



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA



Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

August 11, 2008

Mr. Raul Guzman
Techbilt Companies
P.O. Box 80036
San Diego, CA 92110

CERTIFIED MAIL
7007 1490 0003 8753 5445

In reply refer to:
CWU:R920080099:bjames

CIWQS Place ID: 224166

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

Subject Site:

1. Faraday Avenue Extension and Carlsbad Oaks North Business Park

Dear Mr. Guzman,

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

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

David Barker
Supervising Engineer

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

cc by e-mail:

Kari Coler, U.S. Army Corps of Engineers, Kari.Coler@usace.army.mil
Tamara Spear, California Department of Fish and Game, tspear@dfg.ca.gov
CIWQS: NOV - 350121; Place No. - 224166; Violations - 778594; 401 Certification - 214323

RF



California Regional Water Quality Control Board San Diego Region



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IN THE MATTER OF:

Mr. Raul Guzman
Techbilt Companies
P.O. Box 80036
San Diego, CA 92110

Subject Site:
Faraday Avenue Extension and Carlsbad Oaks
North Business Park

CIWQS:
Place ID: 224166
Regulatory Measure ID: 214323

**NOTICE OF VIOLATION
NO. R9-2008-0099**

August 11, 2008

**In reply refer to:
CWU:R920080099:bjames**

You are Hereby Notified of Violations of Clean Water Act Section 401 Water Quality Certification (§401 Certification) for the following project:

- 1. Faraday Avenue Extension and Carlsbad Oaks North Business Park (§401 Certification 02C-093)**

Such violations subject you to possible enforcement action by the California Regional Water Quality Control Board, San Diego Region (Regional Board); including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

The violations described below were identified from a site inspection on July 2, 2008 and during review of the Regional Board files for the projects.

Summary of Violations:

A. Faraday Avenue Extension and Carlsbad Oaks North Business Park (\$401 Certification 02C-093)

1. FAILURE TO STAMP/STENCIL ALL DRAIN INLETS WITHIN THE PROJECT BOUNDARIES

➤ Pursuant to Certification Condition C.1

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

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

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

➤ Pursuant to Certification Condition C.5

- No later than 30 days after completion of construction of the water quality basins, the applicants shall provide a report documenting the as built design of the basins, and the calculations used to size the basins in accordance with the City of Carlsbad, April, 2003, *Standard Urban Storm Water Mitigation Plan, Storm Water Standards*.

➤ Pursuant to Certification Condition C.6

- The applicants shall vegetate the proposed detention basins with drought tolerant native grasses (e.g. *Distichlis spicata*, *Leymus triticoides*).

Maintenance of the vegetated permanent water quality basin will be triggered when sediment accumulation reaches one half the designated sediment storage volume. When cleaned out, the basin should be over-excavated by at least half a foot to extend the interval between necessary maintenance and no more than 50 percent of the vegetation shall be removed during maintenance activities.

➤ Pursuant to Certification Condition C.7

- No low-flow channel, or other structure that would compromise the water purification functions of the basin, shall be constructed in the proposed permanent water quality basin.

Observation: The Regional Board has not received this report. Three permanent water quality basins were observed during the site inspection on July 2, 2008. Due to a lack of reporting it is currently unknown when the construction of the water quality basins was completed. Due to a lack of reporting, it is also unknown if the permanent water quality basins were

planted with drought tolerant native grasses per Condition C.6, and if a low-flow channel or other structure that would compromise the water purification functions of the basin was constructed, despite the prohibition per Condition C.7.

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

➤ **Pursuant to Certification Condition D.2:**

- The applicants shall mitigate for permanent impacts to 2.7 acres of jurisdictional Waters of the U.S. at the following ratios, in accordance with the May 2004 *Wetland Mitigation Plan Faraday Avenue Extension, South Agua Hedionda Sewer Interceptor, and Carlsbad Oaks North Business Park* (prepared by Merkel & Associates).

Jurisdictional Type	Impacted Acreage	Creation Mitigation Ratio	Creation Acreage	Enhancement Mitigation Ratio	Enhancement Mitigation Acreage
Southern Willow Scrub	1.4	1:1	1.9	4:1	6.0
Freshwater Marsh	0.4	1:1	0.4		
Cismontane Alkali Marsh	0.4	3:1	1.2		
Disturbed Wetland	0.1	--	--		
Non-wetland Waters of the U.S.	0.4	--	--		
Total	2.7		3.5		6.0

Observation: The *Mitigation Compliance Report for the Carlsbad Oaks North On-site Mitigation Area (No. 200200641-JMP)* prepared by HELIX Environmental Planners, Inc., was received by the Regional Board on November 9, 2006 and states that a "total of 3.06 acres of wetland habitat was created, consisting of 1.43 acres of southern willow scrub, 1.02 acres of cismontane alkali marsh, and 0.61 acre of freshwater marsh." This report illustrates the applicant's failure to construct the required total compensatory mitigation acreage, and the required specific habitat acreage. Heavy machinery and earth moving work being conducted in the mitigation area was observed during the site inspection on July 2, 2008.

4. FAILURE TO CONSTRUCT TIMELY HABITAT MITIGATION

➤ **Pursuant to Certification Condition D.5**

- The construction of proposed mitigation shall be completed within the same calendar year as impacts occur, or at least no later than 9 months following the close of the calendar year in which impacts first occur (e.g., if

impacts occur in June 2004, construction of mitigation for all impacts must be completed no later than September 2005).

Observation: Due to a lack of reporting, it is unknown when the initial impacts occurred, possibly in late 2004 or early 2005, but the mitigation site should have been completed by September 2005. The September 2005 deadline is based on the example provided in the certification, and the fact that the certification was issued July 19, 2004, and that quarterly water quality monitoring samples, which are required during construction, were being taken in January 2005. Heavy machinery and earth moving work being conducted in the mitigation area was observed during the site inspection on July 2, 2008.

5. FAILURE TO PROVIDE HABITAT MITIGATION REPORTS

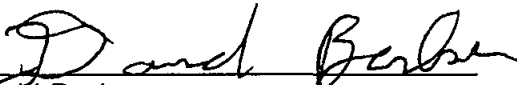
➤ Pursuant to Certification Condition D.8

- Habitat mitigation monitoring reports shall be submitted semi-annually during the first year following installation, and annually until mitigation has been deemed successful. Monitoring reports shall be submitted no later than 30 days following the end of the monitoring period. Monitoring reports shall include, but not be limited to, the following:
 - a. Names, qualifications, and affiliations of the persons contributing to the report;
 - b. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
 - c. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
 - d. Photo documentation from established reference points;
 - e. Survey report documenting boundaries of mitigation area; and
 - f. Other items specified in the draft and final Wetland and Riparian Mitigation and Monitoring Plan.

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

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

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



David Barker
Supervising Engineer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

FACILITY INSPECTION REPORT

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

FACILITY: City of Carlsbad 401 Certification Compliance Review

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

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

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

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

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

INSPECTION TYPE



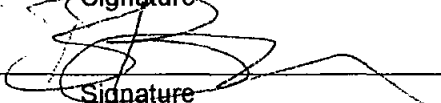
B1 X "B" type compliance--A routine nonsampling inspection. (EPA Type C)

INSPECTION FINDINGS

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

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

STAFF INSPECTOR(S)

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

I. Faraday Avenue Extension and Carlsbad Oaks North Business Park
401 Cert 02C-093

A. Background

1. **Issued To:** City of Carlsbad and Techbilt Construction Company
2. **Date Cert. Issued:** 7/19/2004.
3. **Project Summary:** Extension of Faraday Avenue, El Fuerte Street, and development of an Industrial Business Park.
4. **Project commenced:** Unknown.
5. **Project Completion:** Industrial Park: Ongoing; Roads Opened: Unknown
6. **Certified Impacts:** 2.7 acres of permanent impact to jurisdictional waters (Wetland and Streambed).
7. **Required Mitigation:** Onsite creation of 3.5 acres of wetlands, and onsite enhancement of 6.0 acres.
8. **Post-Construction BMP Requirements:** Installation of 10 inlet filters (Kristar Flo-Guard Plus or an equivalent filter). Installation of 3 permanent, vegetated water quality basins.

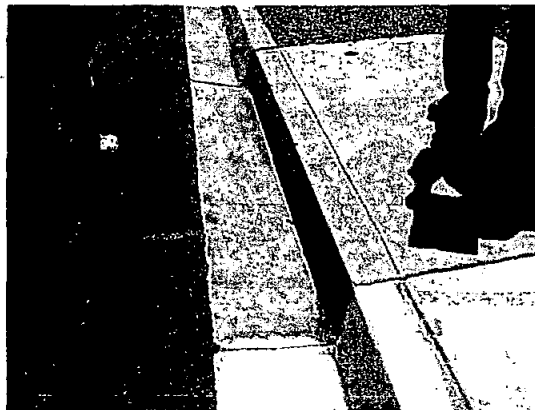
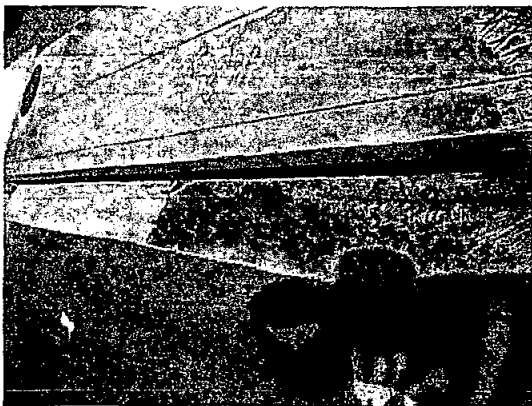
B. Status of Compliance with Cert. Conditions:

Condition C.1

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

Status: Not all storm drain inlet structures were stamped and/or stenciled on 7/2/08.

Inspection Results: On 7/2/2008 the Regional Board inspected the completed Faraday Avenue and El Fuerte Street roadways that are open to public traffic and found two inlets that did not have the required stenciling and/or stamping.



Picture on left (IMG_0411.JPG): Drain inlet adjacent to "Welcome to Carlsbad" sign on the north side of Faraday Avenue.

Picture on right (IMG_0481.JPG): Drain inlet west of the intersection with Brookhaven Pass, on the south side of Faraday Avenue, at the termination of the sidewalk.

Condition C.2

The City of Carlsbad, shall install 10 storm drain inlet filters (Krista[sic] Flo-Guard Plus or an equivalent filter) on Faraday Avenue and El Fuerte Road, as depicted in the submitted Drainage Exhibit (prepared by O'Day, June 2004) per the manufacturers specifications¹.

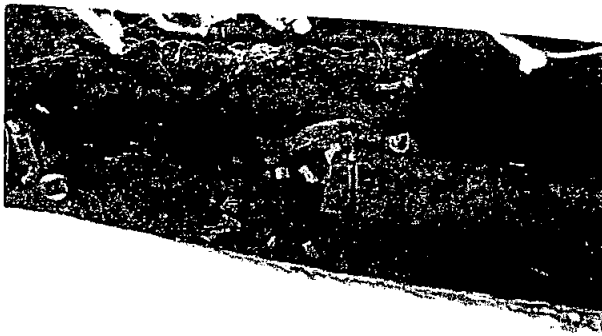
Status: Present conditions are not the same as what was proposed and certified in terms of the number of drain inlets present on El Fuerte Street and the storm drain inlets proposed to contain drain inlet filters.

Inspection Results: On 7/2/2008 the Regional Board inspected the completed Faraday Avenue and El Fuerte Street roadways that are open for public traffic. It appears that the post-construction BMPs for these roadways were not maintained in an effective manner.

All of the proposed inlets on Faraday Avenue that were required to have inlet filters had baskets and booms present. However, in most instances, the baskets were full of trash, debris, and /or sediment that have overloaded the booms, and thus rendered them ineffective. In one case, a boom appeared to be broken (see picture on the next page).

The number of storm drains proposed (7) in the Drainage Exhibit for El Fuerte Street was not the same number as actually constructed on the roadway (8). On the west side of the street there is 1 extra drain inlet. Of the 7 proposed inlets, 4 were required to have inlet filters (consisting of a basket and a boom). Only 2 baskets and 1 boom were observed along the roadway. The 2 drain inlets at the intersection with Faraday Avenue had baskets present, and only the inlet on the east side of the roadway had a boom. The 2 other drain inlets that were required to have inlet filters were missing baskets and booms. The rest of the drain inlets on El Fuerte Street, including the extra inlet did not contain a basket or a boom. No request for an amendment to the certification has been received by the Regional Board.

¹ Note: 12 storm drain inlet filters are proposed on the Drainage Exhibit, not 10 as required by the 401 Water Quality Certification.



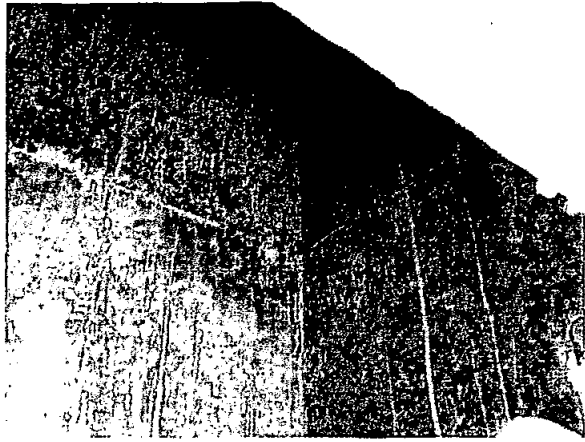
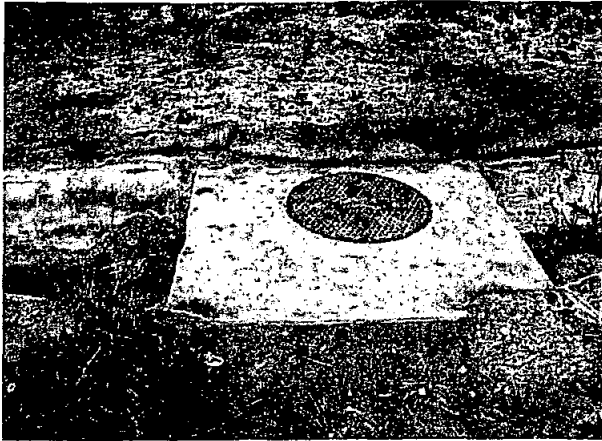
Picture on left (IMG_0435.JPG): West of fire hydrant and before 40 MPH sign, north side of Faraday Avenue, before Orion Street. The red arrow is pointing to a boom that appears to be broken.

Picture on Right (IMG_0442.JPG): East of intersection with Orion Street, on the south side of Faraday Avenue, adjacent to Waste Management. Basket and Boom overloaded with debris.



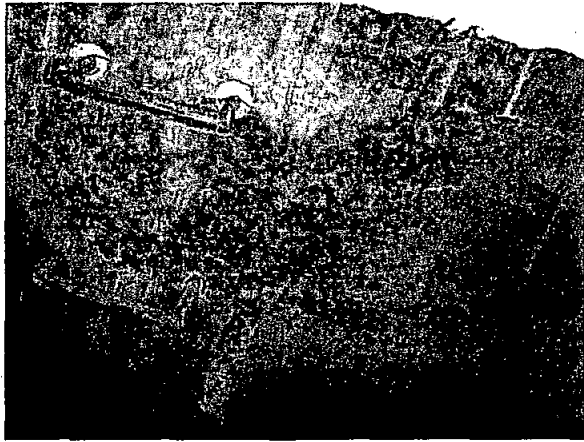
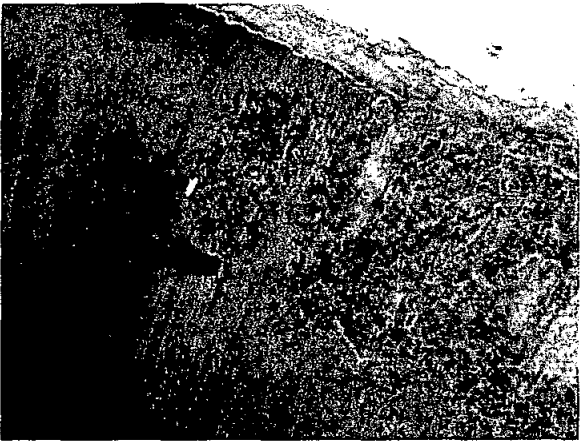
Picture on left (IMG_0451.JPG): Drain inlet south on El Fuerte at the intersection with Faraday Avenue, west side of El Fuerte. No boom present.

Picture on right (IMG_0453.JPG): Next drain inlet south on El Fuerte, on west side of the street, appears to be an additional inlet not on the Drainage Exhibit. No basket or boom present.



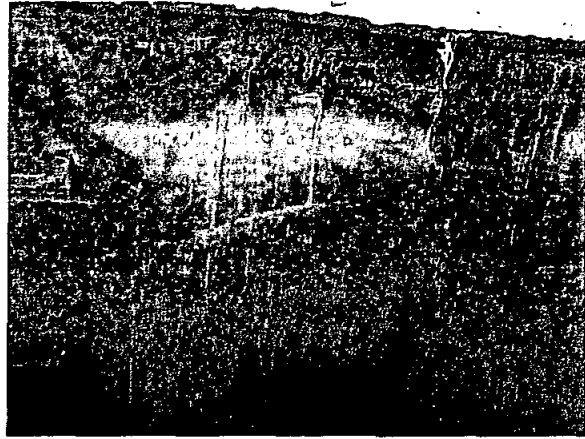
Picture on left (IMG_0456.JPG): Brow ditch entrance into the storm drain at the next drain south on the west side of the street. Broken gravel bags, sediment, and debris are visible around the entrance into the drain.

Picture on right (IMG_0457.JPG): Inside of the storm drain inlet. No basket or boom present. This drain inlet was required to have inlet filters on the Drainage Exhibit.



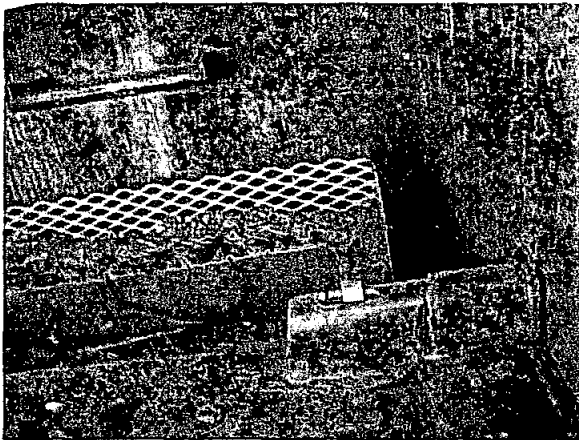
Picture on left (IMG_0459.JPG): Next drain south on the west side of the street, and last inside of the project area. This is the 2nd possible additional drain inlet, with no basket or boom.

Picture on right (IMG_0461.JPG): Inside of the drain inlet at the southern end of the El Fuerte Street inside of the project area on the eastern side of the street. No basket or boom.



Picture on left (IMG_0463.JPG): Next drain north on the east side of the street, near the utilities entrance in the sidewalk. This is a possible extra drain inlet, and no basket or boom is present.

Picture on right (IMG_0466.JPG): Next drain north on the east side of the street, adjacent to a green utilities box. This drain is required to have inlet filters, but no basket or boom is present.



Picture on left (IMG_0469.JPG): On the eastern side of El Fuerte Street, at the intersection with Faraday Avenue. Both a basket and boom were observed in this inlet. Boom was covered by debris and sediment.

Condition C.5

~~No later than 30 days after completion of construction of the water quality basins, the~~ applicants shall provide a report documenting the as built design of the basins, and the calculations used to size the basins in accordance with the City of Carlsbad, April, 2003, *Standard Urban Storm Water Mitigation Plan, Storm Water Standards*.

Status: A report has not been received by the Regional Board.

Inspection Results: The water quality basins were constructed and vegetation is beginning to grow in all of the basins. However, due to the lack of reporting, it is unknown if the sizing of these basins is correct and whether the vegetation was planted manually or if the vegetation established itself without assistance.

Condition C.9

As each individual lot is being developed, and upon final approval by the City of Carlsbad or permanent BMPs selected for that individual pad, the City of Carlsbad will provide the Regional Board with a summary report of the treatment BMPs selected to be implemented for each lot, including but not limited to:

- a. The anticipated pollutants of concern for the proposed end use of the pad.
- b. The types of permanent water quality BMPs to be implemented on site.
- c. Design specifications and sizing calculations for the permanent BMPs.
- d. A diagram depicting the location of the permanent water quality BMPs.
- e. A description of the maintenance requirements for each BMP, the responsible party for the maintenance, and the funding mechanism to ensure maintenance of the BMPs in perpetuity,

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

Inspection Results: 4 Notices of Intent for construction have been submitted to the State Board for enrollment in the Construction NPDES permit for properties within Carlsbad Oaks North Business Park property.

Condition D.2

The applicants shall mitigate for permanent impacts to 2.7 acres of jurisdictional Waters of the U.S. at the following ratios, in accordance with the May 2004 *Wetland Mitigation Plan Faraday Avenue Extension, South Agua Hedionda Sewer Interceptor, and Carlsbad Oaks North Business Park* (prepared by Merkel & Associates).

Jurisdictional Type	Impacted Acreage	Creation Mitigation Ratio	Creation Acreage	Enhancement Mitigation Ratio	Enhancement Mitigation Acreage
Southern Willow Scrub	1.4	1:1	1.9	4:1	6.0
Freshwater Marsh	0.4	1:1	0.4		
Cismontane Alkali Marsh	0.4	3:1	1.2		
Disturbed Wetland	0.1	--	--		
Non-wetland Waters of the U.S.	0.4	--	--		
Total	2.7		3.5		6.0

Status: The *Mitigation Compliance Report for the Carlsbad Oaks North On-site Mitigation Area* (No. 200200641-JMP) received by the Regional Board on 11/9/06 states that a "total of 3.06 acres of wetland habitat was created, consisting of 1.43 acres of southern willow scrub, 1.02 acres of cismontane alkali marsh, and 0.61 acre of freshwater marsh." This report illustrates failure to comply with Condition D.2 of the 401 Certification.

Condition D.4

The applicants shall submit a report (including topography maps and planting locations) to the Regional Board within 90 days of completion of mitigation site preparation and planting, describing as-built status of the mitigation project. If the site grading and planting are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.

Status: Received on 11/9/06. The reported mitigation does fulfill the requirements of Condition D.2. Also, during the investigation, heavy equipment and earth moving work was being conducted in the mitigation area. (Pictures below in Section C, page 9 of this document.)

Condition D.5

The construction of proposed mitigation shall be completed within the same calendar year as impacts occur, or at least no later than 9 months following the close of the calendar year in which impacts first occur (e.g., if impacts occur in June 2004, construction of mitigation for all impacts must be completed no later than September 2005).

Status: Unknown if mitigation activities are complete due to the lack of reporting and aforementioned activities.

Condition D.7

If at any time during the implementation and establishment of the mitigation area(s), and prior to verification of meeting success criteria, a catastrophic natural event (e.g., fire, flood) occurs and impacts the mitigation area, the applicants shall be responsible for repair and replanting of the damaged area(s).

Status: Two sewage spills occurred from the evening of April 2, 2007 through the morning of April 3, 2007, until the sewage was contained, and another spill that lasted approximately 100 minutes occurred on April 6, 2007. The spills resulted in the cumulative release of approximately 411,000 gallons of untreated sewage, of which, 332,600 gallons were contained and recovered. A report by the City of Vista titled Discharger Response to Investigative Order No. R9-2007-0074, Discharge of Untreated Sewage into the Agua Hedionda Creek Within the City of Vista, San Diego County and received on May 14, 2007 in response to an investigative order, mentions that approximately 0.2 acre of the mitigation area was impacted by the construction of berms and a temporary dam, as well as several container plants being killed. No report of the spill, its impacts, and the remedies to the mitigation area has been submitted by the applicants or their consultant.

Condition D.8

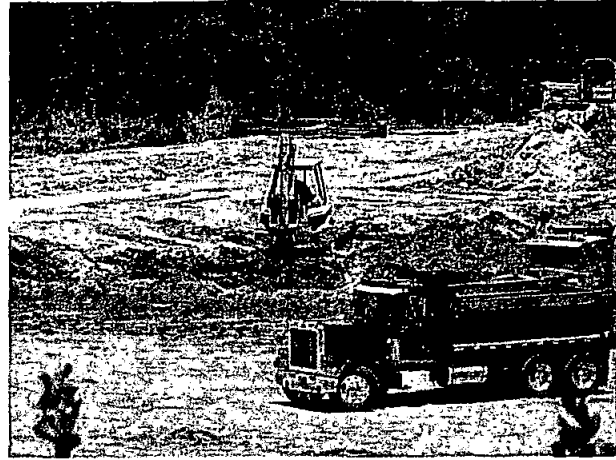
Habitat mitigation monitoring reports shall be submitted semi-annually during the first year following installation, and annually until mitigation has been deemed successful. Monitoring reports shall be submitted no later than 30 days following the end of the monitoring period. Monitoring reports shall include, but not be limited to, the following:

- a) Names, qualifications, and affiliations of the persons contributing to the report;
- b) Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
- c) Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
- d) Photo documentation from established reference points;
- e) Survey report documenting boundaries of mitigation area; and
- f) Other items specified in the draft and final Wetland and Riparian Mitigation and Monitoring Plan.

Status: No semi-annual, or annual reports received. Based on the *Mitigation Compliance Report for the Carlsbad Oaks North On-site Mitigation Area (No. 200200641-JMP)* received by the Regional Board on 11/9/06, the first semi-annual report was due no later than May 2007.

C. Mitigation Inspection Results:

On 7/2/08 the Regional Board inspected the creation area of the mitigation site, located west of South Melrose Drive, south of Faraday Avenue extension. Visual observations indicate that the completed mitigation site, inside the orange fencing, is not the required 3.5 acres. This is further supported by the only the mitigation related report received, the *Mitigation Compliance Report for the Carlsbad Oaks North On-site Mitigation Area (No. 200200641-JMP)*, which states 3.06 acres of wetlands were created. Some work has been conducted, as plantings were observed in the southern portion of the site. Also, heavy machinery and work was observed being conducted in the mitigation area. Due to a lack of reporting, it is unknown if this work is related to the sewage spills in April 2007. Also as a result of the lack of reporting, it is unknown if the required enhancement component of mitigation has been completed. It appears that the required mitigation is not complete, and was not completed in the time required. (See the photographs on the next page.)



Picture on left (IMG_0485.JPG): Taken from the parking lot of the building at Apsen Way and S. Melrose Dr., overlooking mitigation area. Notice work being conducted in the mitigation area.

Picture on right (IMG_0486.JPG): Closer view of work being done in the mitigation area.



Picture on left (Photo 159, 4/3/07, Frank Durazo): Reference the lone tall tree in the background of this picture, is the same tree in the foreground of the above picture, and the picture to the right.²

Picture on right (Photo 42, 04/07/2007 16:45, Cirilo Mariscal, Overview of the spilled sewage into the containment area): Taken from relatively the same vantage point as the above left picture.³

² The picture and citation are taken from the City of Vista Investigation Order Report. The picture illustrates the size of the mitigation area at the time of the sewage spill.

³ Same as above.

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

A. Background

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

B. Status of Compliance with Cert. Conditions:

Condition C.3

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

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

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

Condition C.7

No Later than 90 days after SDRWQCB acceptance of the Final Mitigation Plan, the City of Carlsbad shall provide a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all mitigation areas and their buffers in perpetuity. The conservation easement or other legal limitation on the mitigation property shall be adequate to demonstrate that the site will be maintained without future development or encroachment on the site or which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the U.S. that it supports. The conservation easement or other appropriate legal limitation shall prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, paved maintenance roads, and areas of maintained landscaping for recreation. The City of Carlsbad shall submit proof of a completed preservation mechanism within one year of the submittal of the draft preservation mechanism.

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

Condition C.8

The City of Carlsbad shall submit a report (including topography maps and planting locations) to the SDRWQCB within 90 days of completion of mitigation site preparation and planting, describing as-built status of the mitigation project. If the site grading and planting are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.

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

Condition C.9

The construction of proposed mitigation shall be completed within the same calendar year as impacts occur, or at least no later than 9 months following the close of the calendar year in which impacts first occur (e.g., if impacts occur in June 2006, construction of mitigation for all impacts must be completed no later than September 2007).

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

Condition C.12

Mitigation monitoring reports shall be submitted annually until mitigation has been deemed successful. Monitoring reports shall be submitted no later than 30 days following the end of the monitoring period. Monitoring reports shall include, but not be limited to, the following:

- a. Names, qualifications, and affiliations of the persons contributing to the report;
- b. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
- c. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
- d. Photo-documentation from established reference points;
- e. Survey report documenting boundaries of mitigation area; and
- f. Other items specified in the draft and final Wetland and Riparian Mitigation and Monitoring Plan

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

Condition D.1

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

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

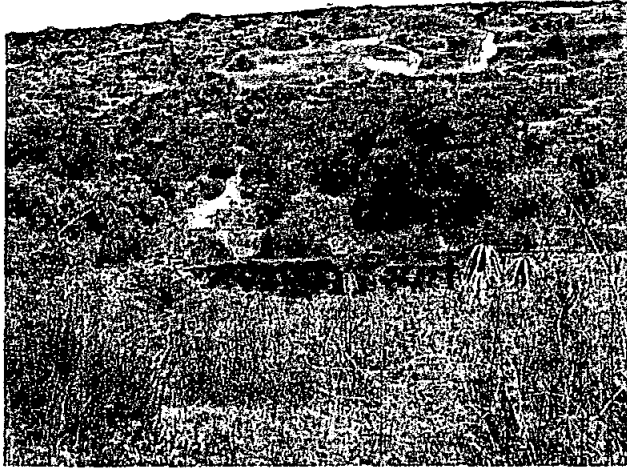
Condition D.4

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

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

C. Mitigation Inspection Results:

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



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

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

A. Background

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

B. Status of Compliance with Cert. Conditions

Condition B.1

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

Status: Not complete.

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

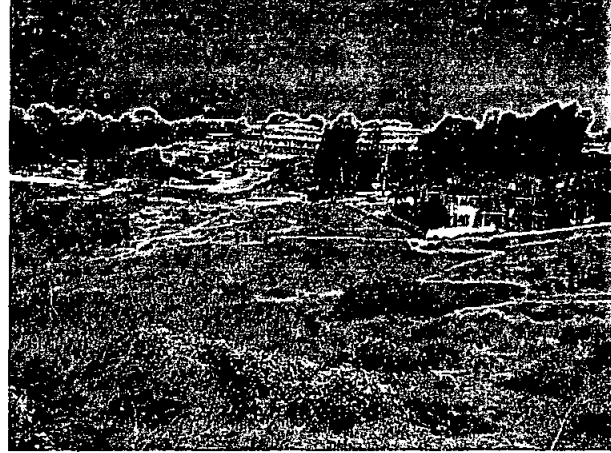
Condition B.2

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

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

Status: Not complete.

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



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

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

Condition C.5

The City of Carlsbad shall submit a report (including topography maps and planting locations) to the Regional Board within 90 days of completion of mitigation site preparation and planting, describing as-built status of the mitigation project. If site grading and planting are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.

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

Condition C.6

The construction of proposed mitigation shall be completed within the same calendar year as impacts occur, or at least no later than 9 months following the close of the calendar year in which impacts first occur (e.g., if impacts occur in June 2005, construction of mitigation for all impacts must be completed no later than September 2006).

Status: Unknown due to lack of reporting.

Condition C.9

Mitigation monitoring reports shall be submitted annually until mitigation has been deemed successful. Monitoring reports shall be submitted no later than 30 days following the end of the monitoring period. Monitoring reports shall include, but not be limited to, the following:

IV. Discussion:

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

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

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

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 TechSilk Companies
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 San Diego, CA 92110

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