

CITY OF SAN DIEGO RIGHT-OF-ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT-OF-ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and THE COUNTY OF SAN DIEGO ("PERMITEE"), to be effective as of March 3rd 2017 ("Effective Date") when signed by the parties and approved by the San Diego City Attorney, as follows:

DEFINITIONS

As used in this Permit, the following terms shall be defined as follows:

- A. **"Permit Area"** shall mean all or part of that certain CITY-owned real property within APN 243-180-01 located in the County of San Diego, and more particularly described in **Exhibits A: Permit Area**, attached hereto.
- B. **"Permit Fee"** Fees under this permit will be waived.
- C. **"Permit Use and Exhibit Descriptions"** shall mean the non-exclusive use of the Permit Area for the purposes of performing two soil borings and constructing two groundwater monitoring wells as shown in **Exhibit A**. The PERMITEE shall have the right to use a licensed outside geotechnical consultant to perform the use specified in this Permit. The PERMITEE has completed an environmental review for the soil boring work, shown in **Exhibit B**. The Department of Environmental Health requested for the PERMITEE to obtain a signed owner consent form from the CITY which is shown in **Exhibit C**.
- D. **"PERMITEE'S Address for Notices"** shall be:

THE COUNTY OF SAN DIEGO< DEPARTMENT OF PUBLIC WORKS
Attention: Richard Pettie, Capital Improvement Projects
5500 Overland Ave., Suite 320
San Diego, CA 92123
Tel: (858) 694-8992
- E. **"Rent"** Rent under this permit will be waived because of cooperation between the Public Utilities Department and The County of San Diego.
- F. **"Term"** shall be for one (1) year(s). Either PERMITEE or the CITY may terminate the Permit at any time for any reason. PERMITEE will have the option to extend the Permit for an additional year by sending written notice to the CITY prior to the expiration of this Permit.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants

permission to PERMITTEE, its officers, employees, agents, contractors, invitees, and guests to enter upon and occupy the Permit Area solely for the purpose of the Permit Use.

2. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY'S prior written consent in each instance.
3. Access. Vehicle access allowed on authorized roads only; no off-road activity permitted without notice. Gates shall remain locked at all times except when accessing or leaving the sites.
4. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S use of the Permit Area. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
5. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of The City Charter of the City of San Diego, California.
6. Term. The Term shall commence on the Effective Date. The Term shall be for one (1) year(s). The PERMITTEE agrees to request renewal of the Permit if additional time is required for completion of the geotechnical study.
7. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY with 60 days prior written notice, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit.
8. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area calculated on a per diem basis using up to three (3) times the fair market rental rate to be determined as of the date of the expiration or termination of this Permit by an appraisal prepared by an appraiser selected by CITY in its sole discretion. CITY'S acceptance of such rent shall neither constitute a renewal or extension of the license, nor

give PERMITTEE any rights in or to the Permit Area.

9. Termination. PERMITTEE may terminate this Permit at any time. CITY may terminate this Permit at any time for any reason, with 60 day written notice to PERMITTEE.
10. Restore and Vacate. Prior to the expiration or PERMITTEE'S earlier termination of this Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and upon such expiration or earlier termination immediately vacate the Permit Area. Upon CITY'S termination of this Permit, PERMITTEE shall immediately cease all operations on the Permit Area and as soon as practicable therefore restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and vacate the Permit Area.
11. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
12. Maintenance of the Permit Area. CITY shall at no time during the Term be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter caused by the Permit Use.
13. Inspection. CITY may at all times enter and inspect the Permit Area.
14. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area.
15. Improvements/Alterations. PERMITTEE shall not construct any permanent improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
16. Insurance. PERMITTEE represents and warrants to CITY that it is self-insured against public liability and property damage claims for at least two million dollars (\$2,000,000) combined single limit liability per occurrence.
17. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any

witnesses, and other pertinent information.

18. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents.

19. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability to PERMITTEE arising out of or in any manner directly or indirectly connected with the PERMITTEE'S use of the Permit Area, and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

Precautionary Note: PERMITTEE shall pay special attention to potentially hazardous weather occurrences such as "Red Flag Warning" events as declared by the National Oceanic and Atmospheric Administration (NOAA) when planning outdoor activities. Prudent re-scheduling may be warranted.

A "Red Flag Warning" means that "critical fire weather conditions are either occurring now, or will shortly. A combination of strong winds, low relative humidity, and warm temperatures will contribute to extreme fire behavior." See: <http://www.wrh.noaa.gov/sxx/>.

20. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
21. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent.
22. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE'S cost.
23. Encumbrances. PERMITTEE shall keep the Permit Area, and any CITY-owned property of which the Permit Area is a part, free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and

from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area pursuant to and in the manner provided under Paragraph 16.

24. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE'S use of the Permit Area.
25. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area by reason of PERMITTEE'S use of the Permit Area, including without limitation licenses and permits
26. Hazardous Substances. PERMITTEE shall not allow the installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Permit Area. PERMITTEE and PERMITTEE'S agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, which may include the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board.
 - 26.1 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and is hereby incorporated into this Permit.
 - 26.2 Remediation. If PERMITTEE'S use of the Permit Area results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
 - 26.3 Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or

request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.

- 26.5 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S use of the Permit Area, including without limitation costs of environmental assessments; costs of regulatory remediation oversight; costs of remediation and removal; any necessary CITY response costs; all fines, penalties or fees assessed by any regulatory agency; damages for injury to natural resources, PERMITTEE'S elected officials, officers, employees, invitees, guests, agents, or contractors, or the public; and all costs of any health assessments or health effect studies.
- 26.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.
- 26.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S use of the Permit Area ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, from or under the Permit Area, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of

the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

- 26.8 Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a breach shall not be a waiver of any other breach. Any waiver of a breach must be in a writing executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any breach shall not waive the use of any other right or remedy for the same breach or for another or later breach. CITY'S acceptance of any rents shall not be a waiver of any breach preceding the rent payment. CITY'S failure to discover a breach or take prompt action to require the correction of any breach shall not result in an equitable estoppel, but CITY may at any and all times require the correction of the breach.
27. Cumulative Remedies. CITY'S rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY'S rights or remedies at law or in equity.
28. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
29. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
30. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
31. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE'S use of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
32. Legal Proceedings. If any party brings an action or proceeding against another party under

this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEE shall pay all of CITY'S costs and expenses thereof, including without limitation reasonable attorney fees and costs.

33. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE'S Address for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO
Attention: Brent Peterson, Public Utilities Department
Address: 525 B Street (MS 906)
San Diego, California 92101
Phone (619) 533-6602

With a copy by First Class Mail to:

SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

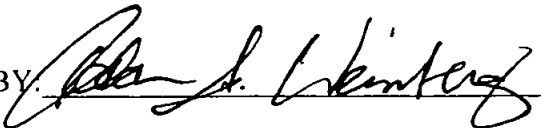
34. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
35. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition, and acknowledges and agrees that CITY has fulfilled all obligations it may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to the

Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE'S employees, from any defects in the Permit Area, and shall be solely responsible therefore.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 2/15/17

Entity: COUNTY OF SAN DIEGO, a political
subdivision of the State of California

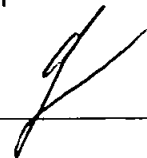
BY: 

Name: ADAM S. WEINBERG

Title: Chief, Real Estate Services Division, Department
of General Services

Date: 3/8/17

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: 

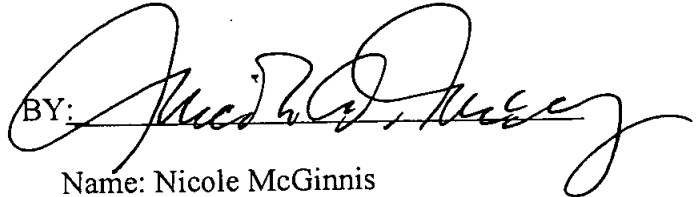
Name: Cybele Thompson

Title: Director, Real Estate Assets

Environmental Analysis Section Environmental Clearance:

- 1) This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301, Class 1, and Existing Facilities.

Date: 2/17/17

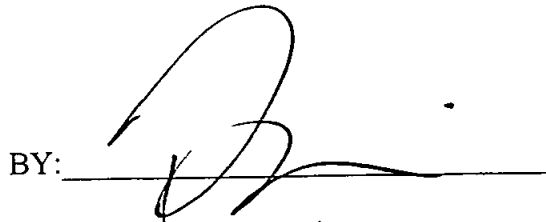
BY: 

Name: Nicole McGinnis

Title: Senior Planner, Public Utilities Department

Approved as to Form and Legality:
MARA W. ELLIOTT, City Attorney

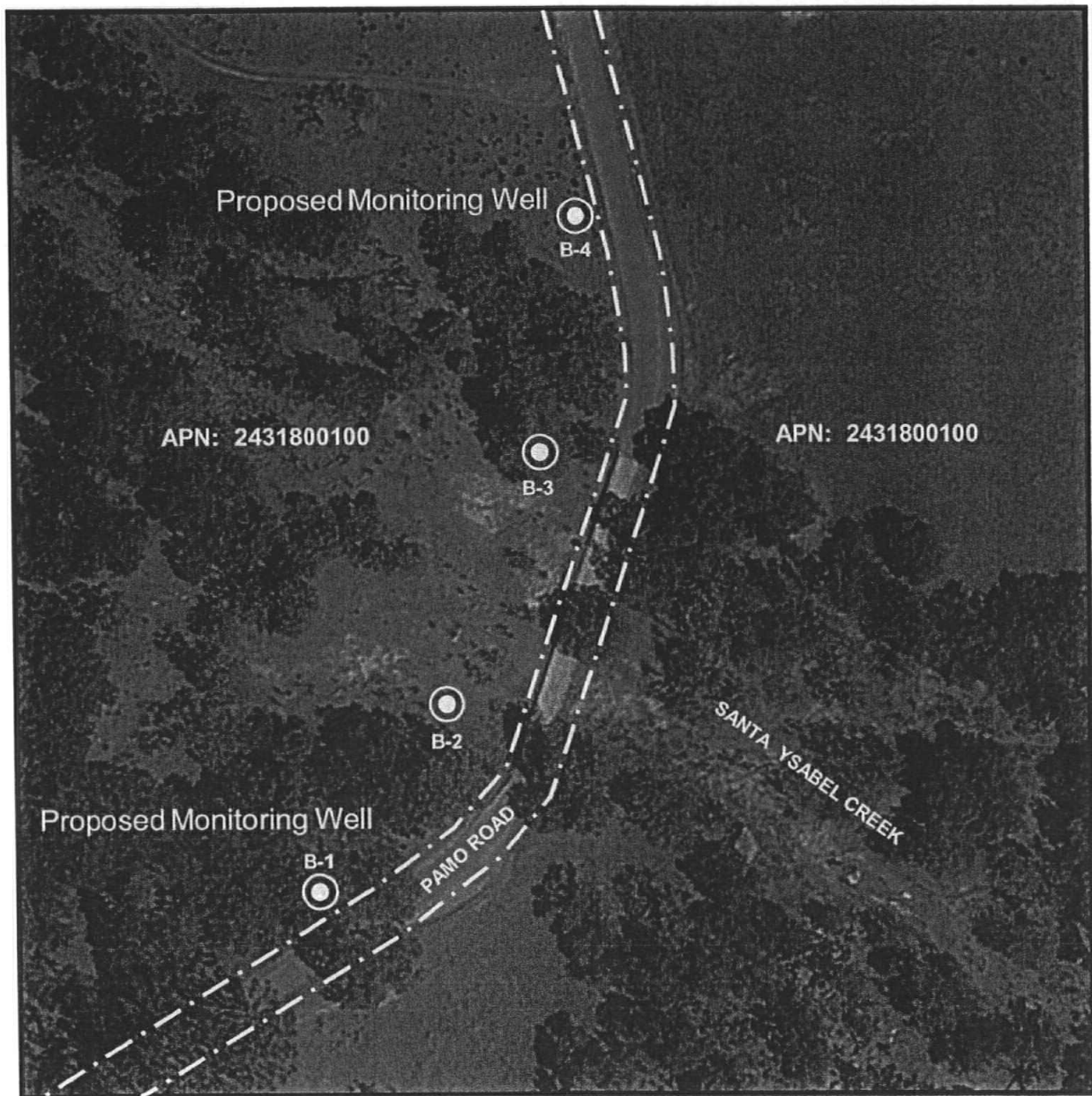
Date: 3/3/17

BY: 

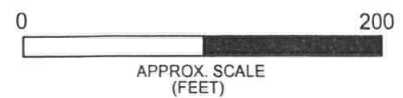
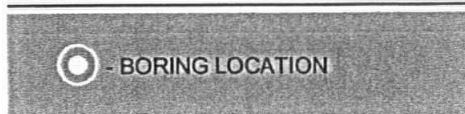
Name: Ray Palmucci

Title: Deputy City Attorney

Exhibit A



LEGEND



The information contained on this graphic representation has been prepared from a variety of sources and is subject to change without notice. Kleinfelder makes no representation or warranty, express or implied, as to the accuracy, completeness, or reliability of the information contained herein. The information is not intended to be used as a basis for any project or as a component of any design or construction. The user assumes all responsibility for the information contained on this graphic representation and is not to be held liable for any errors or omissions.



PROJECT NO.	
DRAWN:	01-11-17
DRAWN BY:	SHR
CHECK BY:	KC
FILE NAME:	

PROPOSED BORING LOCATIONS

PAMO ROAD BRIDGE

FIGURE

2

CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM

County of San Diego	N/A	N/A	BRLO-5957(108)-Geotechnical Borings
Dist.-Co.-Rte. (or Local Agency)	P.M./P.M.	E.A/Project No.	Federal-Aid Project No. (Local Project)/Project No.

PROJECT DESCRIPTION:

The County of San Diego (County) proposes to conduct geotechnical investigations in support of the preliminary engineering design for the Pamo Bridge replacement project (Bridge No. 57C-0729). This project is located where Pamo Road crosses Santa Ysabel Creek, approximately 5.5 miles north of Ramona, California. The geotechnical work would consist of excavating four six-inch diameter geotechnical borings to depths ranging from 40 to 50 feet below the ground surface. The borings would be excavated along the proposed bridge alignment just west of Pamo Road using a truck-mounted rotary drill rig. The rig will access the boring locations from Pamo Road using pre-selected access corridors and will drive over one-inch thick plywood to prevent rutting. Ground disturbance will be limited to the boring locations only and all activities will be monitored by biological, archaeological, and Native American monitors.

See page 2 for project conditions.

CEQA COMPLIANCE (for State Projects only)

Based on an examination of this proposal and supporting information, the following statements are true and exceptions do not apply (See 14 CCR 15300 et seq.):

- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law.
- There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time.
- There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
- This project does not damage a scenic resource within an officially designated state scenic highway.
- This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 ("Cortese List").
- This project does not cause a substantial adverse change in the significance of a historical resource.

CALTRANS CEQA DETERMINATION (Check one)

- ☒ Not Applicable – Caltrans is not the CEQA Lead Agency ☐ Not Applicable – Caltrans has prepared an Initial Study or Environmental Impact Report under CEQA
- ☐ Exempt by Statute. (PRC 21080[b]; 14 CCR 15260 et seq.)
- Based on an examination of this proposal, supporting information, and the above statements, the project is:
- ☐ Categorically Exempt. Class _____ (PRC 21084; 14 CCR 15300 et seq.)
- ☐ Categorically Exempt. General Rule exemption. [This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CCR 15061[b][3].)]

Print Name: Senior Environmental Planner or
Environmental Branch Chief

Print Name: Project Manager

Signature

Date

Signature

Date

NEPA COMPLIANCE

In accordance with 23 CFR 771.117, and based on an examination of this proposal and supporting information, the State has determined that this project:

- does not individually or cumulatively have a significant impact on the environment as defined by NEPA, and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and
- has considered unusual circumstances pursuant to 23 CFR 771.117(b).

CALTRANS NEPA DETERMINATION (Check one)

- ☒ 23 USC 326: The State has determined that this project has no significant impacts on the environment as defined by NEPA, and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an EA or EIS under the National Environmental Policy Act. The State has been assigned, and hereby certifies that it has carried out the responsibility to make this determination pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding dated May 31, 2016, executed between the FHWA and the State. The State has determined that the project is a Categorical Exclusion under:
- ☐ 23 CFR 771.117(c): activity (c) _____
- ☐ 23 CFR 771.117(d): activity (d) _____
- ☒ Activity 7 listed in Appendix A of the MOU between FHWA and the State
- ☐ 23 USC 327: Based on an examination of this proposal and supporting information, the State has determined that the project is a Categorical Exclusion under 23 USC 327.

Kevin Hovey

Bing Luu

Print Name: Senior Environmental Planner or
Environmental Branch Chief

Print Name: Project Manager/DLA Engineer

Signature

Date

Signature

Date

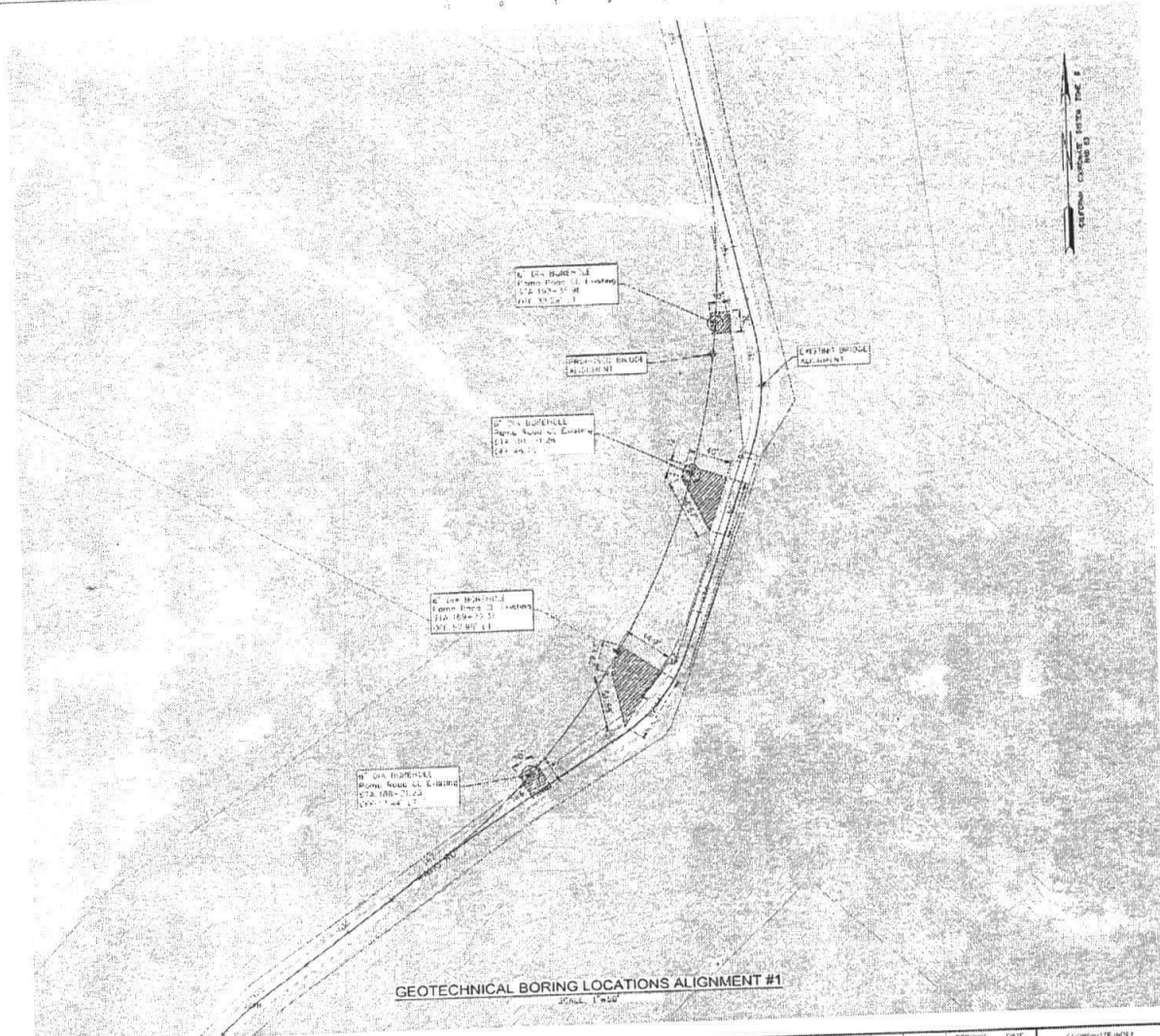
Date of Categorical Exclusion Checklist completion: N/A

Date of ECR or equivalent: 12/21/16

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

FOR REDUCED PLANS
ORIGINAL SCALE IS IN INCHES

		DATE BY PROJECT SHEET NO.
REGISTERED CIVIL ENGINEER		SAN



NOTES:

ALL TRACKING OF EQUIPMENT TO BE DONE BY LAYING DOWN 1" THICK PROTECTIVE PLYWOOD PANELS.

ALL REQUIRED MONITORS TO BE PRESENT ON SITE AHEAD OF THE COMMENCEMENT OF THE GEOTECHNICAL BORINGS.

LEGEND:

 TEMPORARY ENVIRONMENTAL IMPACT AREA

 6" BOREHOLE LOCATION (TYP. 4)

PRELIMINARY STUDY - NOT FOR CONSTRUCTION

THIS DRAWING IS THE PROPERTY OF THE COUNTY OF SAN DIEGO. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF THE COUNTY OF SAN DIEGO.

COUNTY OF SAN DIEGO
DEPARTMENT OF PUBLIC WORKS
5000 OVERLAND AVENUE, SAN DIEGO, CA 92123-1295



DATE	BY	APPROVED	DATE

PAMO ROAD NORTH BRIDGE
PRELIMINARY STUDY
GEOTECH BORING LOCATIONS ALT. 3

DATE	BY	APPROVED	DATE



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



In Reply Refer To:
FWS-SDG-17B0006-17I0005

October 24, 2016
Sent by Email

Mr. Robert A. James
California Department of Transportation
District 11
4050 Taylor Street
San Diego, California 92110

Subject: Informal Section 7 Consultation for the Pamo Road Bridge over Santa Ysabel Creek
Geotechnical Borings Project, San Diego County, California

Dear Mr. James:

This is in response to your letter, dated September 22, 2016, requesting our concurrence with your determination that the subject project is not likely to adversely affect the federally endangered arroyo toad [*Anaxyrus californicus* (*Bufo microscaphus* c.); arroyo toad] and its designated critical habitat, in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The Project is receiving Federal funding through the Federal Highway Administration (FHWA). The California Department of Transportation (Caltrans) has assumed FHWA's responsibilities under the Act for this consultation in accordance with 23 U.S.C. 327 and as described in the National Environmental Policy Act assignment Memorandum of Understanding between FHWA and Caltrans (effective October 1, 2012).

The County of San Diego Department of Public Works, together with Caltrans, is proposing to replace the Pamo Road Bridge over Santa Ysabel Creek with a new two lane structure. This consultation addresses the geotechnical investigation and groundwater monitoring that is necessary to inform the bridge project design process. The geotechnical investigation includes four geotechnical borings. Each boring will be six inches in diameter and approximately 40-50 feet deep. Geotechnical boring work will be conducted with a drill rig truck. The four boring holes will be capped with a PVC or screw-on cap and groundwater monitoring will be conducted at the boring holes on a weekly basis by a two-person crew that will access the boring holes by foot. The holes will be backfilled once bridge construction is complete. Geotechnical boring work is expected to commence in December of 2016 and will take approximately 5 to 8 days to complete (Caltrans 2016).

Arroyo toads are known to occur in the vicinity of the project. There are approximately 140 observations of adult arroyo toads within 2 miles of the project site (Lichtward *et al.* 1993; Vaughan and Prchal 1993; Recon 2010). No project work will occur within arroyo toad breeding habitat. The proposed geotechnical borings will occur within disturbed flat-topped buckwheat scrub, nonnative grassland,

and southern coast live oak habitats. These habitats have the potential to be used for arroyo toad aestivation and foraging.

The proposed project is located within Unit 16 (Santa Ysabel Creek Basin), Subunit 16a (Portions of Santa Ysabel Creek, Guejito Creek, Boden Canyon, Temescal Canyon, Santa Maria Creek, and San Dieguito River) of designated critical habitat for the arroyo toad (76 FR 27:7246-7467). The project will result in approximately 0.09 acre of temporary impacts to designated arroyo toad critical habitat with primary constituent elements (PCEs). Within this area, a small amount of vegetation crushing and trimming will occur, including impacts to 5 to 10 buckwheat, a mulefat, and trimming of a coast live oak and a sycamore tree. Caltrans has determined that the project may affect but is not likely to adversely affect the arroyo toad and its critical habitat (Caltrans 2016).

The following conservation measures (CM) have been incorporated into the project to avoid and minimize potential effects to arroyo toads and their critical habitat:

- CM 1. To ensure that all avoidance and minimization measures are implemented, all activities conducted for the geotechnical investigation will be monitored by a Carlsbad Fish and Wildlife Office (CFWO)-approved biologist (Biological Monitor).¹ The Biological Monitor will conduct a preconstruction sweep of the site to ensure no arroyo toads are present within the work area. If any arroyo toads are detected, the biological monitor will stop all activities within approximately 30 feet of the detected species and Caltrans will re-initiate consultation with the Service to address unanticipated effects to the species. The Biological Monitor will be familiar with the habitats, plants, and wildlife of the project area, and will maintain communications with project personnel to ensure that issues relating to biological resources are appropriately and lawfully managed. Caltrans will submit the Biological Monitor's name, address, telephone number, and work schedule on the project to the CFWO for review and approval prior to initiating project impacts. The contract of the Biological Monitor will allow direct communication with the CFWO at any time regarding the proposed project. The Biological Monitor will be provided with a copy of this consultation.
- CM 2. With the exception of the four boring holes, each with a 6-inch diameter, no soil movement will occur.
- CM 3. Under the guidance of the Biological Monitor, geotechnical borings will be located, to the greatest extent feasible, in areas deemed to be less likely to harbor aestivating arroyo toads (e.g., areas devoid of vegetation).
- CM 4. Under the guidance of the Biological Monitor, pilot holes will be hand-excavated using a small spade to a depth of 1 foot at boring locations within suitable arroyo toad habitat. In the event that an arroyo toad is encountered while digging the pilot hole, the substrate will be immediately replaced, all project work will cease, and Caltrans will re-initiate consultation with the Service to address unanticipated effects to the species.

¹ The Biological Monitor will be familiar with the federally listed species potentially affected by the project (i.e., arroyo toad) and with the habitats that support these species.

- CM 5. All geotechnical boring work will be conducted outside of the March 15 – July 31 arroyo toad active season.
- CM 6. No night work will occur.
- CM 7. Geotechnical boring work during rain events will be avoided to the greatest extent feasible as arroyo toads may become active during rain events and the movement of personnel and equipment through mud may result in sedimentation into breeding habitat. To ensure that work is completed as rapidly as possible such that the temporal disturbance of the habitat is limited, work may continue during a light or intermittent rain, if the Biological Monitor, using his/her best judgment, determines that increased impacts to arroyo toads are unlikely.
- CM 8. To avoid impacts to the terrain from the tires of the drilling rig, 1-inch-thick plywood will be placed on the ground for the drilling rig to move from the pavement to the drilling location. Plywood will not be left in place overnight so small animals are not enticed to shelter underneath the plywood. All plywood will be removed from the site following the completion of project work.
- CM 9. All boring holes will be capped with PVC or screw-on caps with a 6 inch diameter to ~~allow for weekly groundwater monitoring. Groundwater monitoring will be conducted~~ by a two-person crew that will access the boring holes by foot. Boring holes will be capped promptly following monitoring work. Boring holes will be backfilled following the completion of bridge construction work.
- CM 10. The Biological Monitor will submit a final report to the CFWO within 120 days of project completion including photographs of impact areas and adjacent habitat, documentation that authorized impacts were not exceeded, and documentation that general compliance with all CM was achieved. The report will specify numbers and locations of listed species (if observed); observed listed species behavior (especially in relation to project activities); and remedial measures employed to avoid and minimize impacts to listed species. Raw field notes should be available upon request by the CFWO.
- CM 11. The Biological Monitor will also develop and implement an employee education program. Each employee (including temporary, contractors, subcontractors, and the groundwater monitoring crew) will receive a training/awareness program prior to working on the proposed project. Sign-in sheets will be maintained to document completion of the program by each employee. They will be advised of the potential impact to the listed species and the potential penalties for taking such species. At a minimum, the program will include the following topics: occurrence of the listed and sensitive species and / or critical habitats in the area (including photographs), their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, and project features designed to reduce the impacts to these species and habitats and promote occupation of the project area.

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- CM 12. The project site will be kept as clear of debris as possible. All food-related trash items will be enclosed in sealed containers and regularly removed from the site. All spoils, invasive plant cuttings, and material disposal will be disposed of properly. Sediment will not be stockpiled in areas where arroyo toads might burrow into the loose material, or where material could be washed into drainages by rainfall.
- CM 13. Project personnel will be prohibited from bringing domestic pets to the construction site to ensure that domestic pets do not disturb or depredate wildlife in the adjacent native habitat.

Habitat suitable for arroyo toad foraging and aestivation occurs within the project area. However, due to the minimal amount of temporary impacts that will occur, the short duration of the work, and the limited amount of earth disturbance, the likelihood that a toad will be encountered during project work is considered to be discountable. For the purposes of section 7 consultation, a discountable effect is one that is extremely unlikely to occur. In addition, measures (listed above) such as avoiding toad breeding habitat, and completing project work prior to the arroyo toad active season, have been incorporated into the project to ensure that direct impacts to arroyo toads are avoided. To ensure that the project does not result in any unanticipated effects to listed species, a qualified biologist will oversee all project work. If arroyo toads are observed within the work area, the biologist will stop all activities within approximately 30 feet of the detected species and Caltrans will re-initiate consultation with the Service.

Implementation of the project has the potential to result in degradation of arroyo toad habitat through light spill from construction lighting, increased siltation, and trash. Light that alters natural light patterns in ecosystems can lead to increased predation, disorientation, and disruption of inter-specific interactions (Longcore and Rich 2004). To avoid impacts of lighting on arroyo toads, no night work will occur. Increased sedimentation has the potential to kill arroyo toad eggs and larvae through asphyxiation (Sweet 1992; Service 1999). Changes to the water quality (temperature and chemical composition) can lead to reduced oxygen uptake, reduced feeding, and a general decline in species health, which can lead to disease, decreased growth and reproduction, or death. The project has incorporated measures (listed above) to avoid impacts to arroyo toads that could result from effects to water quality due to construction work and material disposal. In addition, the project will avoid attracting predators of the arroyo toad by keeping the site clean of trash and debris. Pamo Road Bridge is an existing facility, so with the proposed measures, any increase in habitat degradation associated with these factors is likely to be insignificant. For the purposes of section 7 consultation, an insignificant effect is one that is sufficiently small that a person would not be able to meaningfully measure, detect, or evaluate it.

The PCEs of arroyo toad critical habitat include rivers or streams, riparian habitats, adjacent uplands including areas of loose soil, a natural flooding regime, stream channels, and adjacent upland habitats that allow for movement (Service 2011). The small amount of temporary impact (0.09 acre) to PCEs within Unit 16 of designated arroyo toad critical habitat will not affect the function of the unit to support large amounts of suitable habitat connecting large populations of toads and promoting the long-term persistence of the species in this area. With the incorporation of the above measures, the proposed project impacts on the primary constituent elements in Unit 16 of arroyo toad critical habitat are considered to be insignificant.

Based on the limited extent of impacts to suitable arroyo toad habitat and designated critical habitat, and the conservation measures that have been incorporated into the proposed project, we concur with your determination that the proposed project is not likely to adversely affect the arroyo toad and its critical habitat. We base our concurrence on the following reasons: 1) the temporary construction disturbance to a small amount (0.09 acre) of arroyo toad critical habitat outside of the breeding season is not anticipated to directly impact individual arroyo toads nor interfere with essential arroyo toad breeding, feeding, or sheltering behaviors; 2) measures have been incorporated to avoid degradation of arroyo toad critical habitat in the project area, and 3) an arroyo toad monitor will be present during geotechnical boring work to ensure that no toads will be impacted by the proposed project.

Therefore, the interagency consultation requirements of section 7 of the Act have been satisfied. Although our concurrence ends informal consultation, obligations under section 7 of the Act shall be reconsidered if new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered or this action is subsequently modified in a manner that was not considered in this assessment. Thank you for your coordination on this project. If you have any questions regarding this letter, please contact Sally Brown of this office at 760-431-9440 extension 278.

Sincerely,

for Karen A. Goebel
Assistant Field Supervisor

Mr. Robert A. James (FWS-SDG-17B0006-17I0005)

LITERATURE CITED

- [Caltrans] California Department of Transportation. 2016. Pamo Road Bridge North Geotechnical Investigation Biological Assessment. 16 pp+appendices.
- Lichtwardt E., D. Mayer, and S. Dodd. 1993. Arroyo Toad Survey Data for Southern California and Central California GIS Databases. 4pp.
- Longcore, T. and C. Rich. 2004. Ecological light pollution. *Front Ecological Environment* 2(4):191-198.
- [RECON] Recon Environmental, Inc. 2010. 2010 Post-Survey Notification of Focused Surveys for Arroyo Toad at the Pamo Road Bridge Replacement Project (RECON Number 5728). 6+pp.
- [Service] U.S. Fish and Wildlife Service. 1999. Recovery plan for the arroyo southwestern toad (*Bufo microscaphus californicus*). U.S. Fish and Wildlife Service, Portland, Oregon. 119 pp.
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- Sweet, S. S. 1992. Initial report on the ecology and status of the arroyo toad (*Bufo microscaphus californicus*) on the Los Padres National Forest of Southern California, with management recommendations. Contract report to USDA, Forest Service, Los Padres National Forest, Goleta, California. 198 pp.
- Vaughan B., and J. Prchal. 1993. Wildlife Survey Form, Arroyo Toad, Pamo Valley. 2 pp.



County of San Diego

ELISE ROTHCHILD
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
LAND AND WATER QUALITY DIVISION
P.O. BOX 129261, SAN DIEGO, CA 92112-9261
(858) 505-6688
www.sdcdeh.org

AMY HARBERT
ASSISTANT DIRECTOR

PROPERTY OWNER CONSENT

Proposed locations for subsurface work:
Property Address:

Assessor's Parcel Number (APN):

West side of Pamo Rd @ Santa Ysabel
Creek, Ramona, CA 92065

2431800100

I, _____, owner of the property/properties listed above, give my permission to
Kleinfelder (consulting company, contractor) to conduct the following work at the locations
stated above.

☒ Install 2 monitoring wells

☐ Destroy _____ monitoring wells

☒ Drill 2 soil borings

I understand that Scott Ruge (registered professional) of Kleinfelder (consulting company) and an
authorized signer for Cascade Drilling (drilling company) have submitted a signed application to the
Department of Environmental Health in which they have agreed to complete the above-stated work according the requirements
of the current SAM Manual, all ordinances and laws of the County of San Diego and the State of California pertaining to
well/boring construction and destruction. I have arranged with the Responsible Party, the person who causes to have
monitoring wells/borings installed or existing wells destroyed on this property, to ensure proper closure of the monitoring
wells/borings.

Property Owner Signature: _____ Date: _____

Print Name: _____ Title: _____

Company: _____

Mailing Address: _____