, and materials to be used for construction. A survey must be completed to determined if all affected property owners support such measure. Please coordinate with Caltrans staff.

Biology
B-1—30 days or less prior to ground disturbing activities, a one-day pre-construction survey for burrowing owl is recommended. In the event owls are found to next within the project area or its area of influence, owl avoidance, minimization, and mitigation of impacts shall be in accordance to CDFW guidance.
B-2—Any vegetation or tree removal, grading, or bridge disturbance and/or retrofitting occurring between February 15 (February 1 for burrowing owl) and August 31 shall require a qualified biologist to conduct at least one nesting bird survey and more if deemed necessary.

Hazardous Waste:
H-1—During removal and handling of yellow stripping paint, the construction contractor must implement a Lead Compliance Plan prepared by a Certified Industrial Hygienist.

ATTACHMENT 6

MAY 15 2014

Notice of Determination

LARRY W. WARD, CLERK

Appendix D

By B. Kennemer B. Kennemer
Deputy

To:

Office of Planning and Research
U.S. Mail: Street Address:
P.O. Box 3044 1400 Tenth St., Rm 113
Sacramento, CA 95812-3044 Sacramento, CA 95814

From:
Public Agency: City of Palm Springs, Ping Services
Address: 3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Contact: Edward Robertson, Principal Planner
Phone: 760-323-8269

County Clerk
County of: Riverside
Address: 2720 Gateway Drive
Riverside, CA 92507

Lead Agency (if different from above):
Address:
Contact:
Phone:

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2014031055

Project Title: Ramon Road Widening Project Between San Luis Rey & Landau Blvd

Project Applicant: City of Palm Springs

Project Location (include county): Ramon Road in the Cities of Palm Springs and Cathedral City, Riverside Co.

Project Description:

The City is the lead agency for the widening of Ramon Road between San Luis Rey on the west and Landau Blvd on the east, and including the Ramon Road bridge over the Whitewater River. The project occurs in both Palm Springs and Cathedral City. The project involves the buildout of a segment of Ramon Road from four travel lanes to six, and connecting this segment to other six-lane segments of Ramon Road, with intersection, bridge and ancillary improvements.

This is to advise that the City of Palm Springs has approved the above
(Lead Agency or Responsible Agency)

described project on May 7, 2014 and has made the following determinations regarding the above
(date)
described project.

1. The project [will will not] have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [were were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [was was not] adopted for this project.
5. A statement of Overriding Considerations [was was not] adopted for this project.
6. Findings [were were not] made pursuant to the provisions of CEQA.

COPIES FILED
FILED per [unclear]
MAY 15 2014
6.19.14

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:
Palm Springs City Hall, 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262

Signature (Public Agency): Edward Robertson Title: Principal Planner

Date: 5.8.14 Date Received for filing at OPR: _____