



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board Item 10 Doc. 5

San Diego Region

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August 11, 2008

Ms. Lisa Hildabrand
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

CERTIFIED MAIL
7007 1490 0003 8753 5452

In reply refer to:
CWU:R920080099:bjames

CIWQS Place ID: 224166;
629552

RE: NOTICE OF VIOLATION NO. R9-2008-0099

Subject Sites:

1. Faraday Avenue Extension and Carlsbad Oaks North Business Park
2. Agua Hedionda Channel Dredging Project

Dear Ms. Hildabrand,

Enclosed is **Notice of Violation (NOV) No. R9-2008-0099** for the subject sites in the City of Carlsbad, San Diego County, CA. The Faraday Avenue Extension and Carlsbad Oaks North Business Park project was issued Clean Water Act Section 401 Certification No. 02C-093 (Certification) on July 19, 2004. The Agua Hedionda Channel Dredging Project was issued Clean Water Act Section 401 Certification No. 06C-007 (Certification) on March 2, 2006. Violations specified in the NOV were identified during a site inspection on July 2, 2008 and during review of the California Regional Water Quality Control Board, San Diego Region files for the projects. Failure to comply with the directives/conditions of the certification are serious and subject you to potential liability that accrues for each day of violation. Therefore, I urge you to take immediate steps to achieve compliance.

Questions pertaining to the enclosed Notice of Violation should be directed to Benjamin James at 858-467-2968 or bjames@waterboards.ca.gov.

David Barker
Supervising Engineer

Attachments: Notice of Violation R9-2008-0099; July 2, 2008 Inspection Report

Ms. Hildabrand

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August 11, 2008

cc by e-mail:

Kari Coler, U.S. Army Corps of Engineers, Kari.Coler@usace.army.mil

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

Glenn Prui, City of Carlsbad, gprui@ci.carlsbad.ca.us

Grant Clavier, City of Carlsbad, gclav@ci.carlsbad.ca.us

CIWQS: NOV – 350121; Place No. – 224166, 629552; Violations – 778594, 778603;
401 Certification – 214323, 298102

Summary of Violations:**A. Faraday Avenue Extension and Carlsbad Oaks North Business Park (§401 Certification 02C-093)****1. FAILURE TO STAMP/STENCIL ALL DRAIN INLETS WITHIN THE PROJECT BOUNDARIES****➤ Pursuant to Certification Condition C.1**

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

Observation: During the site inspection on July 2, 2008, the Regional Board found two inlet structures within the project boundaries along Faraday Avenue that did not have the required stamping/stenciling. The two inlet structures are located in the eastern most section of Faraday Avenue within the project boundaries, with one structure on the north side of the roadway and the other on the south side of the roadway.

2. FAILURE TO CONFORM TO POST-CONSTRUCTION STORM WATER MANAGEMENT CONTROL INSTALLATION PLAN**➤ Pursuant to Certification Condition C.2**

- The City of Carlsbad, shall install 10 storm drain inlet filters (Krista[sic] Flo-Guard 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 specifications¹.

Observation: During the site inspection on July 2, 2008, the Regional Board found that only nine of the twelve required inlet filters were installed according to the plans that were submitted to the Regional Board. Two of the four proposed inlet structures along El Fuerte Street required to have inlet filters did not have the required inlet filters, and another structure along El Fuerte Street that did not have a hydrocarbon absorbent boom. At the southern end, on the west side of El Fuerte Street there was an additional inlet structure constructed that was not depicted on the Drainage Exhibit. This inlet does not have an inlet filter. The Regional Board never received a request for an amendment to the certification.

¹ The Drainage Exhibit prepared by O'Day, June 2004, as part of the *June 2004 Concept Water Quality Plan for Carlsbad Oaks North Business Park* (prepared by O'Day Consultants and Merkel & Associates) proposes that 12 inlet structures will contain inlet filters, not 10 structures as stated in the certification.

3. FAILURE TO PROPERLY MAINTAIN POST-CONSTRUCTION STORM WATER INLET FILTERS

➤ Pursuant to Certification Condition C.3

- Upon installation of the storm drain inlet filters, the City of Carlsbad will be responsible for their inspection and maintenance per the manufacturer's specifications in perpetuity. All inspections and maintenance will be documented and these records will be available to the RWQCB upon request.

Observation: During the site inspection on July 2, 2008, the Regional Board found that most of the inlet structures along Faraday Avenue and El Fuerte Street were overloaded with sediment, trash, and debris, thus rendering them ineffective. One structure on Faraday Avenue had a hydrocarbon adsorbent boom that was broken.

4. FAILURE TO SUBMIT WATER QUALITY BASIN REPORT AND AS-BUILTS

➤ Pursuant to Certification Condition C.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*.

➤ Pursuant to Certification Condition C.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.

➤ Pursuant to Certification Condition C.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 basin.

Observation: The Regional Board has not received this report. Three permanent water quality basins were observed during the site inspection on July 2, 2008. Due to a lack of reporting it is currently unknown when the construction of the water quality basins was completed. Due to a lack of reporting, it is also unknown if the permanent water quality basins were planted with drought tolerant native grasses per Condition C.6, and if a low-flow channel or other structure that would compromise the water purification functions of the basin was constructed, despite the prohibition per Condition C.7.

5. FAILURE TO CONSTRUCT THE COMPENSATORY MITIGATION AS REQUIRED BY THE CERTIFICATION AND CONFORM TO THE MITIGATION PLAN

➤ Pursuant to 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).

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

Observation: The *Mitigation Compliance Report for the Carlsbad Oaks North On-site Mitigation Area (No. 200200641-JMP)* prepared by HELIX Environmental Planners, Inc., was received by the Regional Board on November 9, 2006 and states that a "total of 3.06 acres of wetland habitat was created, consisting of 1.43 acres of southern willow scrub, 1.02 acres of cismontane alkali marsh, and 0.61 acre of freshwater marsh." This report illustrates the applicant's failure to construct the required total compensatory mitigation acreage, and the required specific habitat acreage.

6. FAILURE TO CONSTRUCT TIMELY HABITAT MITIGATION

➤ Pursuant to Certification Condition D.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).

Observation: Due to a lack of reporting, it is unknown when the initial impacts occurred. Assuming a start date of late 2004 or early 2005, the mitigation site should have been completed by September 2005. The September 2005 deadline is based on the example provided in the certification, the fact that the certification was issued July 19, 2004, and that

quarterly water quality monitoring samples, which are required during construction, were being taken in January 2005. Heavy machinery and earth moving work being conducted in the mitigation area was observed during the site inspection on July 2, 2008, indicating that the site is not functioning as a mitigation site.

7. FAILURE TO PROVIDE HABITAT MITIGATION REPORTS

➤ Pursuant to Certification Condition D.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. Photo documentation from established reference points;
 - e. Survey report documenting boundaries of mitigation area; and
 - f. Other items specified in the draft and final Wetland and Riparian Mitigation and Monitoring Plan.

Observation: The Regional Board has not received any of the semi-annual monitoring reports, or the subsequent annual reports. The *Mitigation Compliance Report for the Carlsbad Oaks North On-site Mitigation Area (No. 200200641-JMP)* prepared by HELIX Environmental Planners, Inc., and received by the Regional Board on November 9, 2006 states that the beginning of the five year monitoring period began on October 6, 2006. Based on this date, the first semi-annual monitoring report was due on May 6, 2006, 30 days past the end of the monitoring period. The second semi-annual monitoring report, which concluded the first year of monitoring, was due on November 6, 2006, 30 days past the end of the monitoring period. The first annual monitoring report, which consists of the second year of monitoring, was due on November 6, 2007, 30 days past the end of the monitoring period.

B. Agua Hedionda Dredging Project (\$401 Certification 06C-007)**1. FAILURE TO SUBMIT A FINAL WETLANDS MITIGATION AND MONITORING PLAN****➤ Pursuant to Certification Condition C.3**

- Within 120 days of the issuance of this certification, the City of Carlsbad shall develop and submit a Final Wetlands Mitigation and Monitoring Plan for SDRWQCB approval, that shall be consistent with Conditions C.1 and C.2 above, and shall achieve the following performance standards:
 - a. Created wetlands that are installed to compensate for impacts to jurisdictional wetland areas must possess the three criteria (wetland hydrology, hydrophytic vegetation, and hydric soils) necessary to be delineated as a Corps jurisdictional area;
 - b. All mitigation sites shall be maintained 95 percent free of exotic/nonnative plant species;
 - c. All mitigation sites must be self-sustaining; and
 - d. All mitigation sites must exhibit evidence of natural recruitment of native wetland and/or riparian species.

Observation: The certification was issued on March 2, 2006. Therefore, a final mitigation plan was due by July 1, 2006. The *Draft 1 Compensatory Habitat Mitigation and Monitoring Plan* was received on July 11, 2006 and comments about the inadequacy of the plan were sent via e-mail by Christopher Means on July 18, 2006. A revised and final mitigation plan was not received by the Regional Board. The City of Carlsbad requested an amendment from the Regional Board in a letter dated June 20, 2006 to replace the requirement of a final mitigation plan due within 120 days of certification issuance with an extension for a draft mitigation plan to be due within 210 days. The amendment was never granted because the requested supporting information was never received.

2. FAILURE TO SUBMIT A COMPLETED PRESERVATION MECHANISM OVER THE MITIGATION AREA**➤ Pursuant to Certification Condition C.7**

- No Later than 90 days after SDRWQCB acceptance of the Final Mitigation Plan, the City of Carlsbad 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 City of Carlsbad shall submit proof of a completed preservation mechanism within one year of the submittal of the draft preservation mechanism.

Observation: Failure to submit a final mitigation plan has resulted in a violation of Condition C.7 of the certification which requires a draft preservation mechanism for the mitigation area be submitted to the Regional Board within 90 days of acceptance of the final mitigation plan and proof of a completed mechanism within one year of the submittal of the draft plan.

3. FAILURE TO CONSTRUCT TIMELY HABITAT MITIGATION

➤ Pursuant to Certification Condition C.9

- 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 2006, construction of mitigation for all impacts must be completed no later than September 2007).

➤ Pursuant to Certification Condition C.8

- The City of Carlsbad shall submit a report (including topography maps and planting locations) to the SDRWQCB 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.

➤ Pursuant to Certification Condition C.12

- Mitigation monitoring reports shall be submitted 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 draft and final Wetland and Riparian Mitigation and Monitoring Plan.

Observation: The project was initiated on March 6, 2006 and was completed on March 25, 2006. No evidence of the proposed compensatory mitigation work being conducted was observed during the site inspection conducted by the Regional Board on July 2, 2008. The lack of the compensatory mitigation work being conducted is supported by the violations in the lack of reporting of the 90 day completion of mitigation site preparation report per Condition C.8 of the certification and the annual mitigation and monitoring reports per Condition C.12 of the certification. Failure to construct the mitigation area has also resulted in a violation of Condition D.4 of the certification, which requires the City of Carlsbad to conduct a five-year Bioassessment Monitoring Program and report the results concurrently with the habitat mitigation and monitoring plan required in Condition C.12 of the certification.

4. FAILURE TO DEVELOP A FIVE-YEAR BIOASSESSMENT MONITORING PROGRAM

➤ Pursuant to Certification Condition D.1

- The City of Carlsbad shall develop and implement a five-year Bioassessment Monitoring program to evaluate changes in the benthic macroinvertebrate community in Agua Hedionda Creek resulting from impacts of the dredging project and future planned flood control projects.

➤ Pursuant to Certification Condition D.4

- The five-year Bioassessment Monitoring Program will begin concurrently with the habitat mitigation program pursuant to Section C. of this certification. The bioassessment data and analysis shall be submitted as part of the required habitat mitigation monitoring reports pursuant to Condition C.12 of this certification.

Observation: The five-year Bioassessment Monitoring Program has not been received by the Regional Board. The Regional Board has also not received any results of the five-year Bioassessment Monitoring Program either. The monitoring program was required to begin concurrently with the habitat mitigation monitoring and the results are to be reported per Condition D.4 of the certification with the annual mitigation monitoring reports per Condition C.12 of the certification.

Ms. Lisa Hildabrand
R9-2008-0099

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August 11, 2008

Questions pertaining to the issuance of this Notice of Violation should be directed to Benjamin James at 858-467-2968 or bjames@waterboards.ca.gov. Written correspondence pertaining to this Notice of Violation should be directed to the following address:

David Barker
Attn: Benjamin James
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340



David Barker
Supervising Engineer

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

FACILITY INSPECTION REPORT

DATE: July 2, 2008, July 11, 2008, & July 15, 2008

FACILITY: City of Carlsbad 401 Certification Compliance Review

1. Faraday Avenue Extension and Carlsbad Oaks North Business Park (401 Cert 02C-093)
2. Agua Hedionda Channel Dredging Project (401 Cert 06C-007)
3. North Agua Hedionda Interceptor – Western Segment (401 Cert 04C-089)

**PLACE IDs: 224166 (Faraday Avenue Extension and Carlsbad Oaks North Business Park)
629552 (Agua Hedionda Channel Dredging Project)
243797 (North Agua Hedionda Interceptor – Western Segment)**

**REGULATORY MEASURES: 214323 (Faraday Avenue Extension and Carlsbad Oaks North Business Park)
298102 (Agua Hedionda Channel Dredging Project)
214364 (North Agua Hedionda Interceptor – Western Segment)**

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 – CONSTRUCTION
- GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
- GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- SECTION 401 WATER QUALITY CERTIFICATION
- CWC SECTION 13264

INSPECTION TYPE

B1 X "B" type compliance—A routine nonsampling inspection. (EPA Type C)

INSPECTION FINDINGS

Y Were violations noted during this inspection? (Yes/No/Pending Sample Results)

N Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

STAFF INSPECTOR(S)

Benjamin James		8/4/08
Name	Signature	Date
Lowell Thomson		8/6/2008
Name	Signature	Date
Bree Bourassa		8/6/08
Name	Signature	Date

Pages 2 through 10 of the inspection report (related to the Faraday inspection) have been omitted.

II. Agua Hedionda Dredging Project (401 Cert 06C-007)

A. Background

1. **Issued To:** City of Carlsbad
2. **Date Cert. Issued:** 3/2/2006.
3. **Project Summary:** Dredge work will include the removal of 30,000 to 40,000 cubic yards of accumulated sediment in Agua Hedionda Creek and Calavera Creek, located within and adjacent to the Rancho Carlsbad Mobile Park Home.
4. **Project commenced:** 3/6/2006.
5. **Project Completion:** 3/25/2006.
6. **Certified Impacts:** 0.8 acre of permanent impacts to wetland, and 4.2 acres of temporary impacts to streambed.
7. **Required Mitigation:** Mitigation for permanent impacts to 0.8 acre of vegetated waters of the U.S. will be achieved at a 3:1 ratio, consisting of the creation of 1.6 acres of wetlands within the Carlsbad Hydrologic Unit, and the enhancement or restoration of 0.8 acre of wetlands within the Carlsbad Hydrologic Unit. Mitigation for temporary impacts to 4.2 acres will be achieved at a 1:1 ratio, by the enhancement of 4.2 acres of waters of the U.S./State within the Carlsbad Hydrologic Unit.
8. **Benthic Macroinvertebrate Community Analysis:** The City of Carlsbad shall develop and implement a five-year Bioassessment Monitoring program to evaluate changes in the benthic macroinvertebrate community in Agua Hedionda Creek resulting from impacts of the dredging project and future planned flood control projects, and report the data to the Regional Board.

B. Status of Compliance with Cert. Conditions:

Condition C.3

Within 120 days of the issuance of this certification, the City of Carlsbad shall develop and submit a Final Wetlands Mitigation and Monitoring Plan for SDRWQCB approval, that shall be consistent with Conditions C.1 and C.2 above, and shall achieve the following performance standards:

- a. Created wetlands that are installed to compensate for impacts to jurisdictional wetland areas must possess the three criteria (wetland hydrology, hydrophytic vegetation, and hydric soils) necessary to be delineated as a Corps jurisdictional area;
- b. All mitigation sites shall be maintained 95 percent free of exotic/nonnative plant species;
- c. All mitigation sites must be self-sustaining; and
- d. All mitigation sites must exhibit evidence of natural recruitment of native wetland and/or riparian species.

Status: A final mitigation plan was due by July 1, 2006. *Draft 1 Compensatory Habitat Mitigation and Monitoring Plan* was received on July 11, 2006. Comments about the inadequacy of the plan were sent via e-mail by Christopher Means on July 18, 2006. A revised plan was never received. The City of Carlsbad requested an amendment from the Regional Board in a letter dated June 20, 2006 to replace the requirement of a final mitigation plan due within 120 days of certification issuance with an extension for a draft mitigation plan to be due within 210 days. The amendment was never granted because the requested supporting information was never received.

Condition C.7

No Later than 90 days after SDRWQCB acceptance of the Final Mitigation Plan, the City of Carlsbad 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 City of Carlsbad shall submit proof of a completed preservation mechanism within one year of the submittal of the draft preservation mechanism.

Status: Neither a draft or final preservation mechanism has been received by the Regional Board.

Condition C.8

The City of Carlsbad shall submit a report (including topography maps and planting locations) to the SDRWQCB 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.

Status: No report has been received by the Regional Board.

Condition C.9

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 2006, construction of mitigation for all impacts must be completed no later than September 2007).

Status: Mitigation construction commencement is unknown due to lack of reporting. Based on the date of the activity, mitigation construction should have been completed no later than 12/6/06.

Condition C.12

Mitigation monitoring reports shall be submitted 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. Photo-documentation from established reference points;
- e. Survey report documenting boundaries of mitigation area; and
- f. Other items specified in the draft and final Wetland and Riparian Mitigation and Monitoring Plan

Status: No reports have been received by the Regional Board.

Condition D.1

The City of Carlsbad shall develop and implement a five-year Bioassessment Monitoring program to evaluate changes in the benthic macroinvertebrate community in Agua Hedionda Creek resulting from impacts of the dredging project and future planned flood control projects.

Status: Bioassessment Monitoring program not received by the Regional Board.

Condition D.4

The five-year Bioassessment Monitoring Program will begin concurrently with the habitat mitigation program pursuant to Section C. of this certification. The bioassessment data and analysis shall be submitted as part of the required habitat mitigation monitoring reports pursuant to Condition C.12 of this certification.

Status: No results have been received by the Regional Board.

C. Mitigation Inspection Results:

On 7/2/2008 the Regional Board inspected the proposed mitigation site at Lake Calavera. Visual observation indicated that no work has been conducted in the area as proposed in the *Draft 1 Compensatory Habitat Mitigation and Monitoring Plan*. These observations are supported by the lack of reporting as required by the 401 Certification.



Picture above (IMG_0487.JPG): Photograph of proposed enhancement area, on eastern side of northward extending finger, at Lake Calavera. Two Palm trees are visible.

III. North Agua Hedionda Interceptor – Western Segment (401 Cert 04C-089)

A. Background

1. **Issued To:** City of Carlsbad
2. **Date Cert. Issued:** 6/10/2005.
3. **Project Summary:** The project will re-establish 3,080 feet of sewer access road, construct a 1,800 foot shoreline protection wall, develop a portion of a regional trail system, and perform sewer line and manhole improvements.
4. **Project Commenced:** Unknown.
5. **Project Completion:** Unknown.
6. **Certified Impacts:** 0.153 acre of permanent impacts to tidal wetlands, and 0.19 acre of temporary impacts to tidal wetlands.
7. **Required Mitigation:** Mitigation for permanent impacts to 0.153 acre tidal wetlands will be achieved at a ratio of 4:1, by the creation of 0.16 acre of intertidal mudflat, 0.001 acre of intertidal rocky beach and 0.40 acre of southern coastal salt marsh. Mitigation for temporary impacts to 0.19 acre tidal wetlands will be achieved at a ratio of 1:1, by the restoration of impacted areas to pre-construction vegetative conditions and topography.
8. **Post-Construction BMP Requirements:** Use of decomposed granite on most of the access road surface, vegetated swales in lieu of curb and gutter, and drainage inlet filters will be utilized in catch basins.

B. Status of Compliance with Cert. Conditions

Condition B.1

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

Status: Not complete.

Inspection Results: The proposed curb storm drain inlets were not constructed.

Condition B.2

Post-construction best management practices (BMPs) will be implemented to treat and control urban and storm water runoff from the project in accordance with the March 2004 *North Agua Hedionda Lagoon Interceptor Project Water Quality Technical Report* (prepared by Dudek & Associates). These BMPs shall include:

- a. Use of decomposed granite on most of the access road surface to minimize impervious surface.
- b. Vegetated swales, in lieu of curb and gutter, will be used to convey surface runoff to collection points.
- c. Drainage inlet filters will be utilized in catch basins, primarily to address trash & debris removal prior to discharge into the lagoon.

Status: Not complete.

Inspection Results: The access road, vegetated swales, drainage inlets, and proposed cribwall were not constructed.



Picture on left (IMG_0507.JPG): Location of the western most proposed cribwall and access road.

Picture on right (IMG_0508.JPG): End of Hoover Street, proposed new trail head, beginning of the new access road, and beginning of the shoreline protection wall.

Condition C.5

The City of Carlsbad 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 site grading and planting are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.

Status: No report has been received by the Regional Board.

Condition C.6

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 2005, construction of mitigation for all impacts must be completed no later than September 2006).

Status: Unknown due to lack of reporting.

Condition C.9

Mitigation monitoring reports shall be submitted 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. Photo-documentation from established reference points;
- e. Survey report documenting boundaries of mitigation area; and
- f. Other items specified in the draft and final Wetland and Riparian Mitigation and Monitoring Plan

Status: No reports have been received by the Regional Board.

C. Mitigation Inspection Results:

On 7/2/2008, 7/11/2008, and 7/15/2008 the Regional Board inspected the proposed mitigation area in the *Draft Conceptual Habitat Revegetation Plan North Agua Hedionda Interceptor Western Segment Sewer Maintenance, Access Road & Shoreline Protection Project*. The property was fenced off, with one opening created near a trail head on Park Drive on the western side of the property, with a trash can on the road side of the fence. Visual observations were inconclusive to determine whether mitigation activities were conducted. Due to the lack of reporting and clear visual appearance of mitigation activities, it is assumed the mitigation requirements of the 401 Certification have not been conducted.



Picture on left (IMG_0503.JPG): Proposed wetlands 0.6 acre creation area.

Picture on right (IMG_0504.JPG): Area to the east of the proposed creation area.

IV. Discussion:

Results of the in-house review and field inspection of the City of Carlsbad and Techbilt Construction Corporation's compliance with previously issued 401 water quality certifications has identified multiple violations of the requirements contained within these certifications. Reporting violations were present in all 3 certifications. Post-construction BMPs were not implemented as proposed and certified in 1 of the 3 certifications. Post-construction BMPs present were not maintained in an effective manner.

The City and Techbilt Construction Corporation do not seem to be meeting the success criteria or design specifications for their mitigation site, one of the three mitigation sites visited. It appears that the City has not conducted mitigation activities at the two other mitigation sites.

The results of this compliance overview of the City of Carlsbad shows an overall lack of adherence to certification conditions, and elevation of the situation to an enforcement action may be warranted. These results will also be taken into account when evaluating future applications for 401 Water Quality Certification.