



# PUBLIC NOTICE

**U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT**

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**APPLICATION FOR PERMIT  
Laguna Audubon Basin Long-term Maintenance Project**

**Public Notice/Application No.:** SPL-2022-00432

**Project:** Laguna Audubon Basin Long-term Maintenance Project

**Comment Period:** November 17, 2022 through December 17, 2022

**Project Manager:** Eric Sweeney; (760) 602-4837; Eric.R.Sweeney@usace.army.mil

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**Applicant**

Giles Matthews  
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Santa Ana, California 92701  
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**Location**

The proposed project would be located in Laguna Audubon Basin, tributary to Laguna Canyon Channel within the city of Aliso Viejo, Orange County, CA at approximately 33.589296, -117.751339 (Figure 1).

**Activity**

Orange County Public Works is seeking approval for long-term maintenance (10 years) of Laguna Audubon Basin. OCPW is proposing to remove accumulated sediment from the basin as needed for flood storage and allowing vegetation to regrow in between maintenance events as a part of routine maintenance of the basin. Several willows that are growing on the concrete or grouted riprap would also be removed from the confluence of where the concrete portion of the overflow channel meets a larger earthen channel. These willows are currently growing within the confluence and would be replaced on a minimum five to one ratio in the immediate vicinity. The proposed work would support critical flood control operations, promote groundwater recharge, and promote stormwater capture. Digging and allowing for vegetation regrowth within the basin footprint is necessary to maintain the flood capacity of the basin.

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**Submittal of Public Comments**

Interested parties are hereby notified an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under Section 404 of the Clean Water Act.

**Please do not mail hard copy documents, including comments to any Regulatory staff. Instead, your comments should be submitted electronically to: Eric.R.Sweeney@usace.army.mil. Should you have any questions or concerns about the Corps' proposed action or our comment period, you may contact Eric Sweeney directly at (760) 602-4837.**

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

### **Evaluation Factors**

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this

decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

### **Preliminary Review of Selected Factors**

**EIS Determination**- A preliminary determination has been made an environmental impact statement is not required for the proposed work.

**Water Quality**- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the San Diego Regional Water Quality Control Board. Section 401 requires any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance.

**Coastal Zone Management**- This project is located outside the coastal zone and preliminary review indicates it would not affect coastal zone resources. After a review of the comments received on this public notice and in consultation with the California Coastal Commission, the Corps will make a final determination of whether this project affects coastal zone resources.

**Essential Fish Habitat**- No Essential Fish Habitat (EFH), as defined by the Magnuson-Stevens Fishery Conservation and Management Act, occurs within the project area and no EFH is affected by the proposed project.

**Cultural Resources**- The proposed project would not disturb any previously undisturbed (native) soils within the Corps' Permit Area as there would be no excavation below the existing maintenance baseline of the basin. The work in the basin would occur above engineered concrete and soils, with no native soils impacted and no excavation below the design grade. The work would only involve removal of accumulated sediment and vegetation and temporary stockpiling of removed material within the basin. Additionally, the Corps has consulted the latest version of the National Register of Historic Places (NRHP) and confirmed that the project is not located in the vicinity of any NRHP-listed historic properties.

Preliminary application of Section 106 Criteria for Initiation of the Section 106 Process (36 CFR 800.3[a]) indicates a finding of "no potential to cause effects" for the undertaking on resources listed in or eligible to be listed in the National Register of Historic Places pursuant to Section 106 of the National Historic Preservation Act.

**Endangered Species**- Two federally listed species, least Bell's vireo (*Vireo bellii pusillus*; vireo) and coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher), have the potential to occur within the proposed project area. No mapped designated critical habitat is present in the vicinity of the proposed maintenance activities.

The potential for these federally listed species to occur in the project vicinity is characterized in OCPW's biological report entitled, "Laguna Audubon Basin Maintenance Project Biological Survey Report," dated January 3, 2022, prepared by ICF. Based on results of a literature search, the biological report concluded that there is moderate potential for gnatcatcher nesting, and high potential for gnatcatcher foraging, within coastal sage scrub habitat along the eastern slopes adjacent to the project area. Although no gnatcatcher observations were reported as a result of a field survey conducted on June 4, 2021, the literature search identified numerous recent records of gnatcatcher

located to the north, west, and south of the project site within Laguna Coast Wilderness Park and Aliso and Wood Park. The biological report indicated a total of 2.87 acres of mapped coastal sage scrub habitat along the adjacent slope, only 0.02 acre of which would be temporarily impacted by maintenance activities (Figure 2).

Additionally, the biological report indicated the presence of potential vireo habitat (southern willow scrub) along the southwestern portion of the project area, adjacent to the flood control channel. A total of 0.44 acre of southern willow scrub was mapped in the project vicinity, of which 0.03 acre would be temporarily impacted and 0.01 acre would be permanently impacted (Figure 2). However, the June 4, 2021 field survey did not report any vireo in the project area and the literature search did not identify any historical observations for vireo in the project vicinity.

To ensure that potential impacts to gnatcatcher and vireo are avoided to the maximum extent practicable, the Corps would require that OCPW implement pre-construction monitoring, including avoiding maintenance work in proximity to these species (see Special Condition 3 below). Additionally, OCPW would install Environmentally Sensitive Area fencing around sensitive biological resources (including Southern Willow Scrub, Coastal Sage Scrub, and Native Grassland habitats) adjacent to the project footprint.

Having evaluated the available species and habitat data for the proposed project area and in consideration of OCPW's minimization/avoidance measures, we have made a preliminary effects determination of "no effect" for gnatcatcher and vireo pursuant to Section 7 of the Endangered Species Act.

**Public Hearing-** Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

### **Proposed Activity for Which a Permit is Required**

**Basic Project Purpose-** The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material into a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). Because no fills are proposed within special aquatic sites, identification of the basic project purpose is not necessary.

**Overall Project Purpose-** The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to ensure adequate flood storage capacity within the southern Aliso-San Onofre watershed.

### **Additional Project Information**

**Baseline information-** Land use within the project area consists of the basin, associated access road, open water, and undeveloped lands. Conservation and open lands occur to the west in Laguna Coast Wilderness Park and to the south in Aliso and Wood Park. SR-73 and residential development occur to the north and east. The project area consists largely of disturbed land cover types, with small

patches of Southern Willow Scrub, Coastal Sage Scrub, Open Water, and a Seasonal Depression interspersed, along with an access road and concrete flood control channels and ditches.

Aquatic resources within the project area include ephemeral to intermittent channels and basins. Flows from these features drain southwest to Laguna Canyon Creek, which eventually drains to the Pacific Ocean approximately four miles southwest of the project site.

Project description- OCPW is proposing digging the basin out as needed and allowing vegetation to regrow in between maintenance events at Laguna Audubon Basin as a part of routine maintenance of the basin. Several willows would also be removed from the confluence of where the concrete portion of the overflow channel meets a larger earthen channel. These willows are currently growing within the confluence and would be replaced in the immediate vicinity. The proposed work will support critical flood control operations, promote groundwater recharge, and promote stormwater capture. Digging and allowing for vegetation regrowth within the basin footprint is necessary to maintain the flood protection capacity of the basin.

For the proposed project, OCPW would be authorized to permanently impact approximately 0.01 acre, and temporarily impact approximately 2.29 acres, of non-wetland waters of the U.S. during basin maintenance activities (Figure 3).

Proposed Mitigation- The proposed mitigation may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence (avoidance/minimization/compensation), as applied to the proposed project is summarized below:

Avoidance:

- The staging area will be in uplands on an existing paved roadway around the basin and well outside of waters of the U.S. There would be no staging in the invert of the basin.
- No parking of equipment would be allowed in the basin overnight.

Minimization:

- Maintenance activities would include only the minimum amount of work necessary to alleviate the maintenance need (i.e., flood control) and would not exceed the baseline elevation of the channel. Sediment removal would be monitored by the Office of the Orange County Surveyor to ensure the depth of the excavation is the same as the as-built plans.
- Proper Best Management Practices (BMPs) (i.e. straw wattles, secondary containment tarp, gravel bags) would be staged around heavy equipment not in use to minimize the potential of leaks and contaminants entering the basin. Impacts to downstream water quality would be avoided by having on-site BMP's (i.e., silt fence, straw wattles, secondary containment) in place prior to the start of project work to ensure that sediment from accumulated sediment removal would not impact the waterway.

Compensation:

- No compensatory mitigation has been proposed by the applicant. All impacts to waters of the U.S. would be temporary in nature.

### **Proposed Special Conditions**

The following list is comprised of proposed Permit Special Conditions, which are required of similar types of projects:

1. **Authorized Work:** Sediment removal activities authorized by this permit must be the minimum necessary to alleviate the maintenance need and shall not exceed the baseline elevation of Laguna Audubon Basin.
2. **Reporting:** Within 45 calendar days of completion of each maintenance event in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a post-project implementation memorandum including the following information:
  - A) Date(s) work within waters of the U.S. was initiated and completed;
  - B) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions taken or proposed to achieve compliance);
  - C) Color photographs (including map of photopoints) taken at the project site before and after construction for those aspects directly associated with permanent impacts to waters of the U.S. such that the extent of authorized fills can be verified;
  - D) One copy of "as built" drawings for the entire project. Electronic submittal (Adobe PDF format) is preferred. All sheets must be signed, dated, and to-scale. If submitting paper copies, sheets must be no larger than 11 x 17 inches; and
  - E) Signed Certification of Compliance (attached as part of this permit package).
3. **Endangered Species Act:** All maintenance activities shall occur outside the breeding season for coastal California gnatcatcher (*Poliophtila californica californica*; gnatcatcher) and least Bell's vireo (*Vireo bellii pusillus*; vireo) (February 15th through September 15th) to the maximum extent practicable. If maintenance activities are required during the breeding season, a qualified biologist shall conduct pre-construction bird surveys. If gnatcatchers or vireos are observed exhibiting nesting behaviors (scraping, territorial displays or calls, etc.) during the breeding season, no project-related activities shall occur within 300 feet of these areas until subsequent monitoring indicates gnatcatchers and vireos are no longer present. If gnatcatchers or vireos are not observed exhibiting nesting behaviors but are roosting within 300 feet of the project footprint, a qualified biologist shall be present on-site at all times during maintenance activities requiring mechanized equipment. The qualified biologist shall have the ability to halt maintenance activities. If gnatcatchers or vireos are located within 300 feet of the project site, the Permittee shall immediately notify the Corps Regulatory Division.
4. **Historic Properties:** Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff and Corps' Regulatory Staff within 24 hours (Danielle Storey at 213-452-3855; Eric Sweeney at 760-602-4837). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

For additional information please call Eric Sweeney of my staff at (760) 602-4837 or via e-mail at Eric.R.Sweeney@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



*Regulatory Program Goals:*

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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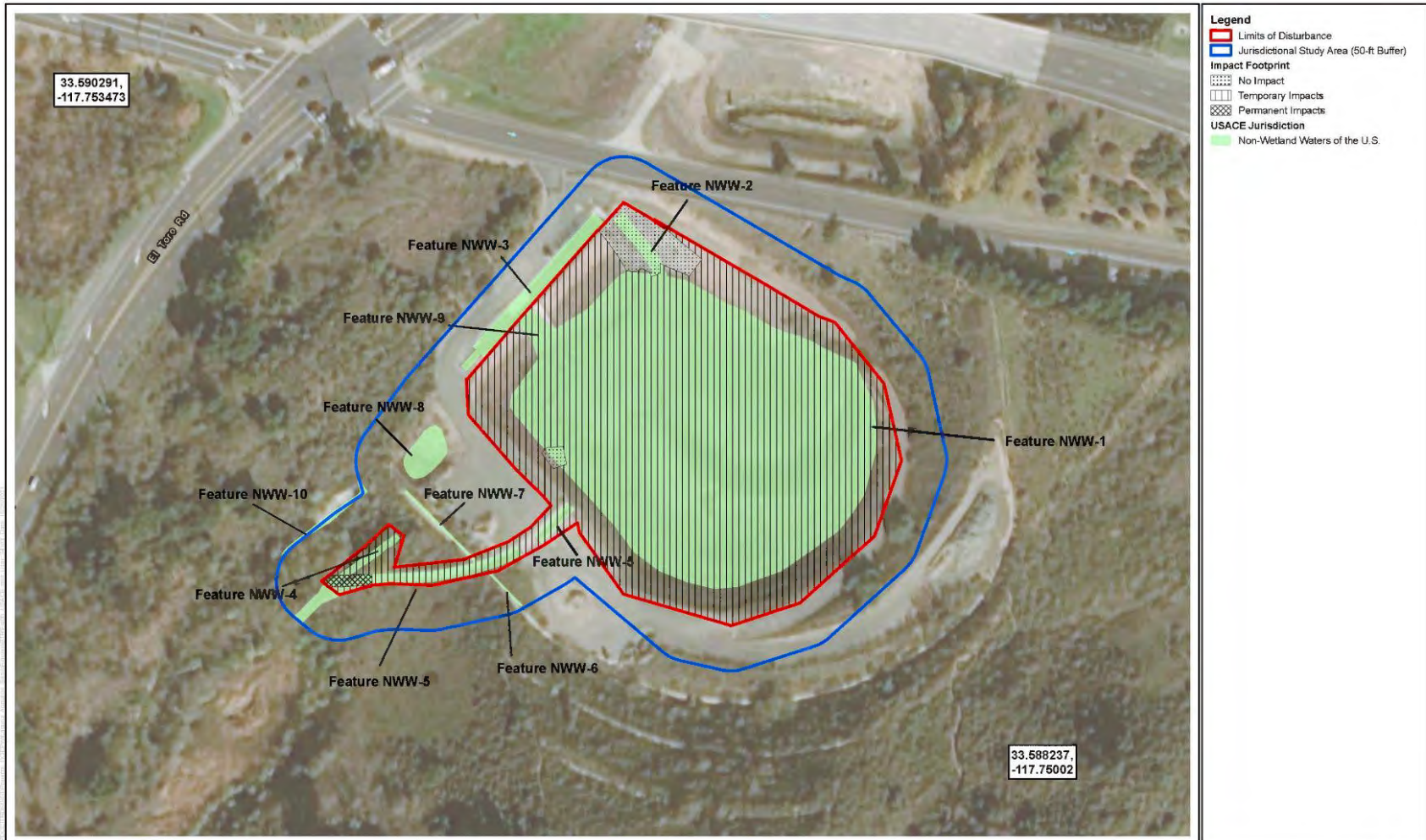
**Attachment 1**  
**Regional Vicinity**  
**Laguna Audubon Basin Maintenance Project**

**Figure 1:** Regional vicinity for the proposed project.





**Figure 2:** Proposed impacts relative to mapped vegetation within and adjacent to waters of the U.S.



**Figure 6**  
**USACE Jurisdictional Resources**  
**Laguna Audubon Basin Maintenance Project**

**Figure 3:** Proposed impacts to jurisdictional waters of the U.S. within the proposed project area.