



H04 Permit  
ACOE

**DEPARTMENT OF THE ARMY**  
**LOS ANGELES DISTRICT, CORPS OF ENGINEERS**  
**SAN DIEGO FIELD OFFICE**  
6010 Hidden Valley Rd, SUITE 105  
CARLSBAD, CA 92011-4213

September 17, 2008

REPLY TO

ATTENTION OF

Office of the Chief  
Regulatory Division

Farouk Kubba  
Diversified Projects Inc.  
2345 Newport Blvd.  
Costa Mesa, California 92627

Dear Mr./Ms. Kubba:

Reference is made to your application dated December 19, 2002, for a Department of the Army (DA) Permit to discharge fill into waters of the U.S., in association with the San Marcos Highlands Project. The proposed work would take place within/near the city of San Marcos and the County of San Diego, CA.

Enclosed is a "Provisional Permit." This provisional permit is NOT VALID and does not constitute authorization for you to do work. The provisional permit describes the work that will be authorized, including general and special conditions which will be placed on your final DA permit, if you receive written approval from the City of San Marcos and the County of San Diego. Please submit them to the Corps when these approvals are granted. No work is to be performed until you have received a validated copy of the DA permit.

**WHEN YOU RECEIVE THE LOCAL AGENCY APPROVALS, THE FOLLOWING  
STEPS NEED TO BE COMPLETED:**

1. The owner or authorized responsible official must sign and date both copies of the provisional permit indicating that he/she agrees to comply with all conditions stated in the permit.
2. The signer's name and title (if any) must be typed or printed below the signature.
3. Both signed provisional permits must be returned to the Corps of Engineers at the above address (Attention: CESPL-RG).
4. The written local agency approvals must be sent to the Corps of Engineers with the signed provisional permits.

5. When returning the signed provisional permits include a check for the processing fee of \$100.00 to the Finance and Accounting Officer USAED LA.

Should the local agency approval contain conditions which might result in a modification to the provisional permit, by signing and dating both copies of the provisional permit and returning them to the Corps of Engineers (along with the appropriate permit fee and local agency approval), we will assume you agree to comply with the local agency approval conditions which may be added to the provisional permit.

Should the local agencies deny the required approval, then the DA permit is considered denied without prejudice. If you subsequently obtain local agency approval, you should contact this office to determine how to proceed with your permit application.

If you have any questions, please contact Robert Smith of my staff at (760) 602 4831 or via e-mail at Robert.R.Smith@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at:  
<http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,



David J. Castanon  
Chief, Regulatory Division *for*

Enclosure(s)

Applicant: DPI - Diversified Projects, Inc.		File Number: 200100479	Date: September 16, 2008
Attached is:			See Section below
X	INITIAL PROFFERED PROVISIONAL PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OF INFORMATION**  
If you have questions regarding this decision and/or the appeal process you may contact:

DISTRICT ENGINEER  
Los Angeles District, Corps of Engineers  
ATTN: Chief, Regulatory Branch  
P.O. Box 532711  
Los Angeles, CA 90053-2325

Tel. (213) 452-3425 FAX (213) 452-4196

If you only have questions regarding the appeal process you may also contact:

Douglas R. Pomeroy, Appeal Review Officer  
U.S. Army Corps of Engineers, CESP-ET-CO  
333 Market Street  
San Francisco, CA 94015-2195

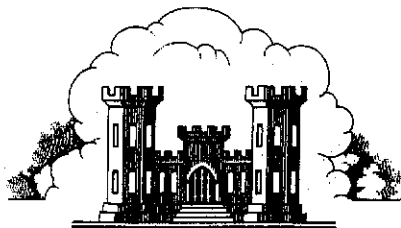
Tel. (415) 977-8035 FAX (415) 977-8047

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:



LOS ANGELES DISTRICT  
U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY PERMIT

Permittee: Diversified Projects Inc., Farouk Kubba

Permit Number: SPL-2001-00479

Issuing Office: Los Angeles District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** To permanently discharge fill onto .74 acre(s) of waters of the U.S. in association with the 203-acre San Marcos Highlands Project as shown on the attached drawings.

**Project Location:** In the City of San Marcos, San Diego County, CA.

**Permit Conditions:**

**General Conditions:**

1. The time limit for completing the authorized activity ends on September 16, 2013. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of

what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. A conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

#### **Special Conditions:**

1. The Permittee shall mitigate for permanent/temporary impacts to 0.80- acre(s) of waters of the U. S., through restoration/creation/enhancement of 2.45 acre(s) of waters of the U.S. as described in the "Habitat Mitigation and Monitoring Plan (HMMP): San Marco Highlands Habitat Mitigation and Monitoring/Water Quality Management Plan (dated October 2005, and prepared by PCR)." The Permittee shall fully implement this HMMP concurrently with impacts to waters of the U.S./within 30 days of initiation of work in waters of the U.S.
2. The Permittee shall implement and abide by the Section 401 water quality certification Order Nos. R9-2005-0272 dated December 15, 2005 as prepared by the California Regional Water Quality Control Board – San Diego Region.
3. Prior to initiation of work in waters of the U.S., the Permittee shall record a Conservation Easement (CE), in a form approved by the Corps, which shall run with the land, obligating the Permittee, its successors and assigns to protect and maintain the 2.45-acre(s) mitigation area (as shown in attached Figure 9 of the HMMP) as natural open space in perpetuity. The CE must include a 3rd party easement holder qualified to hold easements pursuant to California Civil Code section 815.3. The Permittee must provide monies in the form of an endowment (endowment amount to be determined by Property Analysis Record or similar methodology) for the purposes of fulfilling the 3rd party easement holder's responsibilities under the CE. The CE shall preclude establishment of fuel modification zones, paved public trails, drainage facilities, walls, maintenance access roads and/or future easements, except as provided in the Project Description. Further, to the extent practicable, any such facilities outside the CE shall be sited to minimize indirect impacts on the avoided, created, restored and enhanced wetland and non-wetland waters of the U.S. The Permittee shall receive written approval (by letter or e-mail) from the Corps of this CE prior to it being executed and recorded. A recorded copy of the CE shall be furnished to the Corps prior to initiation of work in waters of the U.S.
4. Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps a complete set of final detailed grading/construction plans showing all work and structures in waters of the U.S. The plans shall be submitted on paper that is no larger than 11x 17 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-

mail), Corps approval of the final detailed grading/construction plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans.

5. Prior to initiating construction in waters of the U.S., the Permittee shall post financial assurance ("financial assurance") in a form approved by the Corps for the estimated cost of implementing the approved HMMP (including a 20% contingency to be added to the total costs). The Corps has initially calculated that the performance bond sums to \$300,000 but the permittee can resubmit an estimate for review and the Corps shall consider a revised bond amount after considering the new estimate. The purpose of this financial assurance is to guarantee the successful implementation, maintenance and monitoring of the wetland and non-wetland waters creation, restoration, and enhancement work. Our preferred form of financial assurance is a Performance Bond, in which case, you shall post a Performance Bond for 120% of the anticipated cost of the mitigation and monitoring associated with the project, as indicated above. In addition,

A) The bonding company must appear on the Department of Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies. For a current list of Treasury-authorized companies, write or call the Surety Bond Branch, Financial Management Services, Department of the Treasury, Washington DC 20227; (202) 874-6850 or at the following website: <http://www.fms.treas.gov/c570/c570.html>.

B) The performance bond shall be released only upon a determination by the Corps that successful mitigation has been completed.

C) Alternatively, the Corps will accept an irrevocable letter of credit in the same amount in lieu of a Performance Bond. The terms of the irrevocable letter of credit are subject to Corps approval.

D) The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter preserved waters of the U.S. and riparian wetland/habitat areas shown on Figure 3,4, and 5 of the HMMP. Adverse impacts to waters of the U.S. beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.

6. The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter preserved waters of the U.S. and riparian wetland/habitat areas shown on Figures 3, 4, and 5 of the HMMP. Adverse impacts to waters of the U.S. beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements

7. Within 45 calendar days of completion of authorized work in waters of the U.S., the Permittee shall submit to the Corps a post-project implementation memo indicating the date authorized impacts to waters of the U.S. ceased.

8. Within 45 calendar days of complete installation of all mitigation, the Permittee shall submit to the Corps two copies of a memo indicating the following:

A) Date(s) all mitigation was installed and monitoring was initiated;

B) Schedule for future mitigation monitoring, implementation and reporting pursuant

to final, Corps-approved HMMP;

C) Summary of compliance status with each special condition of this permit (including any noncompliance previously occurred or currently occurring and corrective actions taken to achieve compliance);

D) Color photographs taken at the project site before and after construction for those aspects directly associated with impacts to waters of the U.S.; and

E) One copy of "as built" drawings for the entire project, including all mitigation sites. The drawings shall be submitted on paper that is no larger than 11x 17 inches.

9. This Corps permit does not authorize you to take any threatened or endangered species, in particular the coastal California gnatcatcher, or adversely modify its designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The U.S. Fish and Wildlife Service (FWS) BO (FWS Log No. 1-6-05-F-1668) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit.

#### **Further Information:**

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:



- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
PERMITTEE

\_\_\_\_\_  
DATE

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

\_\_\_\_\_  
David J. Castanon  
Chief, Regulatory Division

\_\_\_\_\_  
DATE

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
TRANSFEREE

\_\_\_\_\_  
DATE

LOS ANGELES DISTRICT  
U.S. ARMY CORPS OF ENGINEERS

NOTIFICATION OF COMMENCEMENT OF WORK  
FOR  
DEPARTMENT OF THE ARMY PERMIT

Permit Number: SPL-2001-00479

Name of Permittee: Farouk Kubba

Date of Issuance: September 16, 2008

Date work in waters of the U.S. will commence: \_\_\_\_\_

Estimated construction period (in weeks): \_\_\_\_\_

Name & phone of contractor (if any): \_\_\_\_\_

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you may be subject to permit suspension, modification, or revocation.

I hereby certify that I, and the contractor (if applicable), have read and agree to comply with the terms and conditions of the above referenced permit.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

At least ten (10) days prior to the commencement of the activity authorized by this permit, sign this certification and return it using any ONE of the following three (3) methods:

(1) E-MAIL a statement including all the above information to:  
Robert.R.Smith@usace.army.mil

OR

(2) FAX this certification, after signing, to: Robert Smith, (760) 602-4848

OR

(3) MAIL to the following address:

U.S. Army Corps of Engineers  
Regulatory Division  
ATTN: CESPL-RG-SPL-2001-00479  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
SAN DIEGO FIELD OFFICE  
6010 Hidden Valley Rd., SUITE 105  
CARLSBAD, CA 92011-4213



LOS ANGELES DISTRICT  
U.S. ARMY CORPS OF ENGINEERS

**NOTIFICATION OF COMPLETION OF WORK AND  
CERTIFICATION OF COMPLIANCE WITH  
DEPARTMENT OF THE ARMY PERMIT**

Permit Number: *SPL-2001-00479*  
Name of Permittee: *Farouk Kubba*  
Date of Issuance: *September 16, 2008*

Date work in waters of the U.S. completed: \_\_\_\_\_  
Construction period (in weeks): \_\_\_\_\_  
Name & phone of contractor (if any): \_\_\_\_\_

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you may be subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

Upon completion of the activity authorized by this permit, sign this certification and return it using any ONE of the following three (3) methods:

(1) E-MAIL a statement including all the above information to:  
Robert.R.Smith@usace.army.mil

OR

(2) FAX this certification, after signing, to: (760 602 4848)

OR

(3) MAIL to the following address:

U.S. Army Corps of Engineers  
Regulatory Division  
ATTN: CESPL-RG-SPL-2001-00479  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
SAN DIEGO FIELD OFFICE  
6010 Hidden Valley Road, SUITE 105  
CARLSBAD, CA 92011

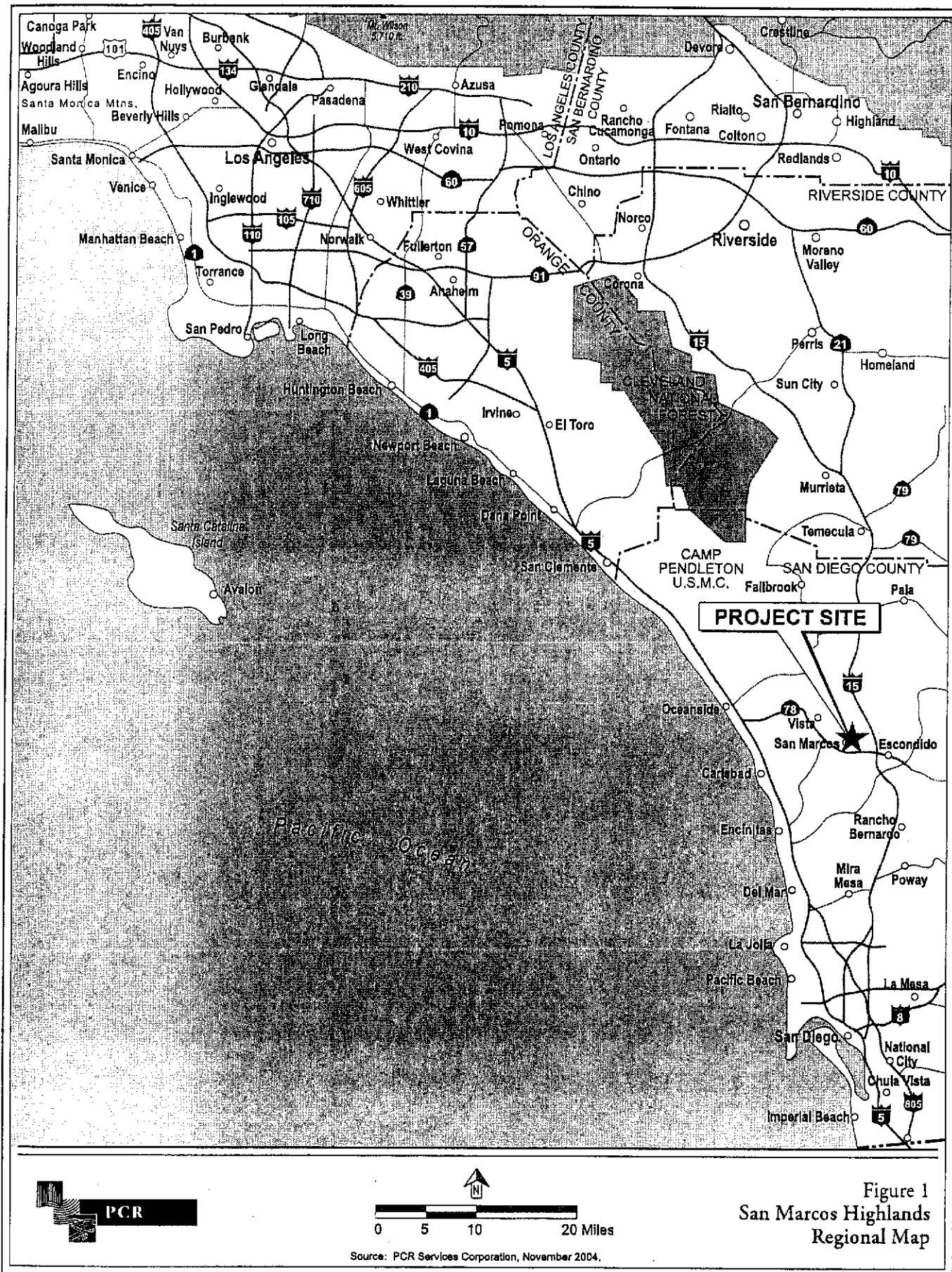


Figure 1  
San Marcos Highlands  
Regional Map

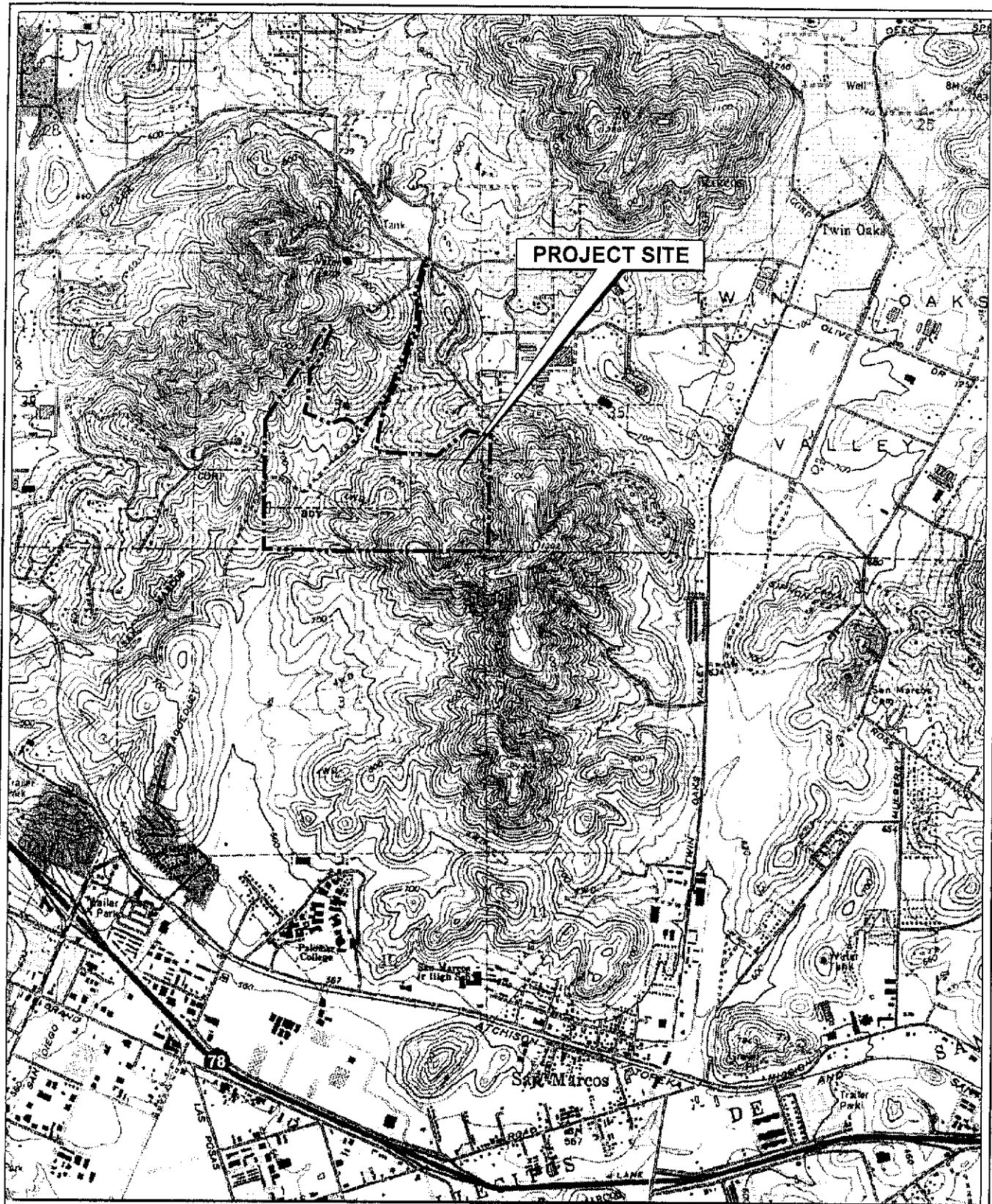
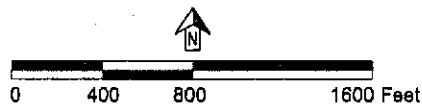
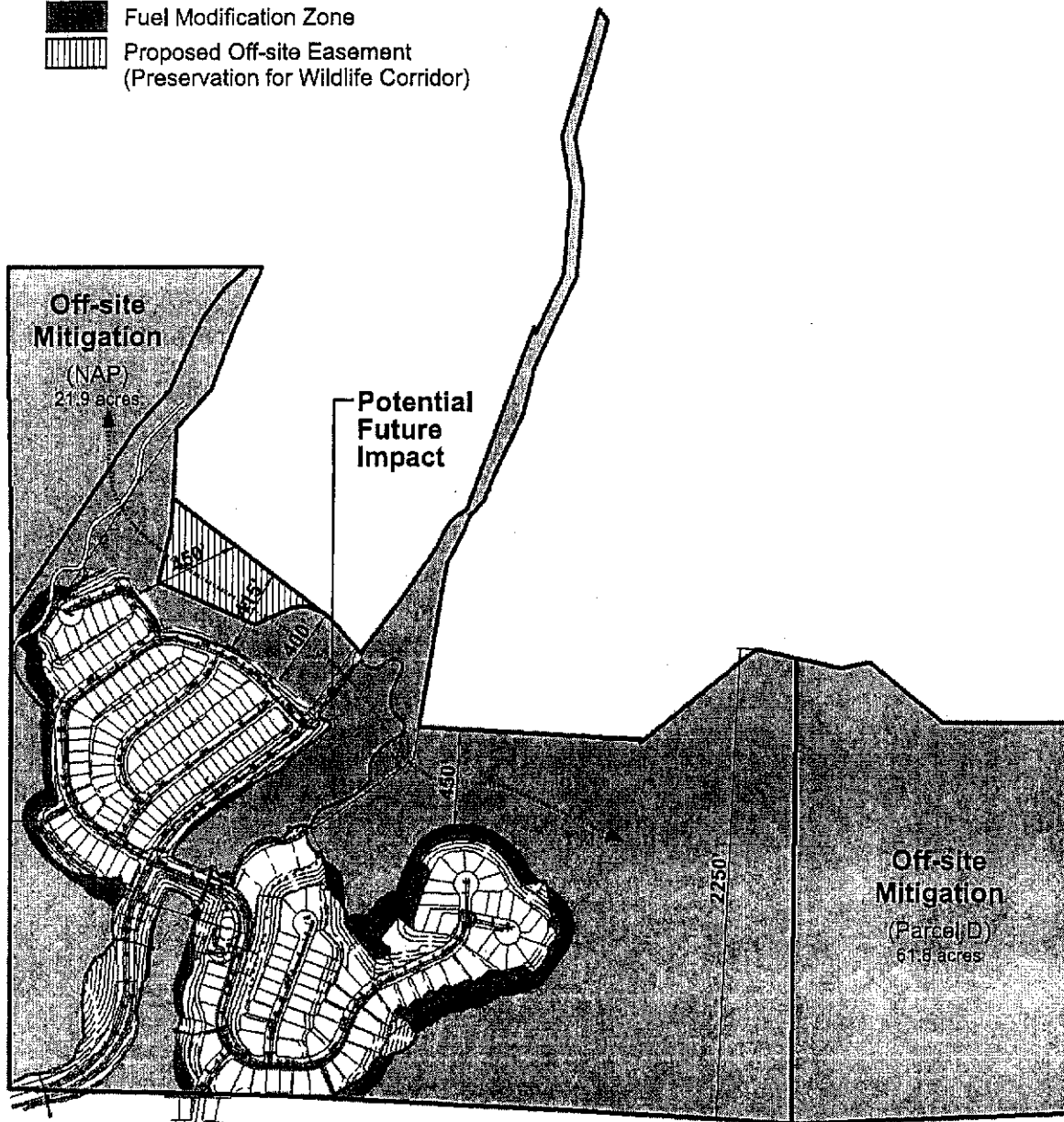


Figure 2  
San Marcos Highlands  
Vicinity Map

Source: USGS Quadrangle San Marcos, California, 1968 and photorevised 1983.

- ◄-----► Wildlife Corridor
- ▨ Preserved Open Space
- Fuel Modification Zone
- ▤ Proposed Off-site Easement  
(Preservation for Wildlife Corridor)



Source: Hunsaker, 2005.

Figure 3  
San Marcos Highlands  
Proposed Development Plan  
and Wildlife Corridor