



**DEPARTMENT OF THE ARMY**  
**LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS**  
**5900 LA PLACE COURT, SUITE 100**  
**CARLSBAD, CALIFORNIA 92008-8832**

December 5, 2016

Arnold Veldkamp, Superior Ready Mix Concrete  
c/o John Ponder, Attorney at Law  
Sheppard Mullin Richter & Hampton LLP  
501 West Broadway, 19th Floor  
San Diego, California 92101-3598

**SUBJECT: Jurisdictional Determination for Superior Ready Mix Concrete's Mission Gorge Plant and Quarry Project Site**

Dear Messrs. Veldkamp and Ponder:

I am responding to your request (File No. SPL-2010-00223-PJB), dated February 16, 2010, for an approved Department of the Army jurisdictional determination for the Superior Ready Mix Concrete's Mission Gorge Plant and Quarry Project site ("Project site") and your subsequent appeal of our previous approved jurisdictional determination of October 27, 2011, as it pertains to the Mining Pond feature on the Project site. The Project site is located within the city of San Diego, San Diego County, California (32 48.32° N, 117 5.158° W; Figures 1 and 2).

This letter includes an Approved Jurisdictional Determination Form (Enclosure A) for the Mining Pond feature of the Superior Ready Mix Concrete's Mission Gorge Plant and Quarry Project (Figure 3). This jurisdictional determination supersedes any prior determinations, including the expired AJD, dated October 27, 2011. We are also providing an Approved Jurisdictional Determination Form (Enclosure B) for Wetland C. In addition, as previously agreed during the Appeal process, we are providing a Preliminary Jurisdictional Determination Form for the remaining aquatic features on the Project site (Enclosure C).

I appreciate you and your client's patience during our protracted appeal review period. The Project site and the conditions, history, and available documentation of the Mining Pond involved complexities that necessitated a thorough review upon remand. A heavy workload combined with staffing shortages prolonged the process.

As you may know, the Corps' evaluation process for determining whether a Department of the Army permit is needed involves two tests. If both tests are met, a permit would likely be required. The first test determines whether the proposed project is located within the Corps' geographic jurisdiction (i.e., it is within a water of the United States). The second test determines whether as proposed, a project involves a regulated activity under Corps' authority, i.e., Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, or Section 103 of the Marine Protection Research and Sanctuaries Act. The evaluation herein pertains to the question of geographic jurisdiction.

Concerning the approximately 10.54-acre Mining Pond, historical maps of the Mining Pond area pre-dating its construction are limited and of coarse resolution. The information available does not controvert your assertion that the excavation of the Mining Pond occurred in dry land incidental to mining. Because of this, we concur that Mining Pond feature is a water-filled depression that was likely created in dry land incidental to mining activity, and so does not meet the definition of “waters of the United States,” even though it may otherwise exhibit indications of such. Consequently, we do not consider the Mining Pond to be a waters of the U.S. [33 CFR 328.3(b)(4)(v); 51 FR 41250, November 13, 1986, as amended at 58 FR 45036, August 25, 1993; 80 FR 37104, June 29, 2015]. The basis for this finding may be found on the enclosed Approved Jurisdictional Determination Form (Enclosure A).

Additionally, based on available information and as previously documented in our October 2011 jurisdictional determination, The Corps has determined that Wetland C is non-jurisdictional. The basis for this finding may be found on the enclosed Approved Jurisdictional Determination Form (Enclosure B).

The four remaining waters within the project area have been preliminarily determined to be waters of the U.S. The documentation for this determination may be found in the enclosure. Preliminary Jurisdictional Determination Form (Enclosure C). Please be aware preliminary jurisdictional determinations are non-binding indications of the presence of waters of the U.S., including wetlands, on a parcel. Preliminary jurisdictional determinations, are advisory in nature, and may not be appealed. If you accept this determination, please sign, date, and return the Preliminary Jurisdictional Determination Form to me within two weeks of receipt.

The purpose of our determination was to identify the extent of the Corps' Clean Water Act jurisdiction on the Superior Ready Mix Concrete's Mission Gorge Plant and Quarry Project site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work. Our jurisdictional determination does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Courtesy copies of this letter are being furnished electronically to the following interested parties: Tom Cavanaugh, Regulatory Program Appeals Officer, South Pacific Division, Corps of Engineers at [Thomas.J.Cavanaugh@usace.army.mil](mailto:Thomas.J.Cavanaugh@usace.army.mil); Eric Becker, San Diego Regional Water Board at [Eric.Becker@waterboards.ca.gov](mailto:Eric.Becker@waterboards.ca.gov); Jeff Brandt at [Jeff.Brandt@wildlife.ca.gov](mailto:Jeff.Brandt@wildlife.ca.gov); and Jason Brush, Chief, Wetlands Program, EPA Region 9 at [Brush.Jason@epamail.epa.gov](mailto:Brush.Jason@epamail.epa.gov).

Thank you for participating in the regulatory program. If you have any questions, please contact me at 760-602-4850.

Sincerely,

Michelle Lynch  
Chief, South Coast Branch

Enclosures

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: Superior Ready Mix Concrete, Attn: Mr. Arnold Veldkamp

File No.: SPL-2010-00223-PJB

Date: December 5, 2016

Attached is:

See Section below

	INITIAL PROFFERED 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
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/cecw/pages/reg\\_materials.aspx](http://www.usace.army.mil/cecw/pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**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 (address on reverse). 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 (address on reverse). 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 (address on reverse). 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.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**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 OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Michelle Lynch  
Chief, Arizona Branch  
Regulatory Division  
U.S. Army Corps of Engineers  
5900 La Place Court, Suite 100  
Carlsbad, California 92008-8832  
Phone: 760-602-4850, FAX 760-602-4848  
Email: Michelle.R.Lynch@usace.army.mil

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

Thomas J. Cavanaugh  
Administrative Appeal Review Officer  
U.S. Army Corps of Engineers  
South Pacific Division  
1455 Market Street, 2052B  
San Francisco, California 94103-1399  
Phone: 415-503-6574, FAX 415-503-6646  
Email: Thomas.J.Cavanaugh@usace.army.mil

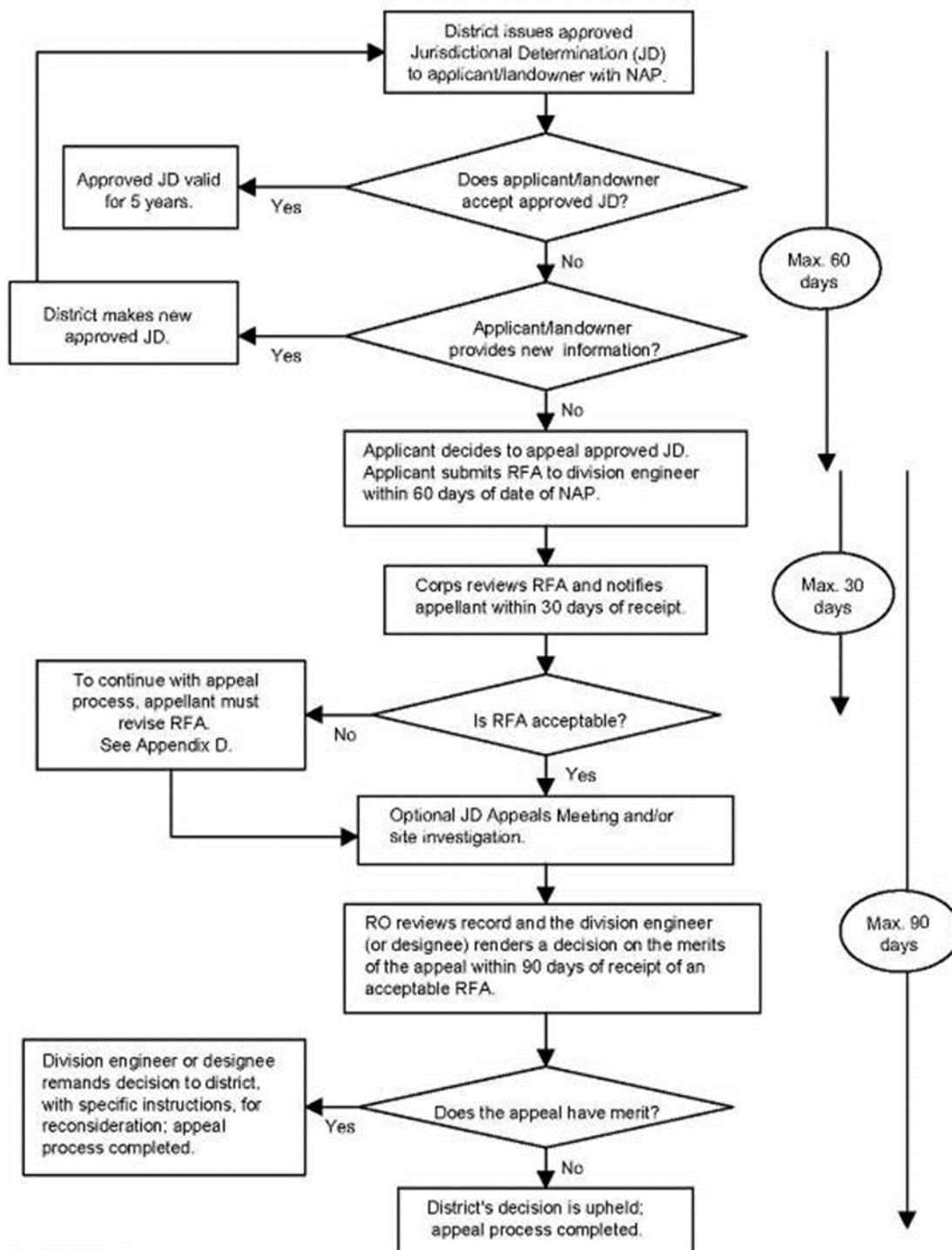
**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the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

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

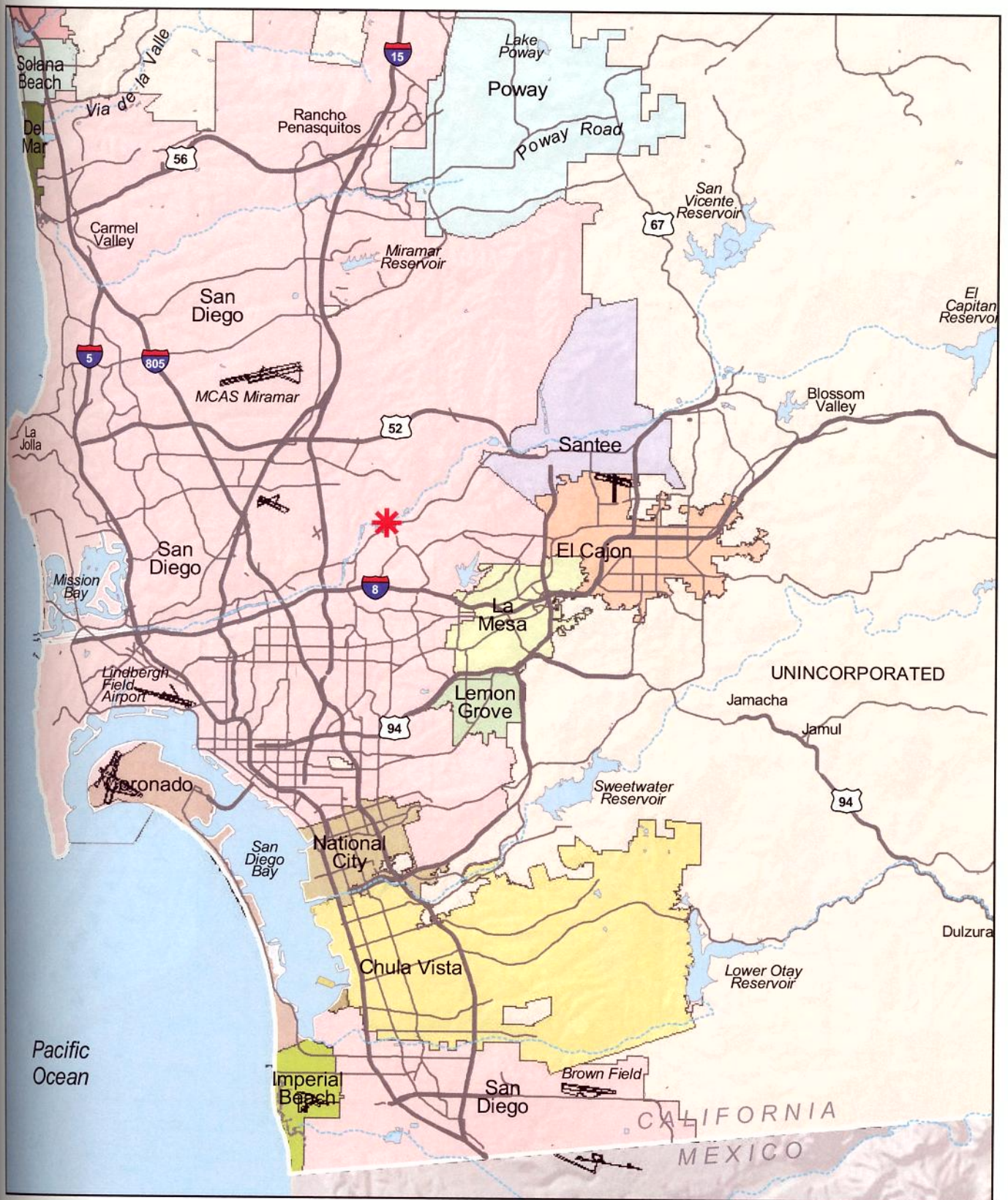
Date:

Telephone number:

## Administrative Appeal Process for Approved Jurisdictional Determinations







\* Project Location

FIGURE 1  
Regional Location



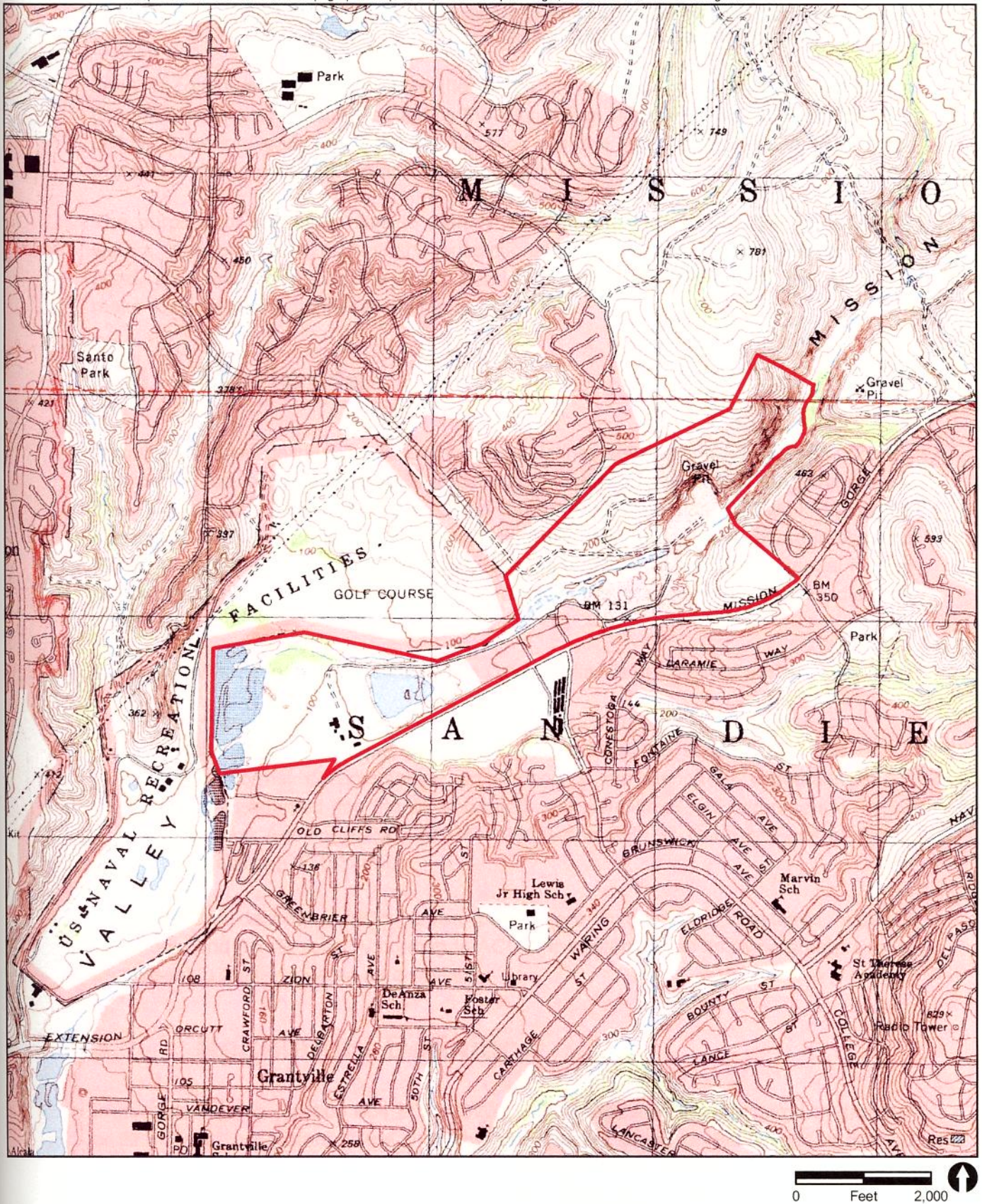
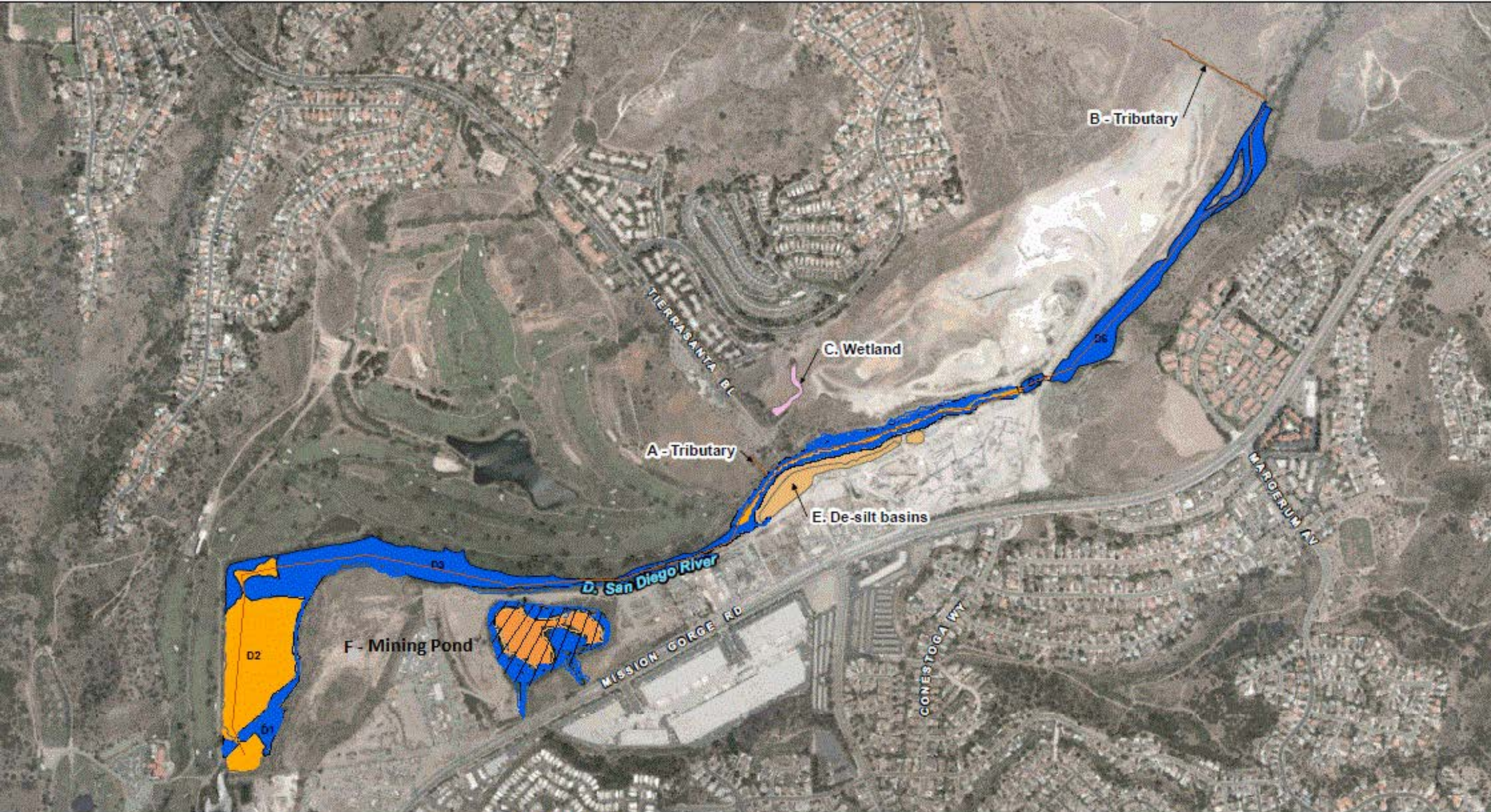


FIGURE 2

Project Location on USGS Map





- Wetland
- Open Water
- Tributary
- Wetland
- De-siltation Ponds
- Mining Pond

**Figure 3. Potential waters and aquatic resources within the project site boundary.**

Jurisdictional Determination Map  
Superior Ready Mix Property