PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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APPLICATION FOR PERMIT
Los Penasquitos Lagoon Maintenance Dredging and Beach Nourishment

Public Notice/Application No.: SPL-2018-00619-RRS
Project: Los Penasquitos Lagoon Maintenance Dredging and Beach Nourishment
Comment Period: April 24, 2019 through May 8, 2019
Project Manager: Robert Smith; (760) 602-4831; Robert.R.Smith@usace.army.mil

Applicant
Kimberly Weinstein
Department of Parks and Recreation (DPR)
4477 Pacific Highway
San Diego, CA 92110
(619) 688-3260

Contact
Mike Hastings
Los Penasquitos Lagoon Foundation
P.O. Box 940
Cardiff by the Sea, California 92007
(760) 271-0574

Location

The dredging and beach nourishment project is located at the river mouth of the Los Peñasquitos Lagoon in the Torrey Pines State Park and Beach and the beach nourishment is located just south of the river mouth along the beach adjacent to Pacific Coast Highway, in the City of San Diego, in San Diego County, CA. (at: 32.9643 W, -117.2652 N).

Activity

The Los Penasquitos Lagoon Foundation, per the attached drawings, proposes to excavate cobble and sand from the lagoon mouth and inlet channels, west of the railroad bridge to restore tidal flow to the lagoon and prevent the lagoon from becoming anoxic and a public health hazard. The Corps had previously permitted this work under a Standard Permit Nos. 2007-01134-RRS which expired on September 30, 2018 and now seeks to reauthorize a new ten year maintenance dredging permit with beach nourishment on the adjacent south beach to the lagoon mouth. The excavation will be accomplished mechanically using a front-loader, excavators and dump trucks to haul sediment when needed. Sediment spoils would be deposited on the southern bank of the excavated channel and washed out to the ocean when water is released from the lagoon or deposited on the beach, approximately 100-600 feet south of the lagoon mouth and along the median water line, and/or along the rip-rap west of Highway 101. Currently the lagoon is closed due to shoaling and recent flood events.

Three types of maintenance are proposed for this permit by the applicant: Emergency breaches, Emergency openings, and Maintenance openings. Note that the term emergency breach and openings were not per Corps processing regulations for emergencies but per local standards. Such emergency breaches and emergency openings have been conducted under the previous 404 Individual Permit, issued to the applicant in 2009. Maintenance openings have been included in this

application as they may be needed to facilitate and support future upstream restoration of salt marsh habitat currently in design by expanding tidal reach and mixing in the main southern tidal channel and ancillary channels in association with Los Penasquitos Lagoon Maintenance (see attached drawings). For more information see Additional Project Information section below.

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 and Section 10 of the Rivers and Harbors Act. Comments should be mailed to:

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
ATTN: Robert Smith
Carlsbad Field Office
5900 La Place Ct., Suite 100
Carlsbad, CA 92008

Alternatively, comments can be sent electronically to: Robert.R.Smith@usace.army.mil

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 and Grunion Protection- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board – San Diego (RWQCB). 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. The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act. For any proposed activity on Tribal land that is subject to Section 404 jurisdiction, the applicant will be required to obtain water quality certification from the U.S. Environmental Protection Agency. The applicant currently has a permit from the California Regional Water Quality Control Board for the proposed project under Section 401 of the Clean Water Act (07C-094) which expired in December 2018. As such, the applicant has submitted a new application to RWQCB for the project on May 31, 2018 and then April 15, 2019 for a new Section 401 water quality certification. Also note that the previous Section 401 water quality certification has grunion protection conditions to ensure that grunion and grunion spawning habitat is protected.

Also note that the Corps and EPA has ensured that the project complies with the Inland Testing Manual (ITM) to ensure that the sand to be dredged meets both grain size and chemical contaminant testing requirements. Previous testing of the dredged material (which is largely greater than 95% sandy material) has met ITM Tier 1 exemption requirements from Tier II testing as the sand is largely suitable marine sediments flowing into the lagoon from the Pacific Ocean or adjacent beaches under

high energy tidal estuarine flows. The Corps and EPA shall continue to require appropriate testing if required per the ITM.

Coastal Zone Management (CZMA)- The applicant has certified the proposed activity would comply with and would be conducted in a manner consistent with the approved State Coastal Zone Management Program. For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that prior to issuing the Corps authorization for the project, the applicant must obtain concurrence from the California Coastal Commission (CCC) the project is consistent with the State's Coastal Zone Management Plan. The District Engineer hereby requests the California Coastal Commission's concurrence or non-concurrence. This project is located in the coastal zone and preliminary review indicates it would affect coastal zone resources.

The Los Peñasquitos Lagoon Foundation, who will be conducting the project work on State Parks property, and previously obtained a 5-year permit from the CCC for inlet maintenance dredging and the placement of the sand on the adjacent beach on August 21, 2007 (CDP 6-07-021). This Coastal Development Permit has been amended twice with the most recent action by the CCC occurring on December 13, 2017 when they voted to approve the second amendment (CDP 6-07-021-A2). Future CZMA compliance will be required as needed from the CCC.

Essential Fish Habitat- Essential Fish Habitat (EFH), as defined by the Magnuson-Stevens Fishery Conservation and Management Act, occurs within the project area and EFH is affected by the proposed project. The Corps of Engineers preliminary determination indicates the proposed activity would adversely affect EFH. Therefore, consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) will be required subsequent to this notice. The Corps of Engineers preliminary determination indicates the proposed activity may adversely affect EFH. Pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Los Angeles District will be requesting future initiation of EFH consultation for the proposed project. This notice supplements the EFH consultation requirements of the Act. In order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), pursuant to 50 CFR 600.920(e)(3), I am providing, enclosing, or otherwise identifying the following information:

1. Description of the proposed action: See project description and other information on page 6 of this public notice.

2. Onsite inspection information: See baseline information on page 6 of this public notice.

3. Analysis of the potential adverse effects on EFH: Project will have beneficial restoration effects to the lagoon and the adjacent beaches at Torrey Pines. The Corps will be consulting with NMFS in reference to the EFH impacts to both Coastal Pelagic and Pacific Groundfish fishery management plans.

4. Proposed minimization, conservation, or mitigation measures: The project will use turbidity monitoring, grunion protection measures, Section 401 water quality protection measures, and will abide by the USFWS informal consultation with the Corps issued to the Corps in 2009 to avoid and minimize any impacts to the avian shorebird wildlife and aquatic resources which will affect the EFH resources.

5. Conclusions regarding effects of the proposed project on EFH: The project will have major restorative benefits to the lagoon and beach community by allowing for the lagoon to remain open and not present a major health and water quality issue to the public.

Therefore, it is my initial determination the proposed activity may adversely affect **but would not** have a substantial adverse impact on EFH or federally managed fisheries in California waters. The Corps will consult with the National Marine Fisheries under an EFH assessment to determine whether the proposed project may minimize impacts to EFH resources and weigh any short-term impacts against long-term benefits of the proposed activity. The proposed inlet work will benefit the lagoon's EFH resources through re-establishing tidal mixing in a system that is naturally marine dominant. The Corps final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NOAA Fisheries.

Cultural Resources- The latest version of the National Register of Historic Places has been consulted and there are not resources located within the project area. The proposed project and project area has been reviewed by the Associate State Archeologist. The archeologist determined that the project, as proposed, would not result in impacts to cultural resources. This review constitutes the extent of cultural resources investigations by the State Parks Department, and the Corps is otherwise unaware of the presence of such resources. The Corps shall complete its responsibilities under Section 106 of the National Historic Preservation Act.
The Corps has determined that due to previous disturbances from the original dredging and beach nourishment that there is No Potential to Cause Effects (§ 800.3(a)(1)) which means 'little likelihood that a historic property exists or may be affected' per Appendix C (3)(b)(1).

Endangered Species (ESA) - The Corps previously completed informal consultation under ESA with the U.S. Fish and Wildlife Service (USFWS) for project impacts to the federally listed as endangered California least tern (*Sterna antillarum browni; CLT)* and the western snowy plover (*Charadrius alexandrinus nivosus; WSP)* and received a letter concluding informal consultation from the USFWS dated January 13, 2009. The Corps will initiate consultation with USFWS for the permit renewal.

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. The basic project purpose for the proposed project is flood control and beach nourishment. The project is water dependent.

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 maintain

flood control, provide beach nourishment, and sustain ecological restoration via regular maintenance dredging and beach nourishment for the Los Penasquitos lagoon and the Torrey Pines State Park.

Additional Project Information

Baseline information- The existing saltwater and freshwater lagoon is a part of the California State Park system for Torrey Pines and the lagoon ocean inlet does close occasionally from sediments entering from the lagoon or the ocean currents. The need for the project is to maintain the lagoon in an open condition that allows tidal mixing, especially during summer months. Due to urban development, the Los Peñasquitos Lagoon has changed from an estuary that was marine dominant and fully tidal, to being a lagoon that is frequently closed to tidal action and subject to habitat conversion from salt marsh to brackish/freshwater. When the lagoon mouth is closed to tidal action, the water within the lagoon channels can become anoxic (i.e., stagnate with low levels of dissolved oxygen) leading to extensive fish and invertebrate kills.

Furthermore, daily dry weather inputs of freshwater run-off accumulate within the lagoon channels during extended mouth closures, lowering salinity that stress or kill marine organisms, facilitates the invasion of brackish marsh species and damages salt marsh vegetation as water levels rise above the channel banks. Lowered salinity levels of lagoon waters during prolonged inlet closures also facilitates breeding of the mosquito (*Culex tarsalis)*, a freshwater mosquito species that transmits brain encephalitis to human hosts within a 2-mile radius of the lagoon. Daily inputs of freshwater from the lagoon's urbanized tributaries during prolonged closures often raise surface levels of lagoon waters above channel banks, greatly expanding viable habitat for this mosquito species to breed as the marsh plain is inundated with hypo saline waters.

Project description- Three types of maintenance are proposed for this permit: Emergency breaches, Emergency openings, and Maintenance openings. Emergency breaches and Emergency openings have been conducted under the previous 404 Individual Permit and local standards, issued to the applicant in 2009. Maintenance openings have been included in this application as they may be needed to facilitate and support future upstream restoration of salt marsh habitat currently in design by expanding tidal reach and mixing in the main southern tidal channel and ancillary channels. All three types are shown on the attached drawing(s) and described below.

1. **Emergency Breaches –** Minor excavation of an outflow channel followed by mechanical breaching of the sand berm blocking tidal exchange between Los Peñasquitos Lagoon and the ocean. The outflow channel typically begins at Transect A1 and extends approximately 300 feet to Transect A3. Emergency breaches would occur when water quality meets environmental conditions established in the project's Coastal Development Permit (CDP) that establish thresholds for dissolved oxygen (DO) and salinity to avoid or minimize impacts to aquatic species. Emergency breaches may also occur to protect public safety from vector-borne illness that includes West Nile virus. Impounded waters during an inlet closure at Los Peñasquitos Lagoon provide ideal breeding habitat for mosquitos (*Culex (C.) tarsalis)* due in most part to daily inputs of dry weather flows of freshwater that enter the lagoon from its urbanized watershed. These dry weather flows lower salinity levels of lagoon waters and expand breeding habitat for *C. tarsalis* from 77 acres to over 400 acres within Los Peñasquitos Lagoon as water levels continue to rise and overtop channel banks. Emergency breaches typically occur when ocean conditions are not favorable for a larger opening, typically during the winter months (December – February) or during summer months when beach use by the public is most active. Excavated material during Emergency breaches is estimated to average between 2,000 – 5,000 cubic yards (cy) with material side-spoiled near the inlet.

2. **Emergency Openings** – Minor excavation of an outflow channel followed by mechanical breaching of the sand berm blocking tidal exchange between Los Peñasquitos Lagoon and the ocean. Following the breach of the inlet, extension of the outflow channel by approximately 1,000 feet from Transect A3 toward Transect E2 to improve tidal mixing and outflow conveyance in the lagoon's eastern channels. This would occur when water quality meets environmental conditions established in the project's CDP that establish thresholds for DO and salinity to avoid or minimize impacts to aquatic species. Emergency opening may also occur to protect public safety from vector-borne illness that includes West Nile virus. Impounded waters during an inlet closure at Los Peñasquitos Lagoon provide ideal breeding habitat for *Culex tarsalis* due in most part to daily inputs of dry weather flows of freshwater that enter the lagoon from its urbanized watershed. These dry weather flows lower salinity levels of lagoon waters and expand breeding habitat for *C. tarsalis* from 77 acres to over 400 acres within Los Peñasquitos Lagoon as water levels continue to rise and overtop channel banks. Emergency openings typically occur during the end of winter/beginning of spring (February – May) to avoid closures than can occur when inlet work is performed during winter months. During typical years, the inlet remains open throughout summer and fall months when inlet work is performed during the previous spring. Excavated material during emergency openings is estimated to average between 10,000 – 30,000 cubic yards (cy) with material hauled south of the inlet for beach disposal that bypasses redistribution of sediment within the inlet. Emergency openings are more beneficial than emergency breaches but should only be performed when there is minimal risk of an impending mouth closure or when it is determined necessary for the health of the lagoon and/or to protect public health from vector-borne illness.

3. **Maintenance Openings** – Incorporate the same methods as described for emergency openings (i.e., excavating the channel toward Transect E2), plus an additional channel from Transect A3 toward Transect E1 to improve tidal mixing east of Transect E1 needed to facilitate and support upstream salt marsh restoration currently being designed. Excavated material would be consistent with grain type/size allowed for beach disposal and would average between 10,000 – 40,000 cy with material hauled south of the inlet for beach disposal that bypasses redistribution of sediment within the inlet.

Also note that the following Table 1 shows the history of the permitted work that was done to keep the lagoon open from 2008 to present with the resultant maintenance dredging history.

Table 1 Los Peñasquitos Lagoon Mouth Maintenance Dredging History

4. Date of Inlet Maintenance [1]	Type of Inlet Maintenance	Cubic Yards Removed Annually	Total Cubic Yards Removed to Date
4/30/08 – 5/09/08[2]	Emergency Opening	32,400	32,400
5/16/09 – 5/26/09 [2]	Emergency Opening	25,674	58,074
5/03/10 – 5/08/10 [2]	Emergency Opening	24,837	82,911
5/06/11 – 5/13/11 [2]	Emergency Opening	26,085	108,996
5/14/12 – 5/18/12 [2]	Emergency Opening	14,637	123,633

5/13/13 – 5/17/13 [3]	Emergency Breach	5,000	128,633
6/12/13 – 6/21/13 [3]	Emergency Opening	35,000	163,633
4/7/14 – 4/11/14 [3]	Emergency Opening	30,180	193,813
4/21/14 – 4/25/14 [3]	Emergency Opening	21,184	214,997
5/19/14 – 5/26/14 [3]	Emergency Breach	4,170	219,167
4/22/15 – 5/1/15 [4]	Emergency Opening	25,575	244,742
3/3/16 – 3/4/16 [5]	Emergency Breach	2,500	247,242
4/1/16 [5]	Emergency Breach	2,500	249,742
5/18/16 – 5/27/16 [5]	Emergency Opening	30,690	280,432
6/9/16 – 6/10/16 [5]	Emergency Breach	3,500	283,932
8/25/16 – 9/2/16 [5]	Emergency Opening	27,300	311,232
11/14/16 – 11/18/16 [5]	Emergency Breach	10,000	321,232
4/13/17 – 4/21/17 [6]	Emergency Opening	22,700	343,932
5/4/18 – 5/14/18 [7]	Emergency Opening	34,534	378,466

[1] No work was performed over the weekend. Also note that the emergency breach and openings were not per Corps processing regulations for emergencies.

[2] Amounts representative of inlet work prior to Regional Beach Sand Project (RBSP) II that placed over 300,000 cubic yards of sand on beaches just to the north of the lagoon inlet in Spring 2012.

[3] Frequency of efforts and total volume of material removed augmented by RBSP II

[4] Lower volume of material removed in 2015 due most likely to lack of substantial winter swell.

[5] Frequency of efforts and total volume of material removed augmented by RBSP II. El Niño Event of 2016 also played a contributing factor with regard to mobilization of sand along the coast and deposition within the inlet area.

[6] Lower volume of material removed due most likely to large flood event in January 2017 that scoured lagoon channels and moved the deep-water point to just east of lower bridge at Highway 101.

[7] We had additional funding for inlet work and elected to work a couple of more days to “catch up” on previous years where we could have removed more sand from the inlet but ran out of funding.

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 project will restore tidal flushing and tidal flows to the lagoon which is largely a restoration action that will avoid impacts to salt water wetlands and occupied habitat by avoiding anoxic conditions from lagoon river mouth closures which could have substantial impacts to both public health and safety thru vector water-borne diseases and impacts to wetlands and wildlife in the lagoon area if the lagoon no longer has tidal flushing and becomes anoxic.

Minimization: Minimization measures include turbidity monitoring and compliance with the USFWS ESA informal consultation letter which outlines ESA measures and water quality conditions for turbidity and grunion protection monitoring and measures. Also once the Corps receives the Section 401 water quality certification then additional water quality measures may be reviewed and implemented.

Compensation: The project shall provide for a ten year permit to allow for maintenance dredging and beach restoration for avian habitats on an as needed basis which shall have substantial values to salt marsh wetlands in the lagoon thru continued tidal flushing and no mitigation for the dredging and disposal of sandy lagoon and beach areas is proposed.

Proposed Special Conditions

For additional information please call Robert Smith of my staff at (760) 602-4831 or via e-mail at Robert.R.Smith@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.

DEPARTMENT OF THE ARMY
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17. Directions to the Site

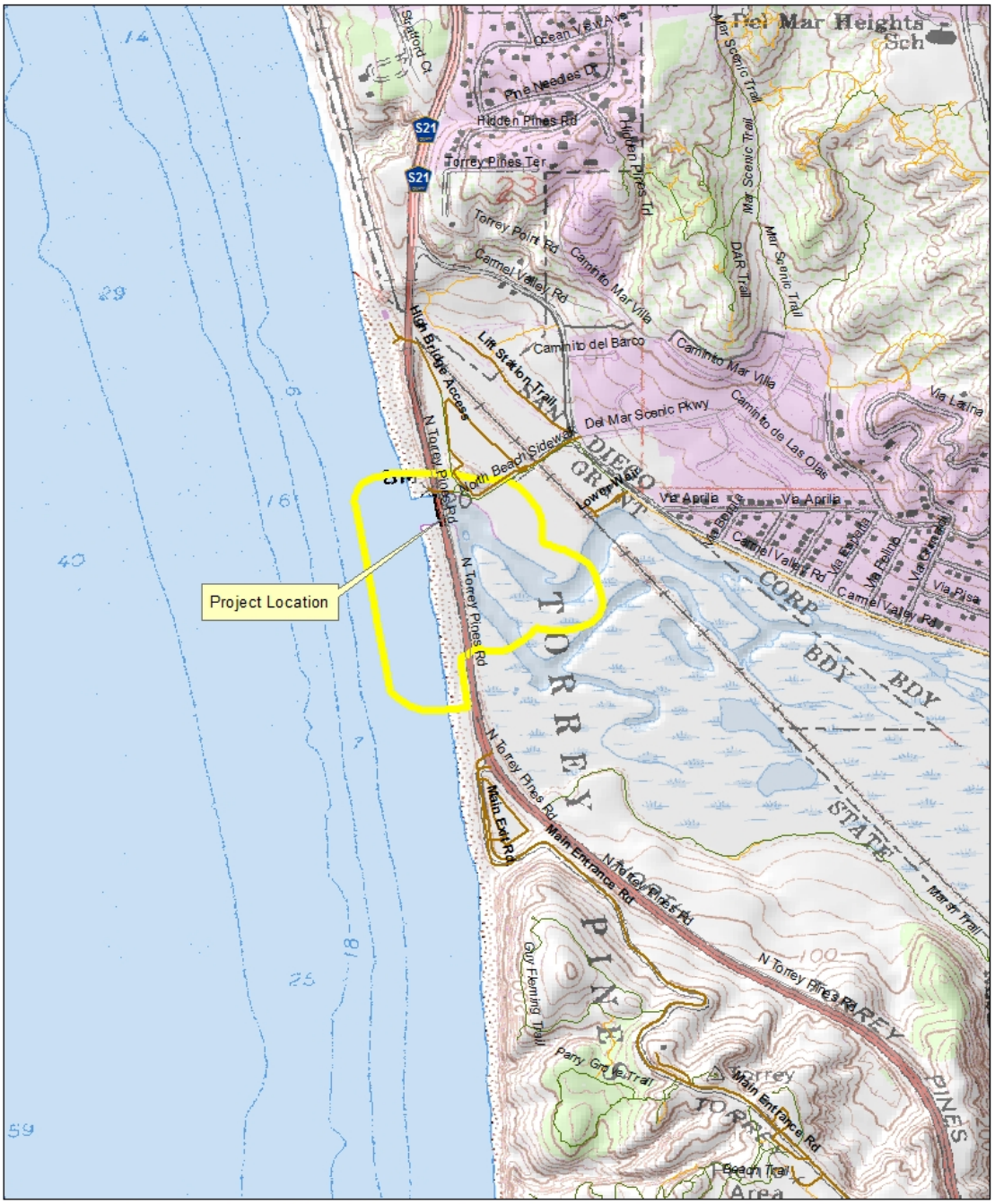

Figure 1. Project Location USGS Del Mar Quadrangle
Los Penasquitos Lagoon Inlet Project
Torrey Pines State Natural Reserve

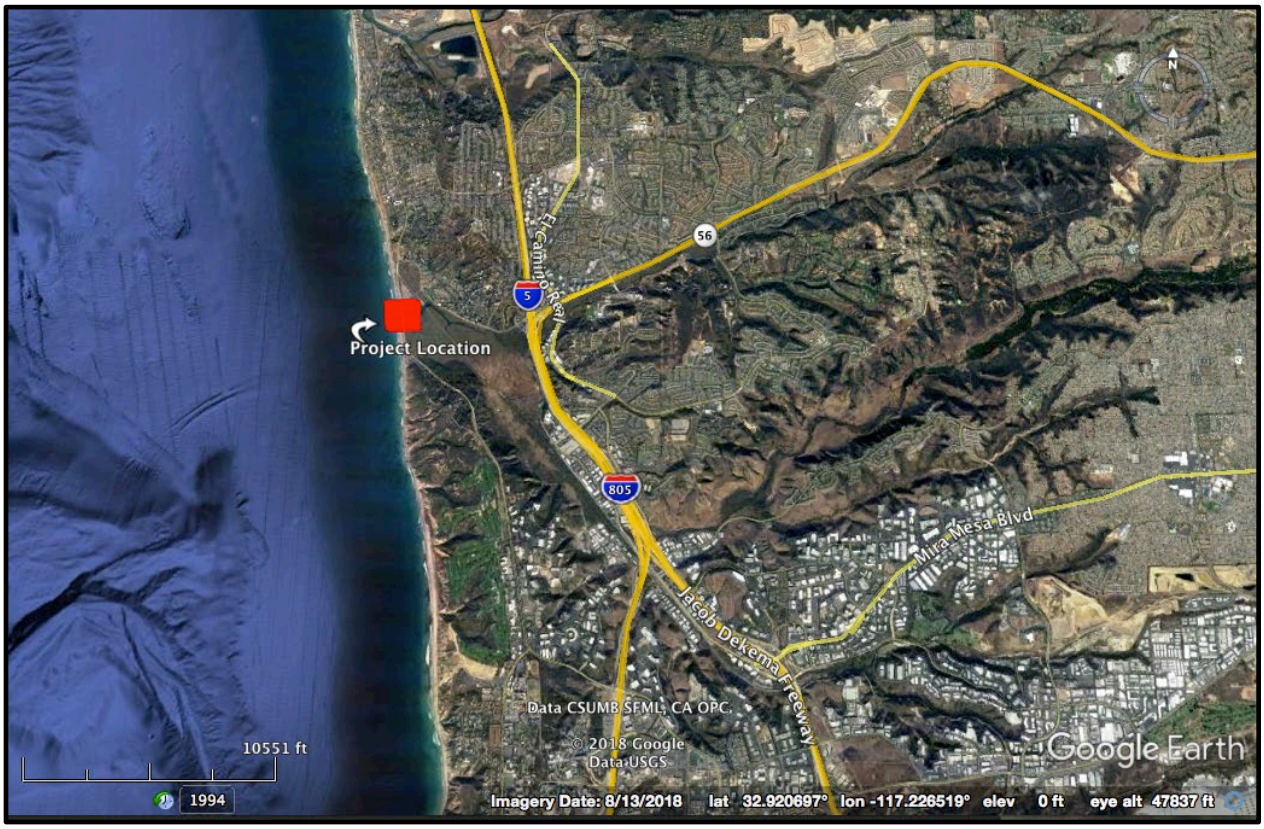

Figure 2. Project Vicinity Map – Los Peñasquitos Lagoon Mouth Maintenance Project (Graphic adapted from Google Earth by LPLF).

18. Nature of Activity

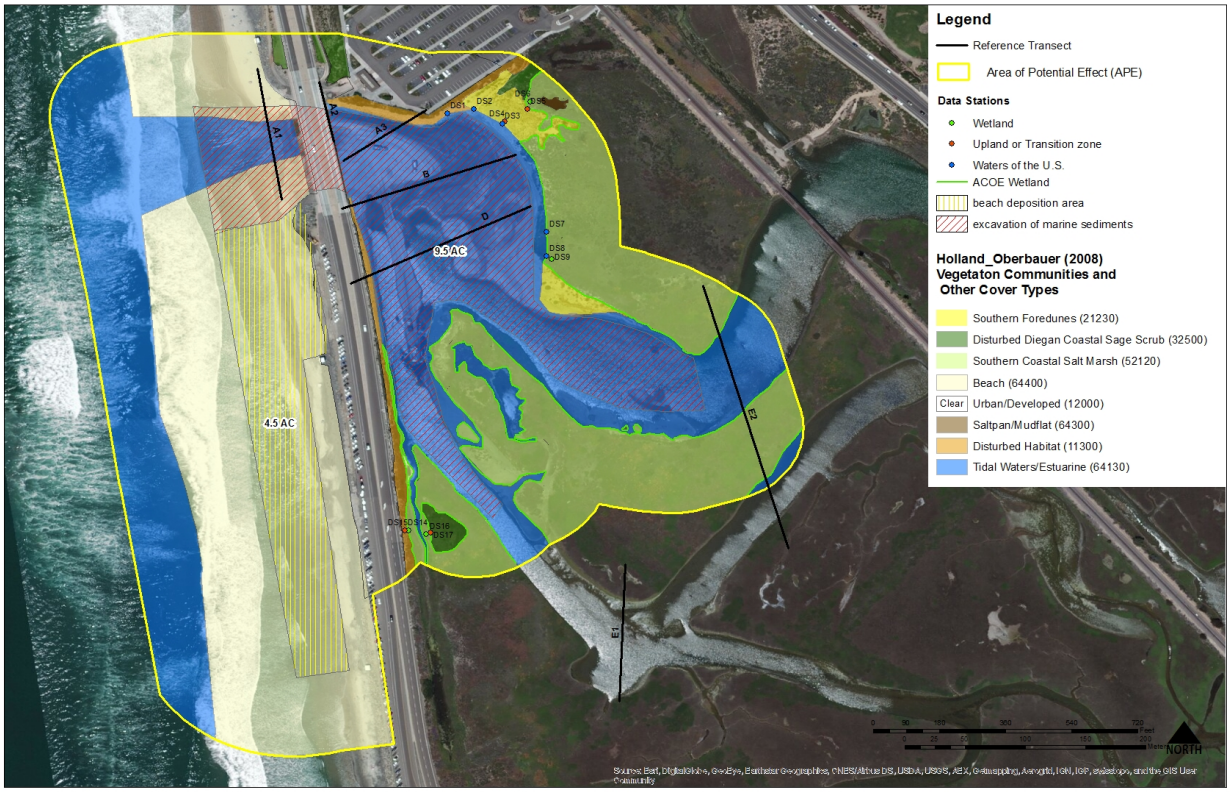

Figure 3. Project Area for Emergency Inlet Opening at Los Peñasquitos Lagoon. (Graphic by CA State Parks)

Figure 4. Equipment Staging Area and Access Point to the Inlet Area at Los Peñasquitos Lagoon. (Graphic adapted from Google Earth by LPLF).