

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

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**Clean Water Act Section 401 Water Quality Certification
and Waste Discharge Requirements
for Discharge of Dredged and/or Fill Materials**

**PROJECT: Brook Forest Mitigation Bank Project
Certification Number R9-2015-0099
WDID: 9000002859**

Reg. Meas. ID: 401338
Place ID: 815681
Party ID: 551466
Person ID: 551465

**APPLICANT: Brook Forest LLC
970 Canterbury Place
Escondido, CA 92029**

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 type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004-DWQ
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017-DWQ	

PROJECT DESCRIPTION

An application dated June 23, 2015 was submitted by Jodi. C. Schnoebelen, Brook Forest LLC (hereinafter Applicant), for Water Quality Certification pursuant to section 401 of the Clean Water Act (United States Code (USC) Title 33, section 1341) for the proposed Brook Forest Mitigation Bank Project (Project). The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) deemed the application to be complete on August 18, 2015. The Applicant proposes to discharge dredged or fill material to waters of the United States and/or State associated with construction activity at the Project site. The applicant proposes to entitle a wetlands mitigation bank known as the "Brook Forest Mitigation Bank" which will provide, for purchase, wetland mitigation credits for projects that impact wetland waters of the United States and/or State. The mitigation bank's primary Service Area will be in northern San Diego County. Major water bodies in the primary Service Area include lower and middle portions of the San Luis Rey River, Escondido Creek, San Marcos Creek, Santa Margarita River, and Aliso Creek.

The Applicant has also applied for a Clean Water Act section 404 permit from the United States Army Corps of Engineers for the Project (USACE File No. SPL-2012-00055-RJV).

The Project is located within Valley Center, San Diego County, California at 12699 Betsworth Road. The Project center reading is located at latitude 33° 13'25.94"N and longitude -117° 2'58.19W. The Applicant has paid all required application fees for this Certification in the

amount of \$5495.00. On an annual basis, the Applicant shall also pay all active discharge fees and post discharge monitoring fees, as appropriate¹. On August 26, 2015 the San Diego Water Board provided public notice of the Project application pursuant to California Code of Regulations, title 23, section 3858 by posting information describing the Project on the San Diego Water Board's web site and providing a period of twenty-one days for public review and comment. No comments were received.

The applicant proposes to restore 26.4 acres of Southern Cottonwood Riparian Forest on the floodplain adjacent to Moosa Creek. The floodplain had previously been converted to agricultural use. The applicant proposes to excavate this agricultural area between 1 and 6 feet and plant the area with native riparian species. Of the 26.4 acres, 22.8 acres of United States and State (California Department of Fish and Wildlife) wetlands and waters will be re-established and 3.6 acres of State-only wetlands and "waters" will be re-established. Within the floodplain an additional 6.0 acres of Southern Willow Scrub will be enhanced and 0.3 acre of disturbed wetland will be rehabilitated. The excavated material will be placed in the upland area, and seeded with native upland species. 7.3 acres of this area will be sold as upland mitigation credits. 183.8 acres of upland habitat will be preserved.

No grading will occur in the Moosa Creek channel. In certain areas, the height of the stream banks will be lowered. It is anticipated that the flow velocities will decrease and allow for increased inundation in the floodplain that may lead to a braided system.

The Project application includes a description of the design objective, operation, and degree of treatment expected to be attained from equipment, facilities, or activities (including construction and post-construction BMPs) to treat waste and reduce runoff or other effluents which may be discharged. Compliance with the Certification conditions will help ensure that construction and post-construction discharges from the Project will not cause on-site or off-site downstream erosion, damage to downstream properties, or otherwise damage stream habitats in violation of water quality standards in the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan).

Project construction will permanently impact 0.3 acre (407 linear feet) of wetland waters of the United States and/or State within the floodplain of Moosa Creek. No loss of waters of the United States and/or State will result from the Project. Overall, the Project will result in a wide restored riparian floodplain along the corridor of Moosa Creek. No structures or impervious surfaces will be created as a result of the Project. Erosion control measures such as straw wattles, sand bags, and silt fencing will be installed to control sediment. The disposal site will be landscaped with permanent vegetation.

¹ The Applicant shall pay an annual active discharge fee each fiscal year or portion of a fiscal year during which discharges occur until the regional board or the State Board issues a Notice of Completion of Discharges Letter to the discharger. Dischargers shall pay an annual post-discharge monitoring fee each fiscal year or portion of a fiscal year commencing with the first fiscal year following the fiscal year in which the regional board or State Board issued a Notice of Completion of Discharges Letter to the discharger, but continued water quality monitoring or compensatory mitigation monitoring is required. Dischargers shall pay the annual post-discharge monitoring fee each fiscal year until the regional board or the State Board issues a Notice of Project Complete Letter to the discharger. Additional information regarding fees can be found electronically at the following location: http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/dredgefillcalculator.xlsx

The purpose of the Project is to restore wetland habitat adjacent to Moosa Creek and use it as a mitigation bank. There will be no loss of waters of the United States and/or State resulting from the Project. The project will result in the re-establishment of 26.4 acres of jurisdictional waters of the United States and or/State, 0.3 acres of wetland rehabilitation, 6.0 acre of southern willow scrub enhancement, 7.3 acres of upland restoration, and 183.8 acres of upland habitat preservation.

Detailed written specifications and work descriptions for the Project including, but not limited to, the geographic boundaries of the Project, timing, sequence, monitoring, maintenance, ecological success performance standards and provisions for long-term management and protection of the mitigation areas are described in the *Brook Forest Development Plan* (Development Plan), November 2015, *Long-Term Management Plan for the Brook Forest Mitigation Bank* (LTMP) dated October 2015 and *A Wetland Establishment Plan for the Brook Forest Conservation/Mitigation Bank*, (Establishment Plan) dated June 2015. San Diego Water Board acceptance of the Development Plan applies only to the Project described in this Certification. The Development Plan is incorporated in this Certification by reference as if set forth herein. The Development Plan provides for implementation of the Project in a manner that protects and restores the abundance, types and conditions of aquatic resources and supports their beneficial uses. Implementation of the Development Plan will improve aquatic resources within the San Diego Water Board's purview and will not have significant negative effect on the environment.

Additional Project details are provided in Attachments 1 through 3 of this Certification.

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Attachments:

1. Definitions
2. Project Location Maps
3. Project Site Plans

I. STANDARD CONDITIONS

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.

II. GENERAL CONDITIONS

- A. **Term of Certification.** Water Quality Certification No. R9-2015-0099 (Certification) shall expire upon a) the expiration or retraction of the Clean Water Act section 404 (33 USC Title 33, section 1344) permit issued by the U.S. Army Corps of Engineers for this Project, or b) five (5) years from the date of issuance of this Certification, whichever occurs first.
- B. **Duty to Comply.** The Applicant must comply with all conditions and requirements of this Certification. Any Certification noncompliance constitutes a violation of the Water Code and is grounds for enforcement action or Certification termination, revocation and reissuance, or modification.
- C. **General Waste Discharge Requirements.** The requirements of this Certification are enforceable through Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Discharges of Dredged or Fill Material that have Received State Water Quality Certification* (Water Quality Order No. 2003-0017-DWQ). This provision shall apply irrespective of whether a) the federal permit for which the Certification was obtained is subsequently retracted or is expired, or b) the Certification is expired. Water Quality Order No. 2003-0017-DWQ is accessible at:

http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/gowdr401regulated_projects.pdf.
- D. **Project Conformance with Application.** All water quality protection measures and BMPs described in the application and supplemental information for water quality

certification are incorporated by reference into this Certification as if fully stated herein. Notwithstanding any more specific conditions in this Certification, the Applicant shall construct, implement and comply with all water quality protection measures and BMPs described in the application and supplemental information. The conditions within this Certification shall supersede conflicting provisions within the application and supplemental information submitted as part of this Certification action.

- E. **Project Conformance with Water Quality Control Plans or Policies.** Notwithstanding any more specific conditions in this Certification, the Project shall be constructed in a manner consistent with the Basin Plan and any other applicable water quality control plans or policies adopted or approved pursuant to the Porter Cologne Water Quality Act (Division 7, commencing with Water Code Section 13000) or section 303 of the Clean Water Act (33 USC section 1313). The Basin Plan is accessible at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/index.shtml

- F. **Project Modification.** The Applicant must submit any changes to the Project, including Project operation, which would have a significant or material effect on the findings, conclusions, or conditions of this Certification, to the San Diego Water Board for prior review and written approval. If the San Diego Water Board is not notified of a significant change to the Project, it will be considered a violation of this Certification.
- G. **Certification Distribution Posting.** During Project construction, the Applicant must maintain a copy of this Certification at the Project site. This Certification must be available at all times to site personnel and agencies. A copy of this Certification shall also be provided to any contractor or subcontractor performing construction work, and the copy shall remain in their possession at the Project site.
- H. **Inspection and Entry.** The Applicant must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents as may be required under law, to:
1. Enter upon the Project or Compensatory Mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Certification;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Certification;
 3. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Certification; and
 4. Sample or monitor, at reasonable times, for the purposes of assuring Certification compliance, or as otherwise authorized by the Clean Water Act or Water Code, any substances or parameters at any location.

- I. **Enforcement Notification.** 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.
- J. **Certification Actions.** This Certification may be modified, revoked and reissued, or terminated for cause including but not limited to the following:
1. Violation of any term or condition of this Certification;
 2. Monitoring results indicate that continued Project activities could violate water quality objectives or impair the beneficial uses of Moosa Creek or its tributaries;
 3. Obtaining this Certification by misrepresentation or failure to disclose fully all relevant facts;
 4. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; and
 5. Incorporation of any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.

The filing of a request by the Applicant for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Certification condition.

- K. **Duty to Provide Information.** The Applicant shall furnish to the San Diego Water Board, within a reasonable time, any information which the San Diego Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Certification or to determine compliance with this Certification.
- L. **Property Rights.** This Certification does not convey any property rights of any sort, or any exclusive privilege.
- M. **Petitions.** 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. 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.

III. CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. **Approvals to Commence Construction.** The Applicant shall not commence Project construction until all necessary federal, State, and local approvals are obtained.
- B. **Personnel Education.** Prior to the start of the Project, and annually thereafter, the Applicant must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response measures, and BMP implementation and maintenance measures.
- C. **Spill Containment Materials.** The Applicant must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.
- D. **General Construction Storm Water Permit.** Prior to start of Project construction, the Applicant must, as applicable, obtain coverage under, and comply with, the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activity*, (General Construction Storm Water Permit) and any reissuance. If Project construction activities do not require coverage under the General Construction Storm Water Permit, the Applicant must develop and implement a runoff management plan (or equivalent construction BMP plan) to prevent the discharge of sediment and other pollutants during construction activities.
- E. **Waste Management.** The Applicant must properly manage, store, treat, and dispose of wastes in accordance with applicable federal, state, and local laws and regulations. Waste management shall be implemented to avoid or minimize exposure of wastes to precipitation or storm water runoff. The storage, handling, treatment, or disposal of waste shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050. Upon Project completion, all Project generated debris, building materials, excess material, waste, and trash shall be removed from the Project site(s) for disposal at an authorized landfill or other disposal site in compliance with federal, state and local laws and regulations.
- F. **Waste Management.** Except for a discharge permitted under this Certification, the dumping, deposition, or discharge of trash, rubbish, unset cement or asphalt, concrete, grout, damaged concrete or asphalt, concrete or asphalt spoils, wash water, organic or earthen material, steel, sawdust or other construction debris waste from Project activities directly into waters of the United States and or State, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited.
- G. **Downstream Erosion.** Discharges of concentrated flow during construction or after Project completion must not cause downstream erosion or damage to properties or stream habitat.

- H. **Construction Equipment.** All equipment must be washed prior to transport to the Project site and must be free of sediment, debris, and foreign matter. All equipment used in direct contact with surface water shall be steam cleaned prior to use. All equipment using gas, oil, hydraulic fluid, or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (e.g., motors, pumps, generator, etc.) shall be positioned over drip pans or other types of containment.
- I. **Process Water.** Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or State or placed in locations that may be subjected to storm water runoff flows. Pollutants discharged to areas within a stream diversion must be removed at the end of each work day or sooner if rain is predicted.
- J. **Surface Water Diversion.** All surface waters, including ponded waters, must be diverted away from areas of active grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. Diversion activities must not result in the degradation of beneficial uses or exceedance of the receiving water quality objectives. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.
- K. **Re-vegetation and Stabilization.** All areas that have 14 or more days of inactivity must be stabilized within 14 days of the last activity. The Applicant shall implement and maintain BMPs to prevent erosion of the rough graded areas. After completion of grading, all areas must be re-vegetated with native species appropriate for the area. The re-vegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be accessed at <http://www.cal-ipc.org/ip/inventory/>.
- L. **Hazardous Materials.** Except as authorized by this Certification, substances hazardous to aquatic life including, but not limited to, petroleum products, unused cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each Project activity involving hazardous materials.
- M. **Vegetation Removal.** Removal of vegetation must occur by hand, mechanically, or through application of United States Environmental Protection Agency (USEPA) approved herbicides deployed using applicable BMPs to minimize adverse effects to beneficial uses of waters of the United States and/or State. Discharges related to the application of aquatic pesticides within waters of the United States must be done in compliance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, the *Statewide General National Pollution Discharge Elimination System Permit for the Discharge of Aquatic Weed Control in Waters of the United States*, and any subsequent reissuance as applicable.

- N. **Limits of Disturbance.** The Applicant shall clearly define the limits of Project disturbance to waters of the United States and/or State using highly visible markers such as flag markers, construction fencing, or silt barriers prior to commencement of Project construction activities within those areas.
- O. **On-site Qualified Biologist.** The Applicant shall designate an on-site qualified biologist to monitor Project construction activities within or adjacent to waters of the United States and/or State to ensure compliance with the Certification requirements. The biologist shall be given the authority to stop all work on-site if a violation of this Certification occurs or has the potential to occur. Records and field notes of the biologist's activities shall be kept on-site and made available for review upon request by the San Diego Water Board.
- P. **Beneficial Use Protection.** The Applicant must take all necessary measures to protect the beneficial uses of waters of Moosa Creek. This Certification requires compliance with all applicable requirements of the Basin Plan. If at any time, an unauthorized discharge to surface waters (including rivers or streams) occurs or monitoring indicates that the Project is violating, or threatens to violate, water quality objectives, the associated Project activities shall cease immediately and the San Diego Water Board shall be notified in accordance with Notification Requirement VII.A of this Certification. Associated Project activities may not resume without approval from the San Diego Water Board.

IV. POST-CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. **Post-Construction Discharges.** The Applicant shall not allow post-construction discharges from the Project site to cause or contribute to on-site or off-site erosion or damage to properties or stream habitats.
- B. **Storm Drain Inlets.** All storm drain inlet structures within the Project boundaries must be stamped or stenciled (or equivalent) with appropriate language prohibiting non-storm water discharges.

V. PROJECT IMPACTS AND COMPENSATORY MITIGATION

- A. **Project Impact Avoidance and Minimization.** The Project must avoid and minimize adverse impacts to waters of the United States and/or State to the maximum extent practicable.
- B. **Project Impacts.** Project construction will permanently impact 0.30 acre (407 linear feet) of wetland waters of the United States and/or State located adjacent to Moosa Creek.

	Impact s (acres)	Impact s (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						
Wetland	0.30		1	N/A		N/A

1. The project is creating a wetland mitigation bank by re-establishing 22.8 acres of waters of the United States/State and 3.6 acres of waters of the State on converted farmland. In addition, the project will be rehabilitating 0.30 acres of degraded wetland. Although there are 0.30 acres of permanent change to the wetland, the impact is considered beneficial, and no compensatory mitigation is required.

C. **No Net Loss.** There shall be no loss of waters of the United States and or/or State resulting from the Project. The Project shall result in the re-establishment of 22.8 acres of wetland waters of the United States and State, rehabilitation of 0.3 acres of wetland waters of the United States and State, re-establishment of 3.6 acres of waters of the State, and enhancement of 6.0 acres of Southern Willow Scrub habitat.

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

E. **Performance Standards.** Rehabilitation and Re-establishment under this Certification shall be considered achieved once it has met the ecological success performance standards contained in the Development Plan (Section X, page X) to the satisfaction of the San Diego Water Board.

F. **Site Design.** The site(s) shall be designed to be self-sustaining once performance standards have been achieved. This includes minimization of active engineering features (e.g., pumps) and appropriate siting to ensure that natural hydrology and landscape context support long-term sustainability in conformance with the following conditions:

1. Most of the channels through the mitigation sites shall be characterized by equilibrium conditions, with no evidence of severe aggradation or degradation;
2. The mitigation sites shall have a well-developed plant community characterized by a high degree of horizontal and vertical interspersions among plant zones and layers.

G. **Temporary Project Impact Areas.** The Applicant must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge of pollutants to waters of the United States and/or State. Restoration must include grading of disturbed areas to pre-project contours and re-

vegetation with native species. The Applicant must implement all necessary BMPs to control erosion and runoff from areas associated with the Project.

H. Long Term Management and Maintenance. The site, must be managed, protected, and maintained, in perpetuity, in conformance with the long term management plan and the final ecological success performance standards identified in the *Long-Term Management Plan for the Brook Forest Mitigation Bank* dated October 2015. The aquatic habitats, riparian areas, buffers and uplands that comprise the 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:

1. Any maintenance activities on the site(s) that do not contribute to the success of the site(s) and enhancement of beneficial uses and ecological functions and services are prohibited;
2. 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 project.
3. The 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, exotic palm trees, and pepper tree. Annual exotic plant species must not occupy more than 5 percent of the mitigation site(s); and
4. If at any time a catastrophic natural event (e.g., fire, flood) causes damage(s) to the site(s) or other deficiencies in the 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 site(s) or project is responding to a catastrophic natural event.

I. Preservation Mechanism. **Within 90 days from the issuance of this Certification,** the Applicant must provide the San Diego Water Board a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all areas and their buffers in perpetuity. **Within one year of the start of Project construction,** the Applicant must submit proof of a completed final preservation mechanism that will protect all areas and their buffers in perpetuity. The conservation easement, deed restriction, or other legal limitation on the properties must be adequate to demonstrate that the sites will be maintained without future development or encroachment on the sites which could otherwise reduce the functions and values of the sites for the variety of beneficial uses of waters of the United States and/ or State that it supports. The legal limitation must prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland and streambed functions and values of the sites. The preservation mechanism must clearly prohibit activities that would result in soil disturbance or vegetation removal, other than the removal of non-native vegetation. Other infrastructure development to be prohibited includes, but is not limited

to, additional utility lines, maintenance roads, and areas of maintained landscaping for recreation.

VI. MONITORING AND REPORTING REQUIREMENTS

- A. **Representative Monitoring.** Samples and measurements taken for the purpose of monitoring under this Certification shall be representative of the monitored activity.
- B. **Monitoring Reports.** Monitoring results shall be reported to the San Diego Water Board at the intervals specified in section VI of this Certification.
- C. **Monitoring and Reporting Revisions.** The San Diego Water Board may make revisions to the monitoring program at any time during the term of this Certification and may reduce or increase the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.
- D. **Records of Monitoring Information.** Records of monitoring information shall include:
1. The date, exact place, and time of sampling or measurements;
 2. The individual(s) who performed the sampling or measurements;
 3. The date(s) analyses were performed;
 4. The individual(s) who performed the analyses;
 5. The analytical techniques or methods used; and
 6. The results of such analyses.
- E. **Benthic Macroinvertebrate Community Analysis.** The Applicant shall conduct bioassessment monitoring, as described in this section, to assess the success of the restoration and the impact of construction activities, whenever applicable, using benthic macroinvertebrate community data. Bioassessment shall include: 1) the collection and reporting of benthic macroinvertebrate data; and 2) the collection and reporting of physical habitat data. Bioassessment using benthic macroinvertebrates shall be conducted in perennial wadeable streams during the index period. Perennial streams shall be defined as streams with surface water flow present during the appropriate index period². Wadeable streams shall be defined as streams that can be safely waded in order to be sampled for benthic invertebrates during the appropriate index period. If the appropriate sampling period lies outside the index period, please contact the San Diego Water Board.

² The appropriate index period can be found electronically at the following location:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/cgp_biomap.pdf

1. **Field Methods.** Bioassessment monitoring must be performed using the SWAMP field methods specified in *Standard Operating Procedures for Collecting Benthic Macroinvertebrate Samples and Associated Physical and Chemical Data for Ambient Bioassessments in California*³ (SOP, Ode 2007) or any updates of these methods. The Applicant shall conduct, concurrently with all required benthic macroinvertebrate collections, the "Full" suite of physical habitat characterization measurements as specified in Table 1 of the SOP.
2. **Laboratory Methods.** Benthic macroinvertebrates shall be identified using the SWAMP laboratory methods specified in *Standard Operating Procedures for Laboratory Processing and Identification of Benthic Macroinvertebrates in California*⁴ (Laboratory SOP, Woodard et al. 2012) or any updates of these methods. Standard Taxonomic Effort (STE) Level II of the Southwestern Association of Freshwater Invertebrate Taxonomists (SAFIT) is required. Quality control samples are required for 10% of the samples each year and Quality Assurance samples must be analyzed by the Aquatic Bioassessment Laboratory of the California Department of Fish and Wildlife.
3. **Data Analysis.** Analysis of benthic macroinvertebrate data shall be conducted using scoring tools including but not limited to the *Southern California Index of Biotic Integrity*⁵ (Ode et. al. 2005) and the *California Stream Condition Index*⁶ (CSCI, Mazor et. al., currently in review) when the CSCI scoring tool is finalized.
4. **Data Storage.** Benthic macroinvertebrate data and physical habitat data shall be submitted to the California Environmental Data Exchange Network⁷ (CEDEN).
5. **Monitoring Sites.** All monitoring sites shall be approved by staff at the San Diego Water Board before sampling is initiated and must meet the following conditions:
 - a. **Monitoring Sites.** At a minimum, bioassessment monitoring for mitigation areas must be performed at three sites (assessment stations) in Moosa Creek before Project initiation, and then in years three and five following start of Project construction, during the established "index period" for the San Luis Rey watershed. The first assessment station is the reference station, which must be located upstream of the mitigation site(s) in a reference area; the second assessment station must be located within the

³ The SOP can be found electronically at the following location:

http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/phab_sopr6.pdf

⁴ The Laboratory SOP can be found electronically at the following location:

http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/bmi_lab_sop_final.pdf

⁵ The *Southern California Index of Biotic Integrity* can be found electronically at the following location:

http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/reports/coastalstreams.pdf

⁶ The *California Stream Condition Index* can be found electronically at the following location:

http://www.waterboards.ca.gov/plans_policies/docs/biological_objective/2_scoring%20tool.pdf

⁷ The California Environmental Data Exchange Network can be found electronically at the following location:

<http://www.ceden.org/>

mitigation site(s); and the third assessment station must be located downstream of the mitigation site(s). The reference station upstream of the mitigation site(s) must be located and sampled concurrently with the second and third assessment stations. Reference stations shall be defined as stations that show minimally disturbed conditions.

6. **Monitoring Reports.** An evaluation, interpretation and tabulation of the benthic macroinvertebrate community analysis must be submitted prior to **March 1** with the respective Annual Project Monitoring Report.
- F. **Discharge Commencement Notification.** The Applicant must notify the San Diego Water Board in writing **at least 5 days prior to** the start of Project construction.
- G. **Annual Project Progress Reports.** The Applicant must submit annual Project progress reports describing status of BMP implementation, and compliance with all requirements of this Certification to the San Diego Water Board prior to **March 1** of each year following the issuance of this Certification, until the Project has reached completion. The monitoring period for each Annual Project Progress Report shall be January 1st through December 31st of each year. Annual Project Progress Reports must include, at a minimum, the following:
 1. **Project Status and Compliance Reporting.** The Annual Project Progress Report must include the following Project status and compliance information:
 - a. The names, qualifications, and affiliations of the persons contributing to the report;
 - b. The status, progress, and anticipated schedule for completion of Project construction activities including the installation and operational status of best management practices project features for erosion and storm water quality treatment;
 - c. A description of Project construction delays encountered or anticipated that may affect the schedule for construction completion; and
 - d. A description of each incident of noncompliance during the annual monitoring period and its cause, the period of the noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - e. The results of the Benthic Macroinvertebrate Community Analysis monitoring required under section VI.E of this Certification.
 2. **Development Plan Monitoring Reporting.** Development Plan monitoring information must be submitted as part of the Annual Project Progress Report for a

period of not less than five years, sufficient to demonstrate that the project has accomplished its objectives and met ecological success performance standards contained in the Development Plan. Following Project implementation the San Diego Water Board may reduce or waive 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 Annual Project Progress Report must include the following compensatory mitigation monitoring information:

- a. Names, qualifications, and affiliations of the persons contributing to the report;
- b. An evaluation, interpretation, and tabulation of the parameters being monitored, including the results of the Development Plan monitoring program, and all quantitative and qualitative data collected in the field;
- c. Monitoring data interpretations and conclusions as to how the project(s) is progressing towards meeting performance standards and whether the performance standards have been met;
- d. 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;
- e. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
- f. Photo documentation of project site prior to construction and each year following until performance criteria have been met. Photo documentation must be conducted in accordance with guidelines posted at http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/401c/401PhotoDocRB9V713.pdf. In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced;
- g. The results of the Benthic Macroinvertebrate Community Analysis monitoring required under section VI.E of this Certification;
- h. As-built drawings of the project site(s), no bigger than 11"X17"; and
- i. A survey report documenting boundaries of the compensatory mitigation site(s).

H. Final Project Completion Report. The Applicant must submit a Final Project Completion Report to the San Diego Water Board **within 30 days of completion of the Project**. The final report must include the following information:

1. Date of construction initiation;
 2. Date of construction completion;
 3. BMP installation and operational status for the Project;
 4. As-built drawings of the Project, no bigger than 11"X17";
 5. Photo documentation of project after all performance criteria have been met. 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 Global Positioning System (GPS) coordinates for each of the photo points referenced; and
 6. An evaluation, interpretation, and tabulation of all monitoring requirements within the Development Plan and benthic macroinvertebrate community assessment data collected throughout the term of Project construction in accordance with section VI.E of this Certification.
- I. **Mitigation Bank Ledger.** The Applicant must include a copy of the most current mitigation bank ledger with each Annual Project Progress Report. The mitigation bank ledger must include: the mitigation bank credits available by habitat type; the amount of acres, linear feet, and credits sold; and the remaining acres, linear feet, and credits available.
- J. **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.
- K. **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:

California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification No. R9-2015-0099: 815681:ngergans
2375 Northside Drive, Suite 100
San Diego, California 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 line: Certification No. R9-2015-0099: 815681:ngergans.

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

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

M. 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."

VII. NOTIFICATION REQUIREMENTS

- A. Twenty Four Hour Non-Compliance Reporting.** The Applicant shall report any noncompliance which may endanger health or the environment. Any such information shall be provided orally to the San Diego Water Board within **24 hours** from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances.

The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The San Diego Water Board, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

- B. Hazardous Substance Discharge.** Except for a discharge which is in compliance with this Certification, any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the State, shall as soon as (a) that person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the County of San Diego, in accordance with California Health and Safety Code section 5411.5 and the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State toxic disaster contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.17), and immediately notify the State Water Board or the San Diego Water Board of the discharge. This provision does not require reporting of any discharge of less than a reportable quantity as provided for under subdivisions (f) and (g) of section 13271 of the Water Code unless the Applicant is in violation of a Basin Plan prohibition.
- C. Oil or Petroleum Product Discharge.** Except for a discharge which is in compliance with this Certification, any person who without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, shall, as soon as (a) such person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State oil spill contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.1). This requirement does not require reporting of any discharge of less than 42 gallons unless the discharge is also required to be reported pursuant to Clean Water Act section 311, or the discharge is in violation of a Basin Plan prohibition.
- D. Anticipated Noncompliance.** The Applicant shall give advance notice to the San Diego Water Board of any planned changes in the Project or the Compensatory Mitigation project which may result in noncompliance with Certification conditions or requirements.
- E. Transfers.** This Certification is not transferable in its entirety or in part to any person or organization except after notice to the San Diego Water Board in accordance with the following terms:
- 1. Transfer of Property Ownership:** The Applicant must notify the San Diego Water Board of any change in ownership of the Project area. Notification of change in ownership must include, but not be limited to, a statement that the Applicant has

provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands and accepts the certification requirements and the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification to the San Diego Water Board **within 10 days of the transfer of ownership.**

2. **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.**
3. **Transfer of Post-Construction BMP Maintenance Responsibility:** The Applicant assumes responsibility for the inspection and maintenance of all post-construction structural BMPs until such responsibility is legally transferred to another entity. At the time maintenance responsibility for post-construction BMPs is legally transferred the Applicant must submit to the San Diego Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer specifications. The Applicant must provide such notification to the San Diego Water Board **within 10 days** of the transfer of BMP maintenance responsibility.

Upon properly noticed transfers of responsibility, the transferee assumes responsibility for compliance with this Certification and references in this Certification to the Applicant will be interpreted to refer to the transferee as appropriate. Transfer of responsibility does not necessarily relieve the Applicant of responsibility for compliance with this Certification in the event that a transferee fails to comply.

VIII. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

- A. The County of San Diego has found the Project exempt from California Environmental Quality Act (CEQA) (Public Resources Code section 21000, et seq.) and CEQA Guidelines (California Code of Regulations, title 14, section 15000 et seq.) pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183 relating to projects consistent with an existing community plan, general plan, or zoning. The County of San Diego has determined that there are no project-specific significant effects which are peculiar to the Project or its site because the County's General Plan Update EIR adequately anticipated and described the impacts of the Project, identified applicable mitigation measures, and this Project implements these mitigation measures.
- B. The San Diego Water Board has reviewed the County of San Diego's Statement of Reasons for Exemption from Additional Environmental Review and 15183 Checklist and concurs that the Project as proposed will not have project-specific significant effects on resources within the San Diego Water Board's purview.

IX. SAN DIEGO WATER BOARD CONTACT PERSON

Nicole Gergans, Environmental Scientist
Telephone: 619-521-3969
Email: nicole.gergans@waterboards.ca.gov

X. WATER QUALITY CERTIFICATION

I hereby certify that the proposed discharge from the **Brook Forest Mitigation Bank Project** (Certification No. R9-2015-0099) 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 State Water Board Order No. 2003-0017-DWQ, "*Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)*," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017-DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the San Diego Water Board may issue individual 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 to, and all proposed mitigation being completed in strict compliance with, the applicants' Project description and/or the description in this Certification, and (b) compliance with all applicable requirements of the Basin Plan.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Certification No. R9-2015-0099 issued on Date.



DAVID W. GIBSON
Executive Officer
San Diego Water Board

23 Nov. 2015
Date

ATTACHMENT 1

DEFINITIONS

Activity - when used in reference to a permit means any action, undertaking, or project including, but not limited to, construction, operation, maintenance, repair, modification, and restoration which may result in any discharge to waters of the state.

Buffer - means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

California Rapid Assessment Method (CRAM) - is a wetland assessment method intended to provide a rapid, scientifically-defensible and repeatable assessment methodology to monitor status and trends in the conditions of wetlands for applications throughout the state. It can also be used to assess the performance of compensatory mitigation projects and restoration projects. CRAM provides an assessment of overall ecological condition in terms of four attributes: landscape context and buffer, hydrology, physical structure and biotic structure. CRAM also includes an assessment of key stressors that may be affecting wetland condition and a "field to PC" data management tool (eCRAM) to ensure consistency and quality of data produced with the method.

Compensatory Mitigation Project - means compensatory mitigation implemented by the Applicant as a requirement of this Certification (i.e., applicant -responsible mitigation), or by a mitigation bank or an in-lieu fee program.

Discharge of dredged material – means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States and/or State.

Discharge of fill material – means the addition of fill material into waters of the United States and/or State.

Dredged material – means material that is excavated or dredged from waters of the United States and/or State.

Ecological Success Performance Standards – means observable or measurable physical (including hydrological), chemical, and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Enhancement – means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment – means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist. Creation results in a gain in aquatic resource area.

Fill material – means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body.

Isolated wetland – means a wetland with no surface water connection to other aquatic resources.

Mitigation Bank – means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing mitigation for impacts authorized by this Certification.

Preservation - means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/ historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/ historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Start of Project Construction - For the purpose of this Certification, "start of Project construction" means to engage in a program of on-site construction, including site clearing, grading, dredging, landfilling, changing equipment, substituting equipment, or even moving the location of equipment specifically designed for a stationary source in preparation for the fabrication, erection or installation of the building components of the stationary source within waters of the United States and/or State.

Uplands - means non-wetland areas that lack any field-based indicators of wetlands or other aquatic conditions. Uplands are generally well-drained and occur above (i.e., up-slope) from nearby aquatic areas. Wetlands can, however, be entirely surrounded by uplands. For example, some natural seeps and constructed stock ponds lack aboveground hydrological connection to other aquatic areas. In the watershed context, uplands comprise the landscape matrix in which aquatic areas form. They are the primary sources of sediment, surface runoff, and associated chemicals that are deposited in aquatic areas or transported through them.

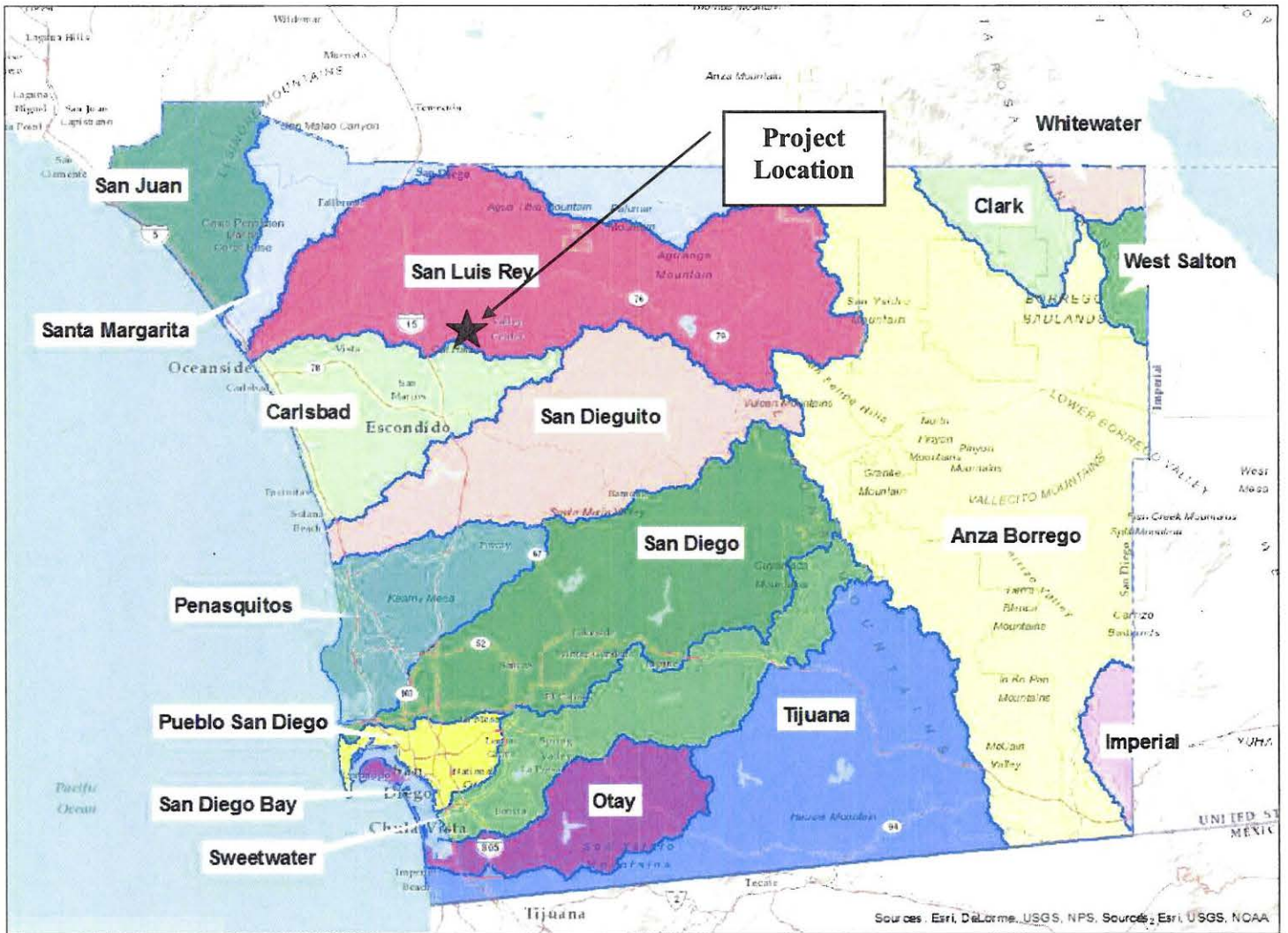
Water quality objectives and other appropriate requirements of state law – means the water quality objectives and beneficial uses as specified in the appropriate water quality control plan(s); the applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act; and any other appropriate requirement of state law.

Brook Forest LLC
Brook Forest Mitigation Bank Project
Certification No. R9-2015-0099

**ATTACHMENT 2
PROJECT LOCATION MAPS**

1. Watershed Map
2. Regional Location

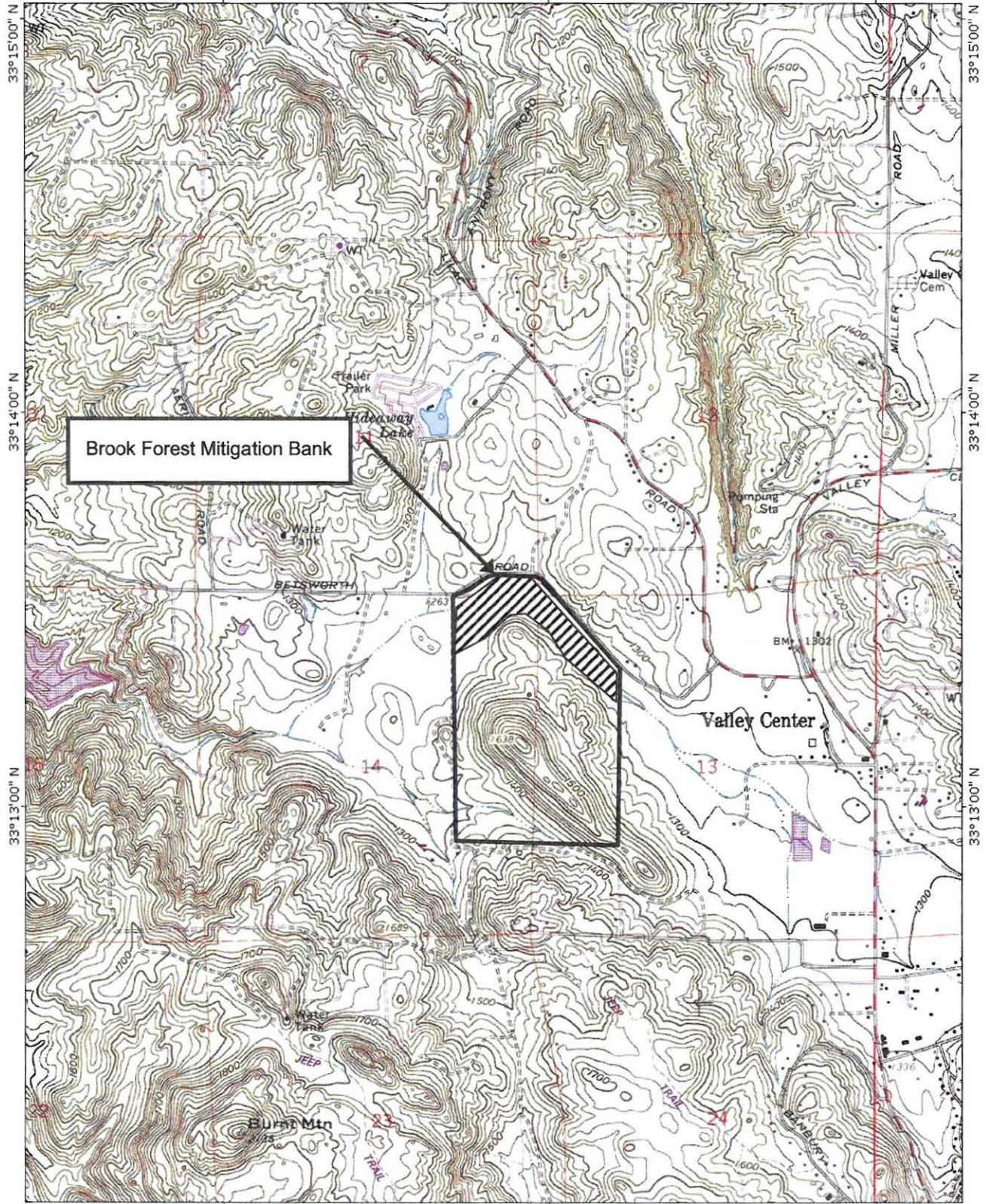
Watershed Map - Brook Forest Conservation/ Mitigation Bank



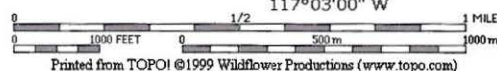
Regional Location – Brook Forest Mitigation Bank
Portion of U.S.G.S. "Valley Center, California" 7.5' Quadrangle Map

TOPOI map printed on 02/25/11 from "SanDiego.tpo" and "Untitled.tpg"
117°04'00" W 117°03'00" W

WGS84 117°02'00" W



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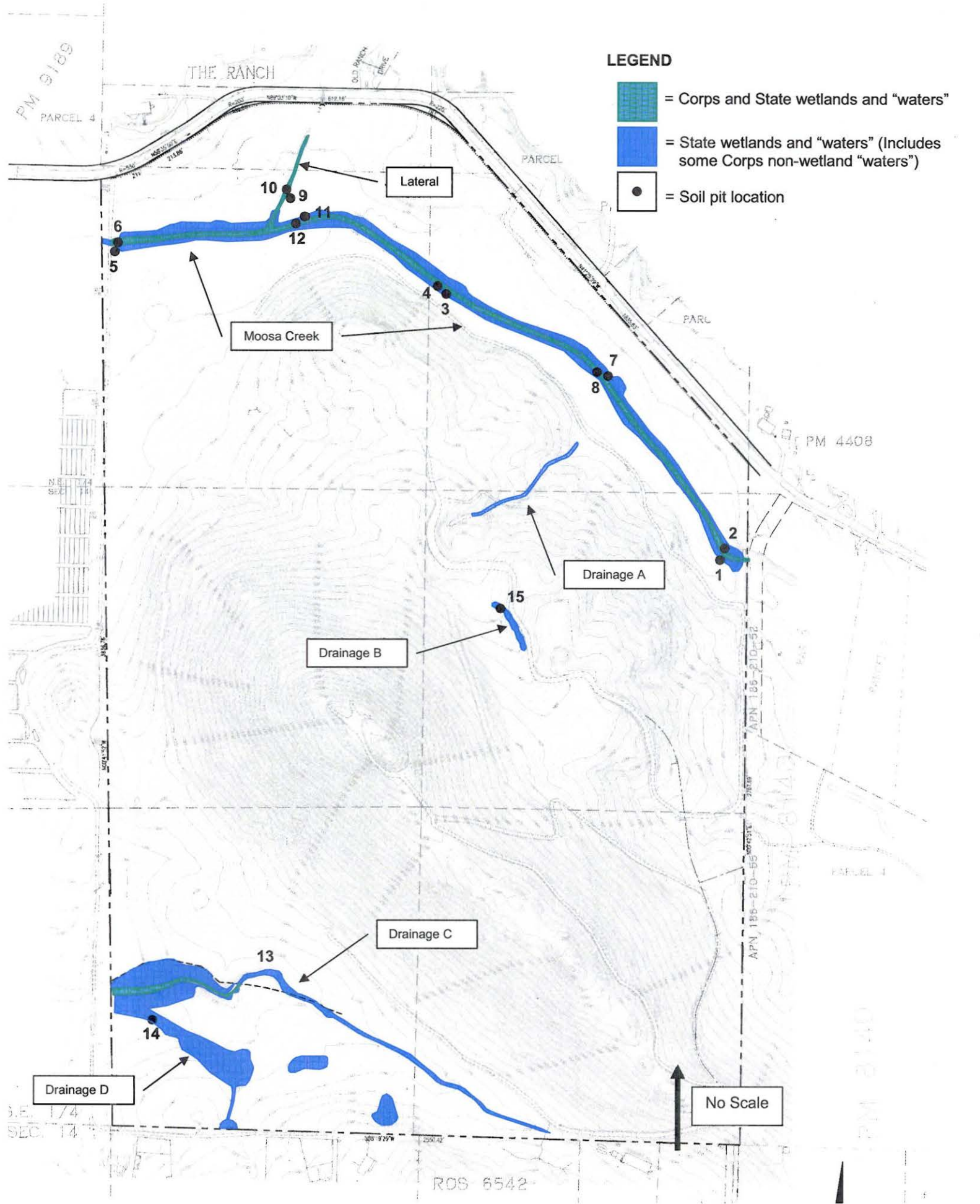
**ATTACHMENT 3
PROJECT SITE PLANS**

1. Recent Arial Photo
2. Wetland Delineation
3. Impacts Within Project Area
4. Conceptual Grading and Wetlands Establishment Plan

Recent Aerial Photo – Brook Forest Conservation/Mitigation Bank



Wetland Delineation



Impacts Within Project Area - Brook Forest Conservation/Mitigation Bank

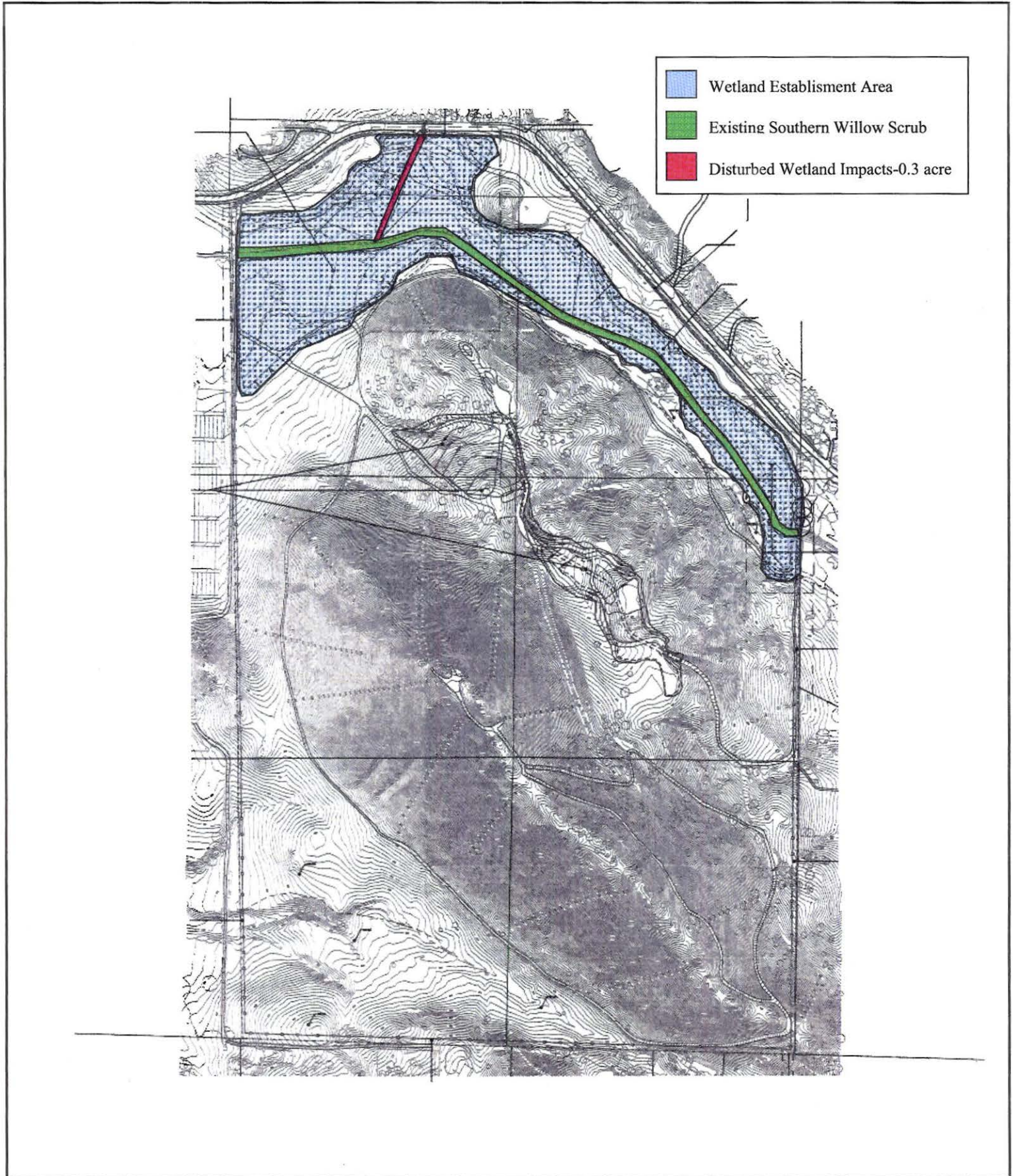


FIGURE 3. CONCEPTUAL WETLANDS ESTABLISHMENT PLAN

