

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

2375 Northside Drive, Suite 100, San Diego, CA 92108
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<http://www.waterboards.ca.gov/sandiego/>

**Amendment No. 1 to Clean Water Act Section 401
Water Quality Certification No. 02C-139**

**PROJECT: College Boulevard Widening Project
Water Quality Certification No. 02C-139**

**APPLICANT: McMillin Companies, LLC
Quarry Creek Investors, LLC
2750 Womble Rd. Suite 200
San Diego, CA 92106**

WDID 9 000001122 Party No. 32483 Place No. 215137 Reg. M. No. 214179

On March 20, 2003, Clean Water Act Section 401 Water Quality Certification No. 02C-139 (Certification) was issued to the City of Oceanside for the College Boulevard Widening Project (Project). By letter dated January 30, 2004, the Project consultant, on behalf of McMillin Companies, LLC and Quarry Creek Investors, LLC (McMillin LLC's), notified the San Diego Water Board that McMillin LLC's would assume responsibility for compliance with the Certification. By letter dated May 28, 2013, McMillin LLC submitted a signed statement, cosigned by the City of Oceanside, demonstrating McMillin LLC's acceptance and understanding of the responsibility to comply with and fully implement the Certification requirements or be subject to liability for failure to do so.

By letter dated August 13, 2013, McMillin LLC requested the Certification be amended to incorporate negotiated revisions to the compensatory mitigation requirements of the Certification. Project construction has already occurred and has permanently impacted 0.02 acre (20 linear feet) and temporarily impacted 0.06 acres (20 linear feet) of streambed waters of the United States and/or State. McMillin LLC's new mitigation proposal, *Invasive Species Control and Monitoring Plan, McMillin Mitigation Site, College Blvd Widening/Kohl's Site, February 27, 2014*, (Mitigation Plan) includes enhancement of 1.70 acres (650 linear feet) of waters of the United States and/or State.

Based on the City and McMillin Companies, LLC requests, the San Diego Water Board is amending the Certification. The following modifications to the Certification, shown below in underline/strikeout format, are hereby effective and enforceable requirements of the Certification. Except as modified or superseded by the Certification modifications set forth below, all of the findings, provisions and other requirements of Certification No. 02C-0139 remain in full force and effect.

1. Page 1, STANDARD CONDITIONS are replaced as follows:

Pursuant to section 3860 of title 23 of the California Code of Regulations, the following three standard conditions apply to all water quality certification actions:

- A. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the Water Code and chapter 28, article 6 (commencing with title 23, section 3867), of the California Code of Regulations.
- B. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to California Code of Regulations title 23, section 3855 subdivision (b), and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- C. This Certification action is conditioned upon total payment of any fee required under title 23, chapter 28 (commencing with section 3830) of California Code of Regulations and owed by the applicant.

2. Page 2, ADDITIONAL CONDITIONS No. 6 is modified as follows:

Unavoidable Project impacts to Buena Vista Creek and its unnamed tributaries within the Carlsbad Watershed must not exceed the type and magnitude of impacts described in the table below. At a minimum, compensatory mitigation required to offset unavoidable temporary and permanent Project impacts to waters of the United States and/or State must be achieved as described in the table below:

~~The Applicant shall implement the March 12, 2003 401 Habitat Mitigation Plan for the College Boulevard Widening Project including the 3:1 restoration/enhancement mitigation ratios for Southern Willow Scrub and Freshwater Marsh habitats.~~

	Impacts (acres)	Impacts (linear ft.)	Mitigation for Impacts (acres)	Mitigation Ratio (area mitigated :area impacted)	Mitigation for Impacts (linear ft.)	Mitigation Ratio (linear feet mitigated :linear feet impacted)
Permanent Impacts						
Freshwater Marsh	0.01	20	1.70 Enhancement ¹	85:1	650 Enhancement ¹	32.5:1
Streambed	0.01					
Temporary Impacts						
Freshwater Marsh	0.02	20	0.02 Restoration	1:1	20 Restoration	1:1
Vegetated non-wetland (Riparian)	0.02	20	0.02 Restoration	1:1	20 Restoration	1:1
Streambed	0.02	20	0.02 Restoration	1:1	20 Restoration	1:1

1. Streambed enhancement onsite at Buena Vista Creek, Carlsbad, CA.

3. Page 2, ADDITIONAL CONDITION No. 8 is modified as follows:

The construction of proposed mitigation shall be initiated ~~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 2003, construction of mitigation for all impacts must be completed no later than September 2004) within 12 months of the date of this Amendment.

Page 3, ADDITIONAL CONDITION No. 10 is replaced with the following:

Annual Compensatory Mitigation Monitoring Report. The Applicant must submit compensatory mitigation monitoring reports, annually, by **March 1** of each year containing sufficient information to demonstrate how the compensatory mitigation project is progressing towards accomplishing its objectives and meeting its performance standards. The monitoring period for each Annual Compensatory Mitigation Monitoring Report shall be January 1st through December 31st of each year. Mitigation monitoring reports must be submitted annually, for a period of not less than five years, sufficient to demonstrate that the compensatory mitigation project has accomplished its objectives and met ecological success performance standards contained in the Mitigation Plan. Following Project implementation the

San Diego Water Board may reduce or waive compensatory mitigation monitoring requirements upon a determination that performance standards have been achieved. Conversely, the San Diego Water Board may extend the monitoring period beyond five years upon a determination that the performance standards have not been met or the compensatory mitigation project is not on track to meet them.

The monitoring reports must include, but not be limited to, the following information:

- A. Names, qualifications, and affiliations of the persons contributing to the report;
- B. An evaluation, qualifications, and affiliations of the persons contributing to the report;
- C. A description of the following mitigation site(s) characteristics:
 - 1. Detritus cover;
 - 2. General topographic complexity;
 - 3. General upstream and downstream habitat and hydrologic connectivity;
and
 - 4. Source of hydrology;
- D. Monitoring data interpretations and conclusions as to how the compensatory mitigation project(s) is progressing towards meeting performance standards and whether the performance standards have been met;
- E. A description of the progress toward implementing a plan to manage the compensatory mitigation project after performance standards have been achieved to ensure the long term sustainability of the resource in perpetuity, including a discussion of long term financing mechanisms, the party responsible for long term management, and a timetable for future steps;
- F. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
- G. Stream photo documentation, including all areas of permanent and temporary impact, prior to and after project construction, and mitigation sites, including all areas of permanent and temporary impact, prior to and after project construction. Photo documentation must be conducted in accordance with guidelines posted at http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf. In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced;
- H. As built drawings of the compensatory mitigation project site(s), no bigger than 11"X17"; and

I. A survey report documenting boundaries of the compensatory mitigation site(s).

4. **Page 3, ADDITIONAL CONDITION No. 15 is added as follows:**

Compensatory Mitigation Plan Implementation. The Applicant must fully and completely implement the Mitigation Plan; any deviations from, or revisions to, the Mitigation Plan must be pre-approved by the San Diego Water Board.

5. **Page 3, ADDITIONAL CONDITION No. 16 is added as follows:**

Performance Standards. Compensatory mitigation required under this Certification shall be considered achieved once it has met the ecological success performance standards contained in the Mitigation Plan to the satisfaction of the San Diego Water Board.

6. **Page 3, ADDITIONAL CONDITION No. 17 is added as follows:**

Transfer of Responsibility. McMillin Companies, LLC assumes responsibility to comply with and fully satisfy the requirements of Certification No. 02C-139 and references in the Certification to the Applicant or the City of Oceanside shall be interpreted to refer to McMillin Companies, LLC as appropriate. This transfer of responsibility for compliance with the Certification does not necessarily relieve the City of Oceanside in the event that McMillin Companies, LLC fails to comply or for past violations of the Certification.

7. **Page 3, ADDITIONAL CONDITION No. 18 is added as follows:**

Long Term Management and Maintenance Plan. Within 12 months from issuance of this Amendment, the Applicant must submit and implement an acceptable Long Term Management and Maintenance Plan to manage the compensatory mitigation project after performance standards have been achieved to ensure the long term sustainability of the resource in perpetuity, including a discussion of long term financing mechanisms, the party responsible for long term management, and a timetable for future steps.

8. **Page 3, ADDITIONAL CONDITION No. 19 is added as follows:**

Long Term Management and Maintenance. The compensatory mitigation site(s) must be managed, protected, and maintained, in perpetuity, in conformance with an approved long term management plan and the final ecological success performance standards identified in the Mitigation Plan. The aquatic habitats, riparian areas, buffers and uplands that comprise the mitigation site(s) must be protected in perpetuity from land-use and maintenance activities that may threaten water quality or beneficial uses within the mitigation area(s) in a manner consistent with the following requirements:

- A. Any maintenance activities on the mitigation site(s) that do not contribute to the success of the mitigation site(s) and enhancement of beneficial uses and ecological functions and services are prohibited;
- B. Maintenance activities must be limited to the removal of trash and debris, removal of exotic plant species, replacement of dead native plant species, and remedial measures deemed necessary for the success of the compensatory mitigation project;
- C. The Mitigation site(s) must be maintained, in perpetuity, 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 must not occupy more than 5 percent of the mitigation site(s); and
- D. If at any time a catastrophic natural event (e.g., fire, flood) causes damage(s) to the mitigation site(s) or other deficiencies in the compensatory mitigation project, the Applicant must take prompt and appropriate action to repair the damage(s) including replanting the affected area(s) and address any other deficiencies. The San Diego Water Board may require additional monitoring by the Applicant to assess how the compensatory mitigation site(s) or project is responding to a catastrophic natural event.

9. **Page 3, ADDITIONAL CONDITION No. 20 is added as follows:**

Electronic Document Submittal. The Applicant must submit all reports and information under required under this Certification in electronic format via e-mail to SanDiego@waterboards.ca.gov. Documents over 50 megabytes (MB) will not be accepted via e-mail and must be placed on a disc and delivered to:

California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification No. 02C-139:PIN 215137
2375 Northside Drive, Suite 100
San Diego, California 92108

Each electronic document must be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Certification No. 02C-139:PIN 215137.

10. **Page 3, ADDITIONAL CONDITION No. 21 is added as follows:**

Document Signatory Requirements. All applications, reports, or information submitted to the San Diego Water Board must be signed as follows:

- A. For a corporation, by a responsible corporate officer of at least the level of vice president.
- B. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
- C. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
- D. A duly authorized representative may sign applications, reports, or information if:
 1. The authorization is made in writing by a person described above.
 2. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
 3. The authorization is submitted to the San Diego Water Board Executive Officer.

If such authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the Project, a new authorization satisfying the above requirements must be submitted to the San Diego Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

11. Page 3, ADDITIONAL CONDITION No. 22 is added as follows:

Document Certification Requirements. All applications, reports, or information submitted to the San Diego Water Board must be 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."

12. Page 3, ADDITIONAL CONDITION No. 23 is added as follows:

Transfer of Mitigation Responsibility: Any notification of transfer of responsibilities to satisfy the mitigation requirements set forth in this Certification must include a signed statement from an authorized representative of the new party (transferee) demonstrating acceptance and understanding of the responsibility to

comply with and fully satisfy the mitigation conditions and agreement that failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the San Diego Water Board under Water Code section 13385, subdivision (a). Notification of transfer of responsibilities meeting the above conditions must be provided to the San Diego Water Board **within 10 days of the transfer date.**

13. Page 3, REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON is modified as follows:

~~David W. Gibson~~ Alan Monji
California Regional Water Quality Control Board, San Diego Region
~~9174 Sky Park Court~~ 2375 Northside Drive, Suite 100
San Diego, CA ~~92123-4340~~ 92108
~~858-467-4387~~ 619-521-3968
~~gibsd@rb9.swrcb.ca.gov~~ Alan.Monji@waterboards.ca.gov

14. ATTACHMENT 1, Compensatory Mitigation is modified as follows:

A total of ~~0.15170~~ 0.15170 acres of wetland habitat will be ~~restored or~~ enhanced onsite.

~~Specifically, the project will restore/enhance 0.03 acres of Southern Willow Scrub (mitigation ratio 3:1) and 0.09 acres of Freshwater Marsh (mitigation ratio 3:1) and 0.03 acres of non-vegetated Waters of the United States (mitigation ratio 1:1).~~

15. ATTACHMENT 2, Distribution List is modified as follows:

Army Corps of Engineers
San Diego Field Office
~~16885 West Bernardo Drive, Suite 300A~~ 5900 La Place Court, Suite 100
San Diego, CA ~~92127~~ Carlsbad, CA 92008
Attn: Richard Van Sant

16. ATTACHMENT 2, Distribution List is modified as follows::

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

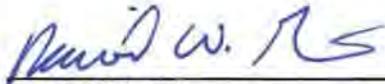
Notification. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with California Code of Regulations, title 23, sections 3867 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Certification Amendment. Copies of the law and regulations applicable to filing petitions may be found on the

Quarry Creek Investors LLC
McMillin Companies, LLC
College Boulevard Widening Project
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March 20, 2003
Amended on October 1, 2014

Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

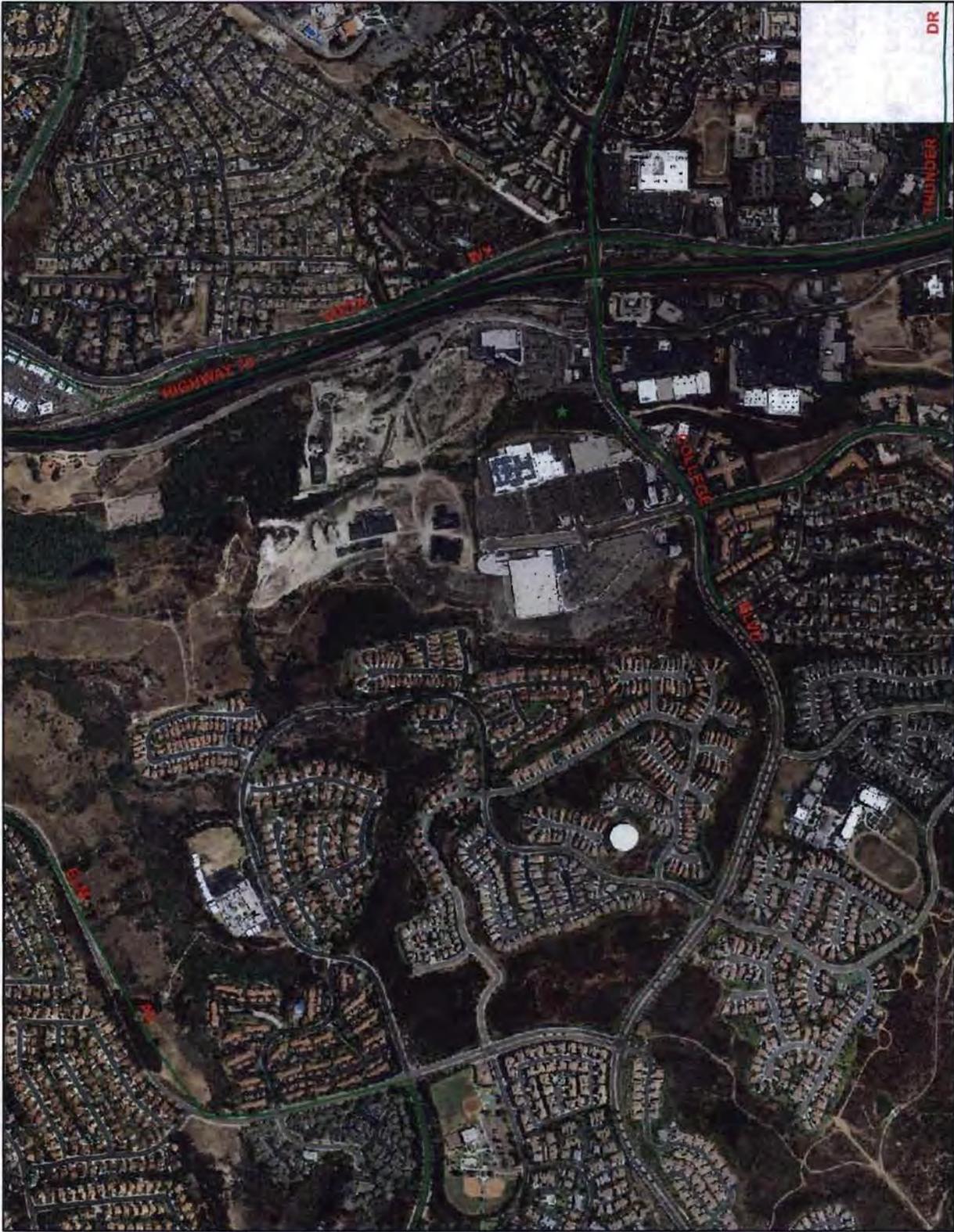
I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Amendment No.1 to Certification No. 02C-139 issued on October 1, 2014.



David W. Gibson
Executive Officer
Regional Water Quality Control Board

1 Oct. 2014
Date

McMillin Project Location

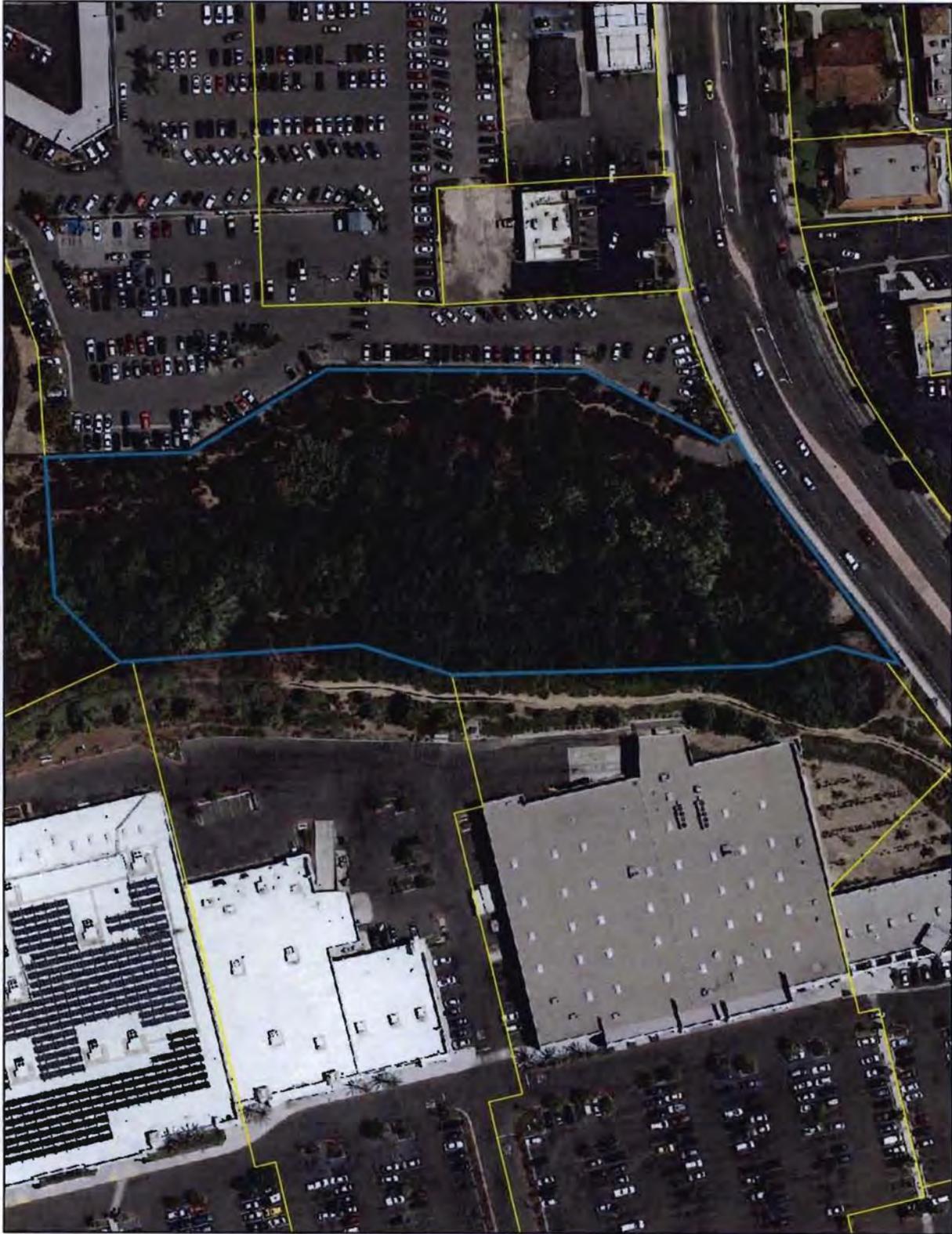


830 415 0 830 Feet



Figure 1. Project location ★

McMillin Mitigation Area



100 50 0 100 Feet



Figure 2. Proposed mitigation area, Parcel number 16801119 - outlined in blue

Tier 1 Invasive Species Coverage.



Figure 3. Data layers of past treatment areas for Arundo and Pampas Grass. Palms are still existing on site.