

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

2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone (619) 516-1990 • Fax (619) 516-1994
<http://www.waterboards.ca.gov/sandiego/>

**Amendment No. 1 to Clean Water Act Section 401
Water Quality Certification No. 02C-093**

**PROJECT: Faraday Avenue Extension and Carlsbad Oaks North Business Park
Project
Certification Number 02C-093**

Reg. Meas. ID: 214323
Place ID: 224166
WDID: 9 000001296

**APPLICANT: Techbilt Construction
3575 Kenyon St, Suite 200
San Diego, California 92110**

**City of Carlsbad
1635 Faraday Ave
Carlsbad, CA 92008**

On July 19, 2004, Clean Water Act Section 401 Water Quality Certification No. 02C-093 (Certification) was issued to the City of Carlsbad and Techbilt Construction (Applicants) for the Faraday Avenue Extension and Carlsbad Oaks North Business Park Project (Project).

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) conducted a site visit on August 11, 2009 with the Applicants and U.S. Army Corps of Engineers (USACE) to check on the progress of the wetland establishment site. The San Diego Water Board provided the Applicant with an inspection report with recommendations to achieve compliance with the Certification.

On March 4, 2013, RECON Environmental Planning, Inc. (RECON), on behalf of the Applicants, contacted the San Diego Water Board, USACE, and California Department of Fish and Wildlife (CDFW) to arrange a visit to the mitigation site. Site visits were conducted on March 27, 2013 and January 14, 2014 with representatives from the San Diego Water Board, CDFW, USACE, Techbilt Construction, and the consultants for the Applicants. Due to the drought and other conditions, the site was having difficulty meeting mitigation habitat requirements. The Applicants attempted to increase storm water flows to the mitigation site, but this resulted in minimal improvement to the southern willow scrub habitat. Alternative measures to help the site meet the mitigation habitat requirements were discussed at the site visits.

The southern willow scrub and freshwater marsh habitat mitigation continued to struggle with little sign of improvement. On January 23, 2017, the USACE provided a plan to the San Diego Water Board and CDFW to use excess cismontane alkali marsh habitat to compensate the underperforming southern willow scrub and freshwater marsh. Under

this plan, the Applicants would also provide mitigation bank credits to address missing mitigation.

By letter dated August 22, 2017, RECON, on behalf of the Applicants, requested the Certification establishment mitigation be amended to 1.07 acres of southern willow scrub, 2.43 acres of cismontane alkali marsh, and 0.25 acres of wetland establishment/re-establishment credits from the San Luis Rey or Brookforest mitigation bank. The required 6.0 acres of enhancement remains unchanged. Attachment 1 contains a summary of the mitigation proposal.

Further discussions with Helix Environmental Planning, on behalf of the Applicants, resulted in the acquisition of an additional 0.15 acres of wetland establishment/re-establishment credits from the San Luis Rey or Brookforest mitigation bank to offset the loss of freshwater marsh habitat. The total mitigation credit purchase was increased to 0.40 acres of credit to compensate for the missing 0.40 acres of freshwater marsh. The additional alkali marsh habitat compensates for the missing southern willow scrub acreage.

Based on the Applicant's request, the San Diego Water Board is amending the Certification to revise the required Project establishment acreage type and require mitigation credit purchase to offset the loss of southern willow scrub and freshwater marsh habitat. Except as modified or superseded by the Certification modifications set forth below, all of the findings, provisions and other requirements of Certification No. 02C-093 remain in full force and effect. The following changes are made to Certification No. 02C-093 and are shown in underline/strikeout format to indicate added and removed language:

1. Page 7, Mitigation, D.2, the Mitigation Table is replaced with the following:

	Impacted Acreage	Revised Carlsbad Oaks North Establishment (Acres)	Carlsbad Oaks North Enhancement (Acres)	Mitigation Bank Credit Purchase (Wetland Establishment/ Re-Establishment Acres)	Total Mitigation (Acres)
Southern Willow Scrub	1.4	1.07 ²	6.0		
Freshwater Marsh	0.4	0	0	0.40	
Cismontane Alkali Marsh	0.4	2.43	0 ¹		
Disturbed Wetlands	0.1	0 ¹	0 ¹		
Non-Wetland Waters of the United States	0.4	0 ¹	0 ¹		
Total	2.7	3.50	6.0	0.40	3.50 Establishment 6.0 Enhancement 0.40 Bank Credit Total = 9.90

¹No mitigation was originally proposed for this habitat type.

²Additional alkali marsh establishment used to replace missing southern willow scrub mitigation.

2. Page 9, Mitigation, D.13, Mitigation Credit condition is added as follows:

13. The Applicant must provide documentation to the San Diego Water Board verifying the purchase of at least 0.40 acres of wetland establishment and/or re-establishment credits from the San Luis Rey Mitigation Bank or other USACE approved mitigation bank within the bank's service area. The use of an alternative mitigation bank to provide required compensatory mitigation must be approved by the San Diego Water Board before the credits are secured.

3. Page 11, Section F. Reporting is modified as follows:

1. ~~All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.~~ **Reporting Authority.** The submittal of information required under this Certification, or in response to a suspected

violation of any condition of this Certification, is required pursuant to Water Code section 13267 and 13383. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit information pursuant to Water Code sections 13268 or 13385.

3. ~~The applicants must submit reports required under this certification, or other information required by the Regional Board, to:~~ **Electronic Document Submittal.** The Applicant must submit all reports and information required under this Certification in electronic format via e-mail to SanDiego@waterboards.ca.gov. Documents over 50 megabytes will not be accepted via e-mail and must be placed on a disc and delivered to:

~~Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification; Project No. 02C-093:224166:amonji
9174 Sky Park Court, Suite 100 2375 Northside Dr., Suite 100
San Diego, California 92123 92108~~

Each electronic document must be submitted as a single file, in Portable Document Format (PDF) and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject: Certification No. 02C-093:224166:amonji.

4. **Page 11, Regional Water Quality Control Board Contact Person is modified as follows:**

~~Christopher Means Alan Monji
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
858-637-7140 Telephone: 619-521-3968
amonji@waterboards.ca.gov Email: Alan.Monji@waterboards.ca.gov~~

5. **Page 14, Attachment 2, Distribution List, is modified as follows:**

~~Jeanette Baker Ms. Michelle Lynch
U.S. Army Corps of Engineers
San Diego Field Office
16885 West Bernardo Drive
Suite 300A~~

San Diego, CA 92127
Michelle.R.Lynch@usace.army.mil

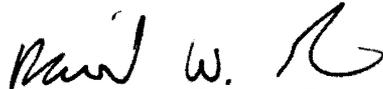
Ms. Marilyn Fluharty
California Department of Fish and Wildlife
South Coast Region
Marlilyn.Fluharty@wildlife.ca.gov

State Water Resources Control Board
Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

Ms. Melissa Scianni
U.S. EPA, OWOW, Region 9
Scianni.melissa@epa.gov

Notification: Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with the California Code of Regulations, title 23, sections 3867 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Certification Amendment. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Amendment No. 1 to Certification No. 02C-093 issued on December 8, 2017.



DAVID W. GIBSON
Executive Officer
San Diego Water Board

8 December 2017
Date

Attachment:

1. RECON, Amendment Request for Carlsbad Oaks North Wetland Mitigation Site, Certification 02C-093, August 22, 2017.

RECON

An Employee-Owned Company

August 22, 2017

Mr. Alan Monji
Regional Water Quality Control Board – San Diego
2375 Northside Drive Suite 100
San Diego, CA 92108

Reference: Amendment Request for Carlsbad Oaks North Wetland Mitigation Site,
Certification Number 02C-093 (RECON Number 4205)

Dear Mr. Monji:

This letter is being submitted on behalf of the applicant, Techbilt Construction Corporation, as a request for an amendment for the Carlsbad Oaks North Wetland Mitigation Site, Project: Faraday Avenue Extension and Carlsbad Oaks North Business Park, File Number 02C-093. The other permits issued for impacts to wetland and non-wetland water resources included the U.S. Army Corps of Engineers (USACE) 404 Nationwide Permit No. 2002-00641-MLM (formerly 404 Nationwide Permit No. 2002-00641-JMB), and the California Department of Fish and Wildlife 1602 Streambed Alteration Agreement No. R5-2002-0218.

The Carlsbad Oaks North Wetland Mitigation Site was designed to create at least 1.4 acres of southern willow scrub habitat, based on southern willow scrub impacted acreage of 1.4 acres, and a creation mitigation ratio of 1:1. As specified in the 401 Water Quality Certification, Condition D.2.: "The applicants shall mitigate for permanent impacts to 2.7 acres of jurisdictional Waters of the U.S. at the following ratios, in accordance with the May 2004 *Wetland Mitigation Plan Faraday Avenue Extension, South Agua Hedionda Sewer Interceptor, and Carlsbad Oaks North Business Park* (prepared by Merkel & Associates)." The certification specifies mitigation for southern willow scrub as creation at 1:1 for 1.4 acres of impacts; however, the table shown on page 7 of 16 of the certification (included as Attachment 1) states that the creation acreage is 1.9 acres. The applicant is requesting that the required creation acreage of southern willow scrub be 1.4 acres, as is consistent with the 1:1 creation mitigation ratio.

As background to the status of the project, at the completion of Year 7 of the maintenance, monitoring, and reporting period for the Carlsbad Oaks North Wetland Mitigation Site, it was determined that the site fell short of the necessary 1.4 acres of southern willow scrub creation habitat. Per discussions amongst the applicant, consultants, and resource agencies, the following proposal to request final sign-off of the project was agreed to by all parties, as originally written by RJ VanSant (USACE), and then edited and approved by the applicant, consultants, and permitting agencies. The excerpt below was taken from email correspondence regarding this matter (RJ VanSant, email message to author, with strike-outs from applicant/consultants, agreed upon by all parties):

We can give credit for 1/2 of the SWS area since cover is only 52%, non-natives are at 21% and the willows are stunted and won't likely reach the function of a normal SWS habitat. There is currently 1.07 acre of SWS so the Permittee would get credit for 0.535 acre (1.07/2). The permit requires ~~1.9~~ 1.4 acre of SWS. Since 2.43 acres of CAM were created and the permit only required 1.2 acres we can let part of that excess make up for the underperforming SWS. We're willing to give 1/2 credit of the excess CAM to make up for some of the SWS, which is 0.615 acre (2.43 ac created - 1.2 ac required = 1.23 excess. $1.23/2 = 0.615$ acre). That would give the Permittee credit for 0.535 acre + 0.615 acre = 1.15 acre, leaving ~~0.75~~ 0.25 acre of SWS creation (~~1.9~~ 1.4 required - 1.15) still needed. That ~~0.75~~ 0.25 acre deficiency of SWS creation should be made up by purchasing SWS wetland WOUS establishment or re-establishment credits from a Corps mitigation bank. At this time that would be either San Luis Rey Bank or Brook Forest Bank.

Mr. Alan Monji
Page 2
August 22, 2017

The Carlsbad Oaks North Wetland Mitigation Site would have a 0.25-acre deficiency of southern willow scrub creation, based on the revised required creation acreage of 1.4 acres (rather than 1.9 acres) of southern willow scrub. The deficiency will be addressed through the purchase of credits at an appropriate mitigation bank. If you have any questions regarding this letter, please contact me by email (ratik@reconenvironmental.com) or by phone (619-308-9333 ext. 178).

Sincerely,



Raquel Atik
Associate Restoration Biologist

RCA:jg

cc: Raul Guzman, Techbilt Construction
RJ VanSant, U.S. Army Corps of Engineers
Kevin Hupf, California Department of Fish and Wildlife
Barry Jones, HELIX Environmental

Reference Cited

Merkel & Associates

2004 Wetland Mitigation Plan. Faraday Avenue Extension, South Agua Hedionda Sewer Interceptor, and Carlsbad Oaks North Business Park. May.



California Regional Water Quality Control Board

San Diego Region



Terry Tamminen
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb9/>
9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 • FAX (858) 571-6972

Arnold Schwarzenegger
Governor

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

RECEIVED JUL 23 2004

PROJECT: Faraday Avenue Extension and Carlsbad Oaks North Business Park
(File No. 02C-093)

APPLICANTS: Marshall Plantz
City of Carlsbad
1635 Faraday Avenue
Carlsbad, CA 92008

Theodore Tchang
Techbilt Construction Corporation
3575 Kenyon Street
San Diego, CA 92110

ACTION:

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

STANDARD CONDITIONS:

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

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

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

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ADDITIONAL CONDITIONS:

In addition to the three standard conditions, the City of Carlsbad and Techbilt Construction Corporation (applicants) shall satisfy the following:

A. GENERAL CONDITIONS

1. The applicants shall, at all times, fully comply with the engineering plans, specifications and technical reports submitted with this application for 401 Water Quality Certification and all subsequent submittals required as part of this certification.
2. The applicants shall comply with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity.
3. The City of Carlsbad shall, at all times, fully comply with the requirements of the San Diego Municipal Storm Water Permit Order No. 2001-01 (NPDES No. CAS0108740).
4. The applicants shall maintain a copy of this certification at the project site so as to be available at all times to site personnel and agencies.
5. Prior to the start of the project, the applicants shall educate all personnel on the requirements in this certification, pollution prevention measures, spill response, and requirements contained in the Storm Water pollution Prevention Plan (SWPPP) prepared for the project.
6. The applicants shall permit the Board or its authorized representative at all times, upon presentation of credentials:
 - a) Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b) Access to copy any records required to be kept under the terms and conditions of this certification.
 - c) Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this certification.
 - d) Sampling of any discharge or surface water covered by this Order.

7. The applicants shall, at all times, maintain appropriate types and sufficient quantities of materials onsite to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reached a waters of the U.S. and/or State.
8. The applicants shall notify the Regional Board within 24 hours of any unauthorized discharge to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and recovered; and additional BMPs or other measures that will be implemented to prevent future discharges.
9. This Certification is not transferable to any person except after notice to the Executive Officer of the San Diego Regional Water Quality Control Board (Regional Board). The applicant shall submit this notice in writing at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new owner containing a specific date for the transfer of this Certification's responsibility and coverage between the current discharger and the new discharger. This agreement shall include an acknowledgement that the existing owner is liable for compliance and violations up to the transfer date and that the new owner is liable from the transfer date on.
10. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
11. In response to a suspected violation of any condition of this certification, the Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the RWQCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
12. In response to any violation of the conditions of this certification, the RWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance.

B. CERTIFICATION CONDITIONS FOR SEDIMENT & EROSION CONTROL DURING THE INTERIM PROJECT PHASE

1. Techbilt Construction Corporation shall implement the following measures to ensure that the Carlsbad Oaks North Business Park project does not cause a net increase in sediment discharge to Agua Hedionda Creek or its south fork during the interim project phase¹.
 - a. BEST MANAGEMENT PRACTICES (BMPs): Techbilt Construction Corporation shall implement the interim sediment and erosion control BMPs as outlined in the June 2004, *Concept Water Quality Plan for the Carlsbad Oaks North Business Park* (prepared by O'Day Consultants and Merkel & Associates). These BMPs include temporary desilting basins, permanent water quality basins, landscaping and drain inlet filters.
 - b. SEDIMENT/SILTATION MONITORING PROGRAM: To assess the effectiveness of the BMPs implemented pursuant to Condition B.1.a, Techbilt Construction Corporation will develop and implement a sediment/siltation monitoring plan to measure sediment loads above and below the project site. Sediment/Siltation monitoring shall continue until such a time that certificates of occupancy, or a City of Carlsbad equivalent to a certificate of occupancy for all building pads within the project. The interim sediment/siltation monitoring program shall be developed and submitted to the Regional Board for acceptance prior to initiation of project grading. Upon Regional Board acceptance of the monitoring plan, Techbilt Construction Corporation shall monitor sediment loading above and below the project as described below:
 - i. Samples to be taken upstream of the of the project site, and immediately downstream of the last point of discharge from the Business Park.
 - ii. Samples to be analyzed for Settleable Solids (mL/L using EPA 160.5) and Total Suspended Solids (mg/L using EPA 160.2).
 - iii. Sediment /siltation monitoring to occur after every significant rainfall where storm water runoff discharges from the Business Park into the south fork of Agua Hedionda Creek (La Mirada Creek). The applicant does not need to perform upstream/downstream sample collection for more than three (3) rain events per month.
 - c. BMP EVALUATION AND MAINTENANCE: The applicants shall immediately assess the results of each sampling event, and if the results of the downstream site show an increase greater than 5 percent above background (upstream site) sediment levels, the applicants shall conduct an immediate assessment of erosion and sediment control BMPs being implemented on-site. The applicants shall:

¹ The Interim project phase is described as the period after grading has been completed and pre-developed pads have been constructed, and before final construction is commenced on the last of the pr-eveloped pads within the project boundaries.

- i. Identify the source of the silt, sediment.
 - ii. Repair or replace any BMP that has failed.
 - iii. Maintain any BMP that is not functioning properly due to lack of maintenance.
 - iv. Evaluate whether additional or alternative BMPs should be implemented to prevent further exceedences of background sediment levels.
 - v. Report to the Regional Board within 5 working days the actions taken to remedy the situation.
- d. **TEMPORARY SUSPENSION OF SEDIMENT/SILTATION MONITORING:**
Sediment/siltation monitoring may be temporarily suspended if all of the following conditions are met:
 - i. Sediment/siltation monitoring data for the pre-developed pads show, to the Regional Boards satisfaction, that interim erosion and sediment control BMPs are functioning as designed to prevent discharge of pollutants to receiving waters.
 - ii. All Pre-developed pads have attained 80% uniform vegetative cover.
 - iii. A formal written request is submitted to the Regional Board, and approved.

Any change in site conditions, such as the beginning of a new phase of project construction, or loss of vegetative cover on pre-developed pads, that results in all of the above conditions not being met, will result in the resumption of sediment siltation monitoring.

2. Techbilt shall include all data, quality assurance and quality control data from the sediment/siltation monitoring program in reports to be submitted monthly during the rainy season (October 1 through April 30). In months receiving no precipitation resulting in a discharge to receiving waters, no report will be required.
3. Temporary desilting basins will be inspected prior to forecasted rain events, daily during extended rain events, and weekly during the rainy season. All inspections will be documented and will be available to the RWQCB upon request.
4. Accumulated sediment shall be periodically removed from the temporary desilting basins when sediment accumulation reaches one half the designated sediment storage volume.

C. CERTIFICATION CONDITIONS FOR POST CONSTRUCTION STORM WATER MANAGEMENT

1. All storm drain inlet structures within the project boundaries shall be stamped and/or stenciled with appropriate language prohibiting non-storm water discharges.

2. The City of Carlsbad, shall install 10 storm drain inlet filters (Kristar Flo- Gard Plus or an equivalent filter) on Faraday Avenue and El Fuerte Road, as depicted in the submitted Drainage Exhibit (prepared by O'Day, June 2004) per the manufacturers specifications.
3. Upon installation of the storm drain inlet filters, the City of Carlsbad will be responsible for their inspection and maintenance per the manufacturers specifications in perpetuity. All inspections and maintenance will be documented and these records will be available to the RWQCB upon request.
4. The applicants shall install three permanent water quality basins as proposed in the June 2004 *Concept Water Quality Plan for Carlsbad Oak North Business Park* (prepared by O'Day Consultants and Merkel & Associates). The basins shall be sized using the **volume based** sizing criteria contained in the City of Carlsbad, April 2003, *Standard Urban Storm Water Mitigation Plan, Storm Water Standards*.
5. No later than 30 days after completion of construction of the water quality basins, the applicants shall provide a report documenting the as built design of the basins, and the calculations used to size the basins in accordance with the City of Carlsbad, April 2003, *Standard Urban Storm Water Mitigation Plan, Storm Water Standards*.
6. The applicants shall vegetate the proposed detention basins with drought tolerant native grasses (e.g., *Distichilis spicata*, *Leymus triticoides*). Maintenance of the vegetated permanent water quality basin will be triggered when sediment accumulation reaches one half the designated sediment storage volume. When cleaned out, the basin should be over-excavated by at least half a foot to extend the interval between necessary maintenance and no more than 50 percent of the vegetation shall be removed during maintenance activities.
7. No low-flow channel, or other structure that would compromise the water purification functions of the basin, shall be constructed in the proposed permanent water quality basins.
8. As each individual lot is developed within the Business Park, the interim BMPs implemented to stabilize the pad will be replaced with permanent structural water quality treatment BMPs as appropriate to the intended end use. Permanent water quality BMPs will be implemented in accordance with the City of Carlsbad April 2003, *Standard Urban Storm Water Mitigation Plan, Storm Water Standards*.
9. As each individual lot is being developed, and upon final approval by the City of Carlsbad of permanent BMPs selected for that individual pad, the City of Carlsbad will provide the Regional Board with a summary report of the treatment BMPs selected to be implemented for each lot, including but not limited to:
 - a. The anticipated pollutants of concern for the proposed end use of the pad.
 - b. The types of permanent water quality BMPs to be implemented on site.

- c. Design specifications and sizing calculations for the permanent BMPs.
- d. A diagram depicting the location of the permanent water quality BMPs.
- e. A description of the maintenance requirements for each BMP, the responsible party for the maintenance, and the funding mechanism to ensure maintenance of the BMPs in perpetuity.

D. MITIGATION

1. Permanent impacts to jurisdictional Waters of the U.S. shall not exceed the following:
 - a. Southern willow scrub – 1.4 acre
 - b. Freshwater marsh – 0.4 acre
 - c. Cismontane alkali marsh – 0.4 acre
 - d. Disturbed wetland – 0.1 acre
 - e. Non-wetland waters of the U.S. – 0.4 acre

2. The applicants shall mitigate for permanent impacts to 2.7 acres of jurisdictional Waters of the U.S. at the following ratios, in accordance with the May 2004 *Wetland Mitigation Plan Faraday Avenue Extension, South Agua Hedionda Sewer Interceptor, and Carlsbad Oaks North Business Park* (prepared by Merkel & Associates).

Jurisdictional Type	Impacted Acreage	Creation Mitigation Ratio	Creation Acreage	Enhancement Mitigation Ratio	Enhancement Mitigation Acreage
Southern Willow Scrub	1.4	1:1	1.9	4:1	6.0
Freshwater Marsh	0.4	1:1	0.4		
Cismontane Alkali Marsh	0.4	3:1	1.2		
Disturbed Wetland	0.1	--	--		
Non-wetland Waters of the U.S.	0.4	--	--		
Total	2.7		3.5		6.0

3. Within 90 days of the issuance of the final map for the project, the applicants shall provide a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all mitigation areas and their buffers in perpetuity. The conservation easement or other legal limitation on the mitigation property shall be adequate to demonstrate that the site will be maintained without future development or encroachment on the site or which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the U.S. that it supports. The conservation easement or other appropriate legal limitation shall prohibit, without exception, all residential, commercial, industrial, institutional, and transportation

development, and any other infrastructure development that would not maintain or enhance the wetland functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, paved maintenance roads, and areas of maintained landscaping for recreation. The applicants shall submit proof of a completed preservation mechanism within one year of issuance of this certification.

4. The applicants shall submit a report (including topography maps and planting locations) to the Regional Board within 90 days of completion of mitigation site preparation and planting, describing as-built status of the mitigation project. If the site grading and planting are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.
5. The construction of proposed mitigation shall be completed within the same calendar year as impacts occur, or at least no later than 9 months following the close of the calendar year in which impacts first occur (e.g., if impacts occur in June 2004, construction of mitigation for all impacts must be completed no later than September 2005).
6. Mitigation areas shall be maintained free of perennial exotic plant species including, but not limited to, pampas grass, giant reed, tamarisk, sweet fennel, tree tobacco, castor bean, and pepper tree. Annual exotic plant species shall not occupy more than 5 percent of the onsite mitigation areas.
7. If at any time during the implementation and establishment of the mitigation area(s), and prior to verification of meeting success criteria, a catastrophic natural event (e.g., fire, flood) occurs and impacts the mitigation area, the applicants shall be responsible for repair and replanting of the damaged area(s).
8. Habitat mitigation monitoring reports shall be submitted semi-annually during the first year following installation, and annually until mitigation has been deemed successful. Monitoring reports shall be submitted no later than 30 days following the end of the monitoring period. Monitoring reports shall include, but not be limited to, the following:
 - a) Names, qualifications, and affiliations of the persons contributing to the report;
 - b) Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
 - c) Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
 - d) Photodocumentation from established reference points;
 - e) Survey report documenting boundaries of mitigation area; and
 - f) Other items specified in the final Wetland and Riparian Mitigation and Monitoring Plan.

9. In the event that the proposed mitigation does not obtain the 3rd year success criteria milestones for mitigation as presented in table 5 of the *Wetland Mitigation Plan Faraday Avenue Extension, South Agua Hedionda Sewer Interceptor, and Carlsbad Oaks North Business Park* (Merkel & Associates,2004), the applicants shall provide the RWQCB with a technical report detailing the actions that will be taken to bring the mitigation up to the success criteria. This report shall also provide an evaluation of alternative mitigation opportunities within the Agua Hedionda Hydrologic Area to be utilized for additional mitigation, if portions of the required mitigation are unsuccessful after five years.
10. In the event that the proposed mitigation does not obtain the 4th year success criteria milestones for mitigation, The applicants shall provide the RWQCB with a technical report detailing the actions that will be taken to bring the mitigation up to the success criteria, and a conceptual mitigation plan for an alternative mitigation site within the Agua Hedionda Hydrologic Area to be utilized for additional mitigation, if portions of the required mitigation are unsuccessful after five years.. The mitigation plan shall mitigate for any portion of the mitigation that does not meet final success criteria, at a ratio of 2:1.
11. In the event that the proposed mitigation does not obtain full success with the 5th year success criteria the applicants shall finalize the conceptual mitigation plan (see condition No.10) and submit the plan to the RWQCB within 30 days of the 5th year monitoring report period. No later than 90 days following RWQCB acceptance of the final mitigation plan, or 30 days after RWQCB receipt of the plan, the applicants shall begin implementation of the final mitigation plan.
12. For purposes of this certification, creation is defined as the creation of vegetated or unvegetated waters of the U.S. where they have never been documented or known to occur (e.g., conversion of nonnative grassland to freshwater marsh). Enhancement is defined as modifying existing waters of the U.S. to enhance functions and values (e.g., removal of exotic plant species from jurisdictional areas and replacing with native species).

E. CERTIFICATION CONDITIONS FOR RECEIVING WATER QUALITY MONITORING

1. The applicants shall develop and implement a five-year Receiving Waters Monitoring Program in the south fork tributary of Agua Hedionda Creek (La Mirada Creek, HSU 904.31) to evaluate potential project impacts to the Agua Hedionda Creek watershed for pollutants/stressors contained in the SWRCB's 2002 Monitoring List for Agua Hedionda Creek. The Receiving Waters Monitoring Program shall be developed and submitted to the Regional Board for acceptance prior to impacts to jurisdictional areas. At a minimum, the Monitoring Program shall assess changes in nutrients, pesticides, and benthic community in Agua Hedionda Creek and La Mirada Creek, including but not limited to the following:

- a. **WATER QUALITY ASSESSMENT:** The applicants shall perform water quality sampling and analysis for nitrogen and phosphorous nutrients (NH₃, NO₃-N, NO₂-N, TKN, ortho phosphorous and Total Phosphorous), diazinon, and physicochemical constituents (pH, temperature, electrical conductance, dissolved oxygen). At a minimum, sampling will be conducted monthly for the first year, and quarterly thereafter. Samples shall be taken upstream of the of the project site, and immediately downstream of the last point of discharge from the Business Park.
 - b. **BENTHIC MACROINVERTEBRATE COMMUNITY ANALYSIS:** Bioassessment monitoring shall be performed using the professional-level non-point source protocol of the California Stream Bioassessment Procedure.² At a minimum, bioassessment monitoring shall be performed at three sites (assessment stations) on La Mirada Creek (as flow permits) in May/June and October of each year. One assessment site shall be located upstream of the Faraday Avenue flood retention berm, and one assessment site shall be located below the structure. A reference station upstream of the project shall be located and sampled concurrently with the assessment stations.
2. Where procedures are not otherwise specified for the Receiving Water Quality Monitoring Program, sampling, analysis, and quality assurance/ quality control must be conducted in accordance with the Quality Assurance Program Plan (QAPP) for the State of California's Surface Water Ambient Monitoring Program, adopted by the State Water Resources Control Board (SWRCB).³
 3. The five year receiving water quality monitoring will begin concurrently with the habitat mitigation program pursuant to Condition B.8 of this certification. The receiving water quality data and analysis shall be submitted as part of the required habitat mitigation monitoring reports pursuant to Condition B.8 of this certification.
 4. The Regional Board Executive Officer may make revisions to the Receiving Water Quality monitoring program at any time during the five year monitoring term, and may include a reduction or increase in the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.

² Copies of the California Stream Bioassessment Procedure can be obtained at <http://www.dfg.ca.gov/cabw/cabwhome.html> additional information on stream bioassessment may be obtained at <http://www.swrcb.ca.gov/rwqcb9/programs/bioassessment.html>.

³ The QAPP can be downloaded from the SWRCB web page at http://www.swrcb.ca.gov/swamp/docs/swamp_qapp.pdf.

F. REPORTING

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

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

3. The applicants shall submit reports required under this certification, or other information required by the Regional Board, to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification; File No 02C-093
9174 Sky Park Court, Suite 100
San Diego, California 92123

PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On August 18, 2002, receipt of the project application was posted on the SDRWQCB web site to serve as appropriate notification to the public.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Christopher Means
California Regional Water Quality Control Board. San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
(858) 637-5581
meanc@rb9.swrcb.ca.gov

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from Faraday Avenue Extension and Carlsbad Oaks North Business Park (File No. 03C-052) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under California Regional Water Quality Control Board, San Diego Region, Waiver of Waste Discharge Requirements (Waiver Policy) No. 17. Please note that this waiver is conditional and, should new information come to our attention that indicates a water quality problem, the Regional Board may issue waste discharge requirements at that time.

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



John H. Robertus
Executive Officer
Regional Water Quality Control Board

7/19/2004
Date

- Attachments:
1. Project Information
 2. Distribution List
 3. Location Map
 4. Site Map
 5. Mitigation overview
 6. Habitat Creation Diagram

**ATTACHMENT 1
PROJECT INFORMATION**

Applicants:	Marshall Plantz Senior Civil Engineer City of Carlsbad 1635 Faraday Avenue Carlsbad, CA 92008	Theodore Tchang Techbilt Construction Corp. 3575 Kenyon Street San Diego, CA 92106
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Applicant Representatives:	Keith Merkel Merkel & Associates 5434 Ruffin Road San Diego, CA 92123
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Project Name:	Faraday Avenue Extension and Carlsbad Oaks North Business Park
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Project Location:	The project area encompasses approximately 650 acres of land located in the northeastern portion of the City of Carlsbad, San Diego County. The project is located east of El Camino Real and North of Palomar Airport Road, South of the UCSD Los Monos Reserve
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Type of Project:	Transportation improvement, flood control, industrial Business Park
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Project Description:	The Faraday Avenue extension project proposes an approximately 1.3 mile extension of Faraday Avenue from its current terminus in the City of Carlsbad to its existing terminus in the City of Vista. The roadway would be constructed as a four-lane secondary arterial, which includes a right-of-way width of 84 feet. The Faraday Avenue extension would also serve to create a regional flood retention basin by the construction of an earthen berm across the south fork of Agua Hedionda Creek. As part of this project El Fuerte Road would be extended from Loker Avenue north to the future Faraday Avenue alignment.
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The Carlsbad Oaks North Business Park project is located on a 414 acre property and proposes the construction of 24 industrial lots ranging from 3 acres to 20.7 acres, the proposed project would also include open space, a pedestrian trail and employee picnic areas.

Federal Agency/Permit:	U.S. Army Corps of Engineers Individual 404 Permit
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Other Required Regulatory Approvals:	California Department of Fish & Game Streambed Alteration Agreement
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California Environmental Quality Act (CEQA) Compliance:	The City of Carlsbad approved the Final Environmental Impact Report for the Carlsbad Oaks Specific Plan on October 9, 2002.
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Receiving Water: Agua Hedionda Creek

Impacted Waters of the United States: Permanent impacts to jurisdictional Waters of the U.S. shall be as follows:

- a. Southern willow scrub – 1.4 acre
- b. Freshwater marsh – 0.4 acre
- c. Cismontane alkali marsh – 0.4 acre
- d. Disturbed wetland – 0.1 acre
- e. Non-wetland waters of the U.S. – 0.4 acre

For a total of 2.7 acre of total jurisdictional impacts.

Dredge Volume: NA

Related Projects Implemented/to be Implemented by the Applicant(s): The City of Carlsbad has proposed other regional in stream flood retention facilities as part of their Master Drainage Plan.

Compensatory Mitigation: Mitigation for permanent impacts to 2.7 acres of jurisdictional Waters of the U.S. will be achieved by the creation of 3.5 acres of jurisdictional waters and habitat, and the enhancement of 6.0 acres of 6.0 acres of Southern Willow Scrub, in accordance with the May 2004 *Conceptual Wetland Mitigation Plan* (prepared by Merkel & Associates).

Best Management Practices: During construction, this project will comply with the BMP requirements stipulated in the State Water Resources Control Board Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity.

During the interim phase of the project temporary desilting basins and permanent landscaping will be implemented to prevent the discharge of sediment from the pre-developed pads. The developer of the project will develop and implement a sediment/siltation monitoring program to monitor the effectiveness of the erosion and sediment control BMPs implemented.

Post-construction BMPs will be implemented to treat urban runoff generated from the project. Specific BMPs will include:

- 3 permanent water quality basins.
- 10 drain inlet filters treating the areas not being served by the permanent water quality basins.
- As pads are developed the applicants will provide a summary report of the post construction BMPs to be implemented for each

pad.

- The applicants will develop and implement a five year receiving water quality monitoring program to assess the impact of the project.

Public Notice:

On August 18, 2002, receipt of the project application was posted on the SDRWQCB web site to serve as appropriate notification to the public.

Fees:

Total Due: \$3000.00 Total Paid (check No.084782): \$3000.00

**ATTACHMENT 2
DISTRIBUTION LIST**

Jeanette Baker
U.S. Army Corps of Engineers
Regulatory Branch
16885 W. Bernardo Dr., Suite 300 A
San Diego, CA 92127
(858) 674-5388 (fax)

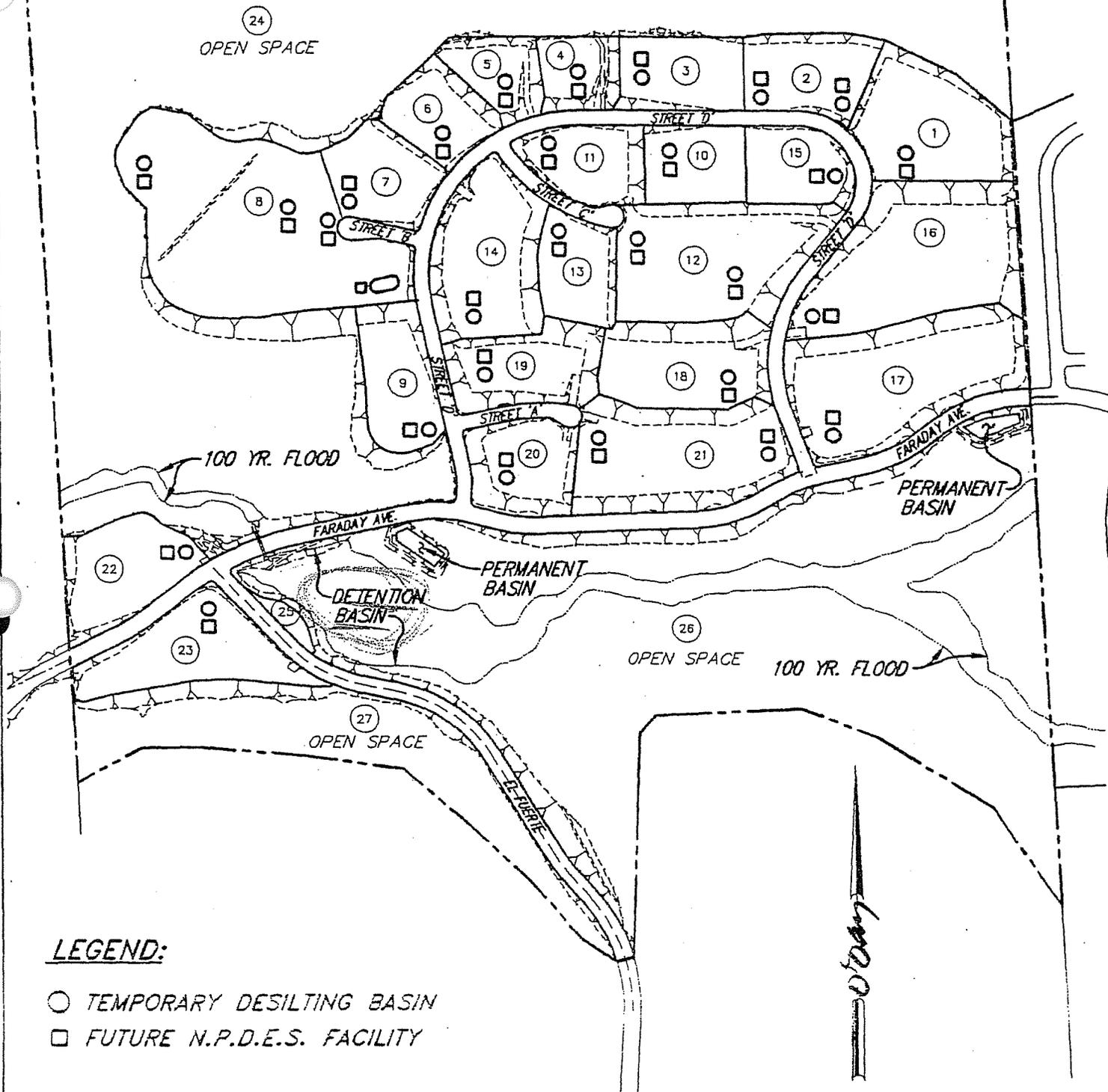
Keith Merkel
Merkel & Associates, Inc.
5434 Ruffin Road
San Diego, CA 92123

Isabelle Kay
Natural Reserve System
University of California, San Diego
9500 Gilman Drive
La Jolla, CA 92093-0116

Diane Nygaard
Preserve Calavera
5020 Nighthawk Way
Oceanside, CA 92056

Ms. Karen Skaret
Legal Intern
San Diego Baykeeper
2924 Emerson Street, Suite 220
San Diego, CA 92106

State Water Resources Control Board
Division of Water Quality



LEGEND:

- TEMPORARY DESILTING BASIN
- FUTURE N.P.D.E.S. FACILITY

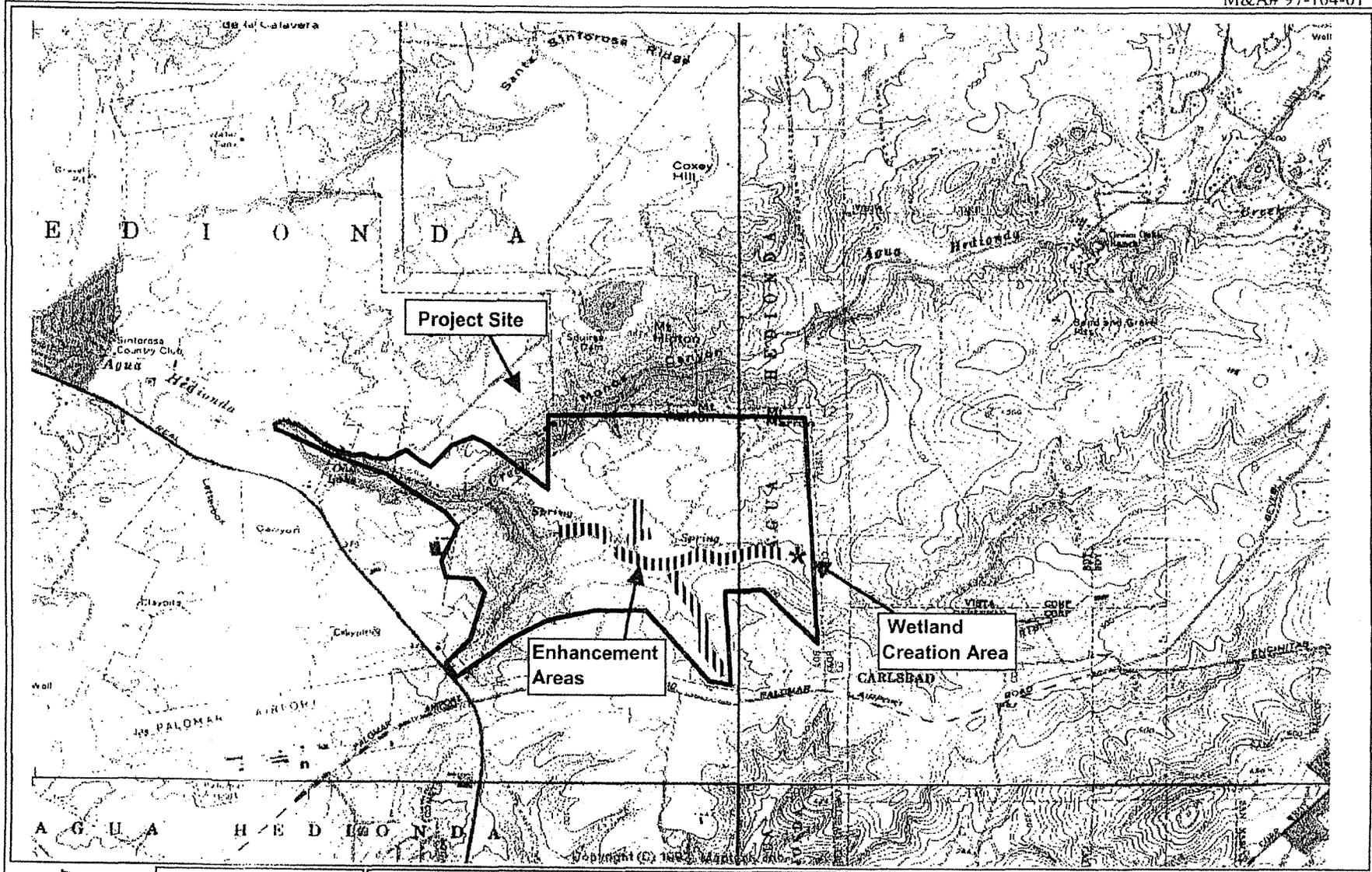
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JN 961005

**CARLSBAD OAKS NORTH
BUSINESS PARK
N.P.D.E.S. EXHIBIT**

O'Day
CONSULTANTS

5900 Pasteur Court Suite 100 Carlsbad, California 92008 619-931-7700 Fax: 619-931-8688	Civil Engineering Planning Processing Surveying
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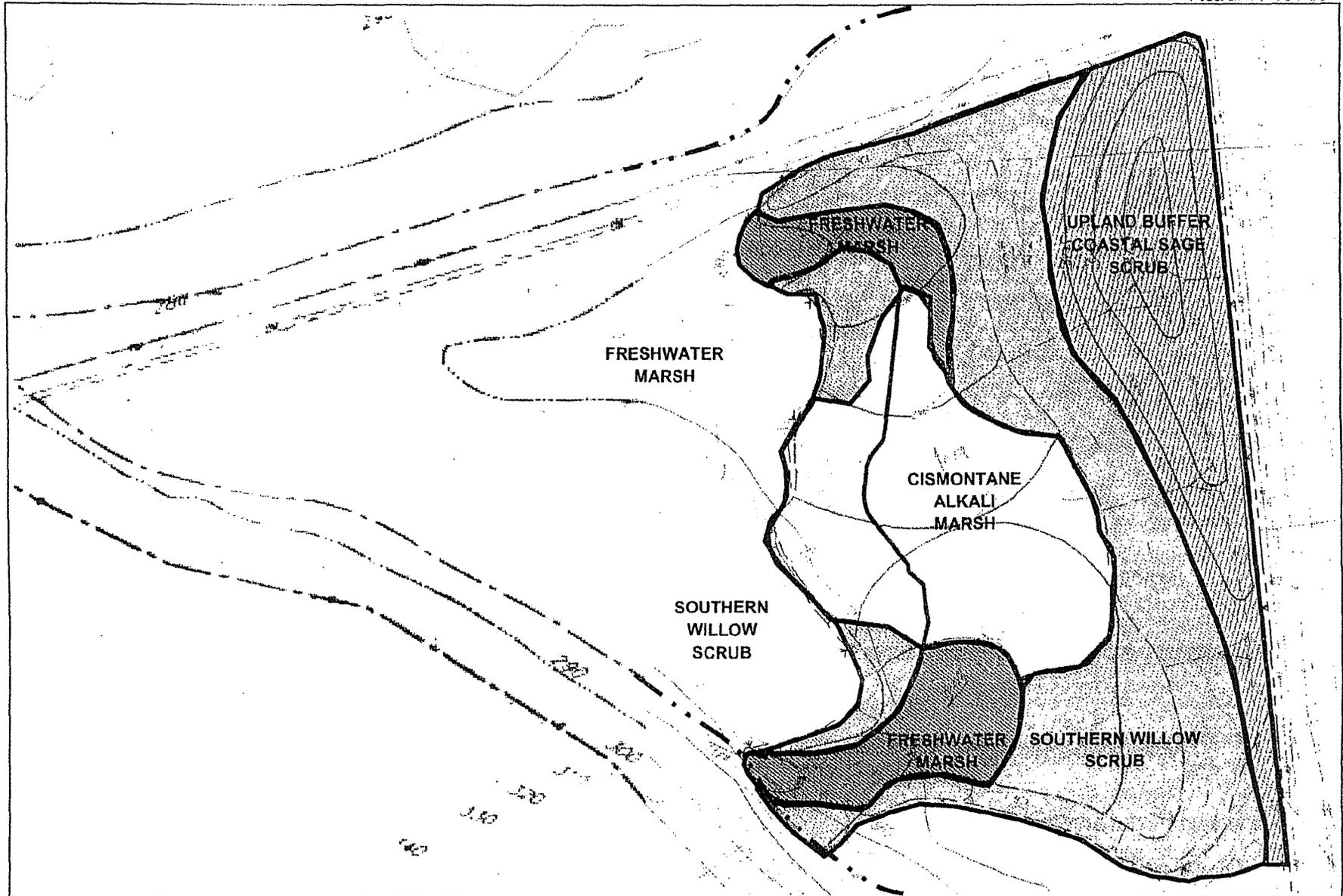
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Approximate Project Study Area
Carlsbad Oaks North Specific Plan
 Source: USGS 7.5' San Luis Rey, San Marcos, Rancho Santa Fe, and Encinitas, CA Quadrangles

Figure
1

Merkel & Associates, Inc.

Attachment No. 5



Scale:
1" = 120'

Faraday Avenue Extension/Carlsbad Oaks North
Habitat Restoration Zones

Figure
4

Merkel & Associates, Inc.

Attachment No. 6