



# California Regional Water Quality Control Board

## San Diego Region



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March 19, 2009

Certified Mail No. 7008 1140 0002 4285 3766

Mr. Matthew O. Tucker  
North County Transit District  
810 Mission Avenue  
Oceanside, CA 92054

In reply, refer to:

|                   |             |
|-------------------|-------------|
| WDID No.          | 9 000001611 |
| CIWQS:            |             |
| Party No.         | 31651       |
| Place No.         | 646850      |
| Reg. Measure. No. | 320977      |

Dear Mr. Tucker:

**SUBJECT:** Action on Request to Amend Clean Water Act Section 401 Water Quality Certification No. 07C-017 for the Oceanside Passing Track Extension project

The California Regional Water Quality Control Board San Diego Region (Regional Board) is amending the Oceanside Passing Track Extension project Certification Number 07C-017. This amendment has been requested by the North County Transit District. Specifically two items were requested: 1) Condition C.3. be removed from the Certification as conservation easements are not allowed within the rail line right of way; and 2) To allow the North County Transit District to have the option to mitigate at the North County Habitat Bank. The Regional Board agrees to the removal of Condition C.3., but disagrees with the option to mitigate at North County Habitat Bank as the Regional Board finds that onsite mitigation is ecologically and geographically more suitable in this case. If, at a later date, the North County Transit District and/or Amtrak determine that permanent impacts are to occur at the mitigation site, North County Transit District and/or Amtrak must apply for revised amendments to the Certification.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that North County Transit District has accepted and will comply with all conditions of the Certification. Failure to comply with all conditions of this Certification may result in enforcement actions against the North County Transit District.

Changes to the Certification are shown in strikeout and underline fonts below.

### *California Environmental Protection Agency*

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## ADDITIONAL CONDITIONS

### C. MITIGATION

3. ~~Within 90 days of the issuance of this certification, North County Transit District must provide a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all mitigation areas and their buffers in perpetuity. The conservation easement or other legal limitation on the mitigation property must be adequate to demonstrate that the site will be maintained without future development or encroachment on the site or which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the U.S. that it supports. The conservation easement or other appropriate legal limitation 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 functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, paved maintenance roads, and areas of maintained landscaping for recreation. The North County Transit District must submit proof of a completed preservation mechanism within one year of issuance of this certification. If a future railroad maintenance project temporarily impacts the mitigation areas, the impacted habitat must be replaced on-site and in-kind within one year. If a future railroad related capital improvement project permanently impacts the mitigation area, the North County Transit District must provide in-kind mitigation at an off-site location at a ratio higher than 1:1 to be approved by Regional Board via amendment to this Certification.~~

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions regarding this notification, please contact Mike Porter directly at (858) 467-2726 or by email [mporter@waterboards.ca.gov](mailto:mporter@waterboards.ca.gov).

Respectfully,

  
John H. Robertus  
Executive Officer

Mr. Tucker  
Oceanside Passing Track Amendment

- 3 -

March 19, 2009

cc: Ms. Crystel Doyle  
U.S. Army Corps of Engineers  
San Diego Field Office  
6010 Hidden Valley Road  
Suite 105  
Carlsbad, CA 92011

Ms. Janet Struckwrath  
U.S. Department of the Interior  
Fish and Wildlife Service  
6010 Hidden Valley Road  
Carlsbad, CA 92011

Ms. Tamara Spear  
California Department of Fish and Game  
South Coast Region  
Habitat Conservation Planning – South  
4949 Viewridge Avenue  
San Diego, CA 92123

State Water Resources Control Board  
Division of Water Quality  
401 Water Quality Certification and Wetlands Unit  
P.O. Box 100  
Sacramento, CA 95812-0100

Mr. Eric Raffini  
Wetlands Regulatory Office  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
R9-WTR8-Mailbox@epa.gov

Mr. Dan Tormey  
ENTRIX, Inc.  
2140 Eastman Avenue, Suite 200  
Ventura, CA 93003

Patrick O'Neill  
BRG Consulting, Inc.  
304 Ivy Street  
San Diego, California 92101-2030

Mr. John Eschenbach  
Amtrak Engineering  
603 C Garrison Street  
Oceanside, CA 92054

| SENDER: COMPLETE THIS SECTION  | COMPLETE THIS SECTION ON DELIVERY   |
|--|---|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> | <p>A. Signature <input checked="" type="checkbox"/> Agent<br/><input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>  |
| <p>1. Article Addressed to:</p> <p>Matthew Tucker<br/>North County Transit District<br/>810 Mission Ave.<br/>Oceanside, CA<br/>92054</p>   | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p> <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> |
| <p>2. Article Number<br/>(Transfer from service label)</p>   | <p>7008 1140 0002 4285 3766</p>   |

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE  
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| <table border="1" style="width: 100%;"> <tr> <td style="width: 10%;">Sent to</td> <td>Matthew Tucker, NCTD</td> </tr> <tr> <td>Street, Apt. No.,<br/>or PO Box No.</td> <td>810 Mission Ave</td> </tr> <tr> <td>City, State, ZIP+4</td> <td>Oceanside CA 92054</td> </tr> </table> |                      | Sent to | Matthew Tucker, NCTD | Street, Apt. No.,<br>or PO Box No. | 810 Mission Ave | City, State, ZIP+4 | Oceanside CA 92054 |
| Sent to  | Matthew Tucker, NCTD |         |                      |                                    |                 |                    |                    |
| Street, Apt. No.,<br>or PO Box No.   | 810 Mission Ave      |         |                      |                                    |                 |                    |                    |
| City, State, ZIP+4   | Oceanside CA 92054   |         |                      |                                    |                 |                    |                    |

PS Form 3800, August 2006 See Reverse for Instructions