

**DEPARTMENT OF THE ARMY
REGIONAL GENERAL PERMIT NUMBER 88**

Permittee: Orange County (OC) Parks

Project Name: RGP 88 – OC Parks Ocean Outlets Maintenance Program
(Poche Beach Outlet and Capistrano Beach Outlet No. 1)

Permit Number: SPL-2010-00849

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 U.S. Army Corps of Engineers (Corps) 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 Location: The project consists of maintenance at two ocean outlets: Prima Deshecha Channel (Poche Beach Outlet) and Capistrano Beach Outlet No. 1 (CB Outlet), in the city of Dana Point, Orange County, California (Figure 1). Poche Beach Outlet is located southeast of the intersection of Pacific Coast Highway and Camino Capistrano. Poche Beach Outlet is bordered to the north by railroad tracks and the Pacific Coast Highway, to the south by open beach and the Pacific Ocean, to the east by open beach and a recreational facility, and to the west by single-family residences and open beach. CB Outlet is located approximately 750 feet southeast of the intersection of Pacific Coast Highway and Palisades Drive. CB Outlet is bordered to the north by a parking lot, Pacific Coast Highway and a residential area on coastal bluffs, to the south by open beach and the Pacific Ocean, to the east by open beach, a parking lot and a residential area, and to the west by open beach and the Pacific Ocean.

Outlet	Latitude	Longitude
Poche Beach Outlet	33.441091	-117.645131
Capistrano Beach Outlet No. 1	33.453886	-117.666480

Project Description: The proposed project would consist of recurring maintenance activities at Poche Beach Outlet and Capistrano Beach Outlet No. 1 (CB Outlet). The project would include semi-annual outlet maintenance and as-needed minor maintenance activities. The outlets would be subject to inspections by OC Parks to determine when maintenance activities are necessary.

- 1. Semi-Annual Maintenance:** Semi-annual maintenance activities would typically occur before the wet season (autumn) and before the summer recreation season (spring). These maintenance activities would include excavation of sediment deposits at the end of the outlets, discharge of excavated sediment onto the beach above the high tide line, and grading to prepare the adjacent beach area for recreational use.

Semi-annual maintenance at Poche Beach Outlet would include grading of an approximately 0.179-acre area and excavation of approximately 960 (+/- 192) cubic yards of sediment. The discharge of excavated sediment and related earthwork would occur on the beach adjacent to Poche Beach Outlet in an approximately 0.576 acre area above the high tide line.

Autumn semi-annual maintenance at CB Outlet would include grading of an approximately 0.103 acre area and excavation of approximately 486 (+/- 97) cubic yards of sediment. The discharge of excavated sediment and related earthwork would occur on the beach adjacent to CB Outlet in an approximately 0.230 acre area above the high tide line. Spring semi-annual maintenance would back-fill CB Outlet to improve beach-related recreational opportunities.

A Pre-Construction Notification (PCN) to the Corps Regulatory Division would be required prior to each semi-annual maintenance event at the outlets. A Notice to Proceed from the Corps Regulatory Division would be required prior to commencement of project-related activities.

- 2. Minor, As-Needed Maintenance:** Minor, as-needed maintenance would include year-round berm-breaching activities for both Poche Beach Outlet and CB Outlet. These activities would re-establish channel flow when ponding occurs and beach access impairment is imminent. Maintenance activities would include excavation of a notch in the naturally forming sand berms at the downstream end of each outlet and mechanized grading to re-contour outlet slopes. OC Parks would periodically inspect the outlets and determine when maintenance is needed. At Poche Beach Outlet, maintenance would involve the removal of the sand berm to restore surface connectivity to the ocean. Work would be limited to the minimal amount necessary to achieve the overall project purpose.

A PCN to the Corps Regulatory Division would be required prior to commencement of minor, as-needed maintenance activities if nesting birds are found within 500 feet of the project sites during nesting bird surveys. As described above, these surveys would be required prior to commencement of any maintenance activities conducted

during nesting bird season (March through September). If nesting birds are found, the Corps Regulatory Division would coordinate with the USFWS prior to making a final determination regarding the proposed activity. In this instance, a Notice to Proceed from the Corps Regulatory Division would be required prior to commencement of project-related activities.

Permit Conditions:

General Conditions:

1. The time limit for completing the authorized activity ends on **June 24, 2029**. 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. If 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. For your convenience, a copy of the 401 certification is attached (Attachment A).
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. **Water Quality Certification:** The Permittee shall comply with the terms and conditions of the Clean Water Act Section 401 Water Quality Certification (WQC) (R9-2017-0087), dated October 18, 2017 and amended August 29, 2022 (Enclosure 1). This WQC expires on October 18, 2027. No work shall occur after October 18, 2027 until renewal of the WQC and written authorization is issued by the Corps Regulatory Division. Additionally, no work shall be authorized that exceeds the scope of activities authorized under WQC R9-2017-0087 until written authorization is issued by the Corps Regulatory Division.
2. **Authorized Work:** Any activities authorized by this permit must be the minimum necessary to alleviate the maintenance need and should not exceed the design specifications of the ocean outlets.
 - a. The permittee shall submit a Pre-Construction Notification (PCN) to the Corps Regulatory Division at least ten days prior to conducting semi-annual maintenance activities at each outlet. This PCN shall include the name, address, and telephone number of the permittee's designated point-of-contact, the location of the proposed maintenance activities in detail, including an identification of the affected waterbodies, a description of the project area's existing conditions, including any sensitive resources that may be affected and anticipated impacts resulting from the proposed work, and a proposed work schedule. The permittee may proceed with the proposed maintenance activities if no response is received from the Corps Regulatory Division within this ten-day period, unless nesting California least tern (*Sterna antillarum browni*) or western snowy plover (*Charadrius alexandrinus nivosus*) are found within 500 feet of the project footprint (see Special Condition 3 below). If the Corps Regulatory Division determines the proposed maintenance activities would be impermissible under this permit, the permittee would need to apply for separate authorization.
 - b. Minor, as-needed maintenance activities are limited to one event every two weeks at each outlet for the duration of this permit. In the event that more frequent maintenance activities are needed, the permittee must submit a PCN to the Corps Regulatory Division at least ten days prior to the proposed construction start date. The permittee may proceed with construction if no response is received from the Corps Regulatory Division within this ten-day period, unless nesting California least tern or western snowy plover are found within 500 feet of the project footprint (see Special Condition 3 below). If the Corps Regulatory Division determines the proposed maintenance activities would be impermissible under this permit, the permittee would need to apply for separate authorization.
3. **Endangered Species:** This Corps permit does not authorize you to take any threatened or endangered species, in particular, the California least tern and the

western snowy plover, or adversely modify their 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). Your authorization under this Corps permit is conditional upon your compliance with all of the required avoidance and minimization measures of 2024-0083076-S7-I-001-OR (Carlsbad Fish and Wildlife Office, June 18, 2024), which are incorporated by reference in this permit (Enclosure 2). Failure to comply with the required avoidance and minimization measures would constitute non-compliance with your Corps permit.

4. **Essential Fish Habitat:** The permittee shall conduct all maintenance activities outside of the California grunion (*Leuresthes tenuis*) spawning season (March 1st through September 30th) to the maximum extent practicable. If maintenance activities are required during the spawning season, pre-project surveys for grunion activity shall be conducted by a qualified biologist in accordance with the protocols described in the Grunion Protection Plan for Necessary Outlet Maintenance During the Grunion Spawning Season of March through September Report (Chambers Group, Inc., September 7, 2006). Impacts to grunion spawning areas shall be avoided or minimized in accordance with the protocols described in this report.
5. **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' Regulatory Project Manager (Eric Sweeney at 213-392-0431) and the Corps' Archeology Staff within 24 hours (Daniel Grijalva at 760-520-4736). 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.
6. **Access to the Site:** You must allow representatives from this office and other state and Federal resource agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.
7. **Best Management Practices (BMPs):** No debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, from construction shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the United States. Therefore, the permittee shall employ all

standard BMPs to ensure that toxic materials, silt, debris, or excessive erosion do not enter waters of the United States during project construction.

8. **Siltation Controls:** When performing any excavation activity in or near the outlets, all excavated material shall be distributed onto the adjacent beach above the mean high water mark within the boundaries identified on Figures 2 – 4. Appropriate BMPs shall be implemented to minimize turbidity during construction.
9. **Equipment:** Vehicles shall not be driven or equipment operated in waters of the United States on-site, except as necessary to complete the proposed project. The permittee shall ensure that all vehicle maintenance, staging, storage, and dispensing of fuel occur in designated upland areas, located in such a manner as to prevent any runoff from entering waters of the United States.
10. **Suitable Material:** The permittee shall discharge only clean materials suitable for use in the oceanic environment. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
11. **Aquatic Life Movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area.
12. **Spawning Areas:** Discharges into spawning areas during spawning season must be avoided to the maximum extent practicable. Seasonal restrictions are discussed above in Special Condition 3.
13. **Waterfowl Breeding Areas:** Discharges into breeding areas for migratory waterfowl shall be avoided to the maximum extent practicable.
14. **Navigation:** The permitted activity shall not interfere with the right of the public to free navigation on all navigable waters of the United States. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, cessation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps Regulatory Division, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No

claim shall be made against the United States on account of any such removal or alteration.

15. Reports: The permittee shall submit an annual written report to this office by May 1st of each year this RGP is valid. The report shall summarize all maintenance activities and include written documentation and photographs of all work performed under this RGP during the prior year. Any data collected, including water quality samples and terrestrial or aquatic sensitive species surveys, shall be included in the annual report. **Providing this report is mandatory.** These reports enable us to track the use of this RGP to verify that the minimal effects determination is being met, as required by section 404(e) of the Clean Water Act. Failure to provide timely annual reports would constitute non-compliance with this Special Condition and would be considered a violation (33 C.F.R. §326.4(d)). Furthermore, failure to provide these annual reports will jeopardize the possibility of re-authorizing this permit when it expires. At a minimum, the report shall include the following information:

- a. The name, address, and telephone number of:
 - i. The permittee's point-of-contact
 - ii. The permittee's agent (if appropriate)
- b. Full description of the activities conducted during the previous year, including:
 - i. Description of each maintenance event for each ocean outlet, including any deviations from the project description.
 - ii. Size and description of the project area (include maps or drawings showing the area and lineal extent of the project and pre- and post-construction photographs).
 - iii. Information on the receiving waterbodies impacted including:
 - a) The name of the waterbodies;
 - b) The type of receiving waterbodies (e.g. river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, wetland type, etc.);
 - c) Temporary/permanent impact(s) in acres/cubic yards/linear feet for each maintenance event;
 - d) Other mitigation steps (to avoid or minimize impacts); and
 - e) Compensatory mitigation in acres/cubic yards/linear feet.
 - iv. Information on federally listed or proposed endangered species, designated or proposed critical habitat, Essential Fish Habitat, and federally managed fish species (notification must be provided to USFWS and/or the National Marine Fisheries Service, as appropriate) including:
 - a) Temporary/permanent adverse impacts;
 - b) Mitigation steps (to avoid, minimize); and

c) Compensatory mitigation.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:
 - (X) Section 10 of the Rivers and Harbors 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 (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. Re-evaluation of Permit Decision. This office may re-evaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a re-evaluation 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 re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. §325.7 or enforcement procedures such as those contained in 33 C.F.R. §§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 C.F.R. §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 re-evaluation 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 MAKANA NOVA, OC PARKS

06-24-2024
DATE

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

James E. Mace
Lead, Orange & Riverside Counties
South Coast Branch
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



Legend

★ Project Location



0 0.5 1 2
Miles

Figure 1
Project Vicinity Map



Legend

- Disposal Area
- Excavation/Dredging Area
- Work Area
- High Tide Line
- Mean High Water Line
- USACE/RWQCB Jurisdiction
- Jurisdiction 300-foot Buffer
- Photo Location (w/ direction)

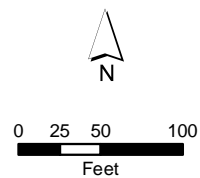


Figure 2
Poche Beach Outlet



Legend

- Disposal Area
- Excavation/Dredging Area
- Work Area
- High Tide Line
- Mean High Water Line
- USACE/RWQCB Jurisdiction
- Jurisdiction 300-foot Buffer
- Photo Location (w/ direction)

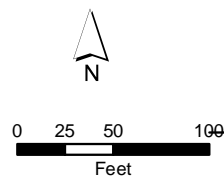


Figure 3
Capistrano Beach Outlet

Enclosure 1

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION

2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone (619) 516-1990 • Fax (619) 516-1994
<http://www.waterboards.ca.gov/sandiego/>

Amendment No. 1 to Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials

PROJECT: OUTLET MAINTENANCE PROGRAM PROJECT
Certification Number R9-2017-0087
WDID: 9 000003176

APPLICANT: ORANGE COUNTY PARKS
13042 Old Myford Road
Irvine, CA 92602

CIWQS Tracking Numbers: Regulatory Measure ID No.: 423328
Place Identification No. (PIN): 835350
Party Identification No.: 551427
Person Identification No.: 524862

On October 18, 2017, Clean Water Act Section 401 Water Quality Certification No. R9-2017-0087 (Certification) was issued to the Orange County Parks (Applicant) for the Outlet Maintenance Program Project (Project).

By email dated June 23, 2022, Mark Estoque, on behalf of the Applicant, requested the Certification be amended to extend the expiration date of the Certification an additional 5 years until October 18, 2027.

Based on the Applicant's request, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) is amending the Certification to extend the expiration date of the Certification to October 18, 2027. Except as modified or superseded by the Certification modifications set forth below, all of the findings, provisions and other requirements of the Certification remain in full force and effect. The following changes are made to the Certification and are shown in underline/strikeout format to indicate added and removed language, respectively:

Page 5, Section II. GENERAL CONDITIONS: Condition A is modified as follows:

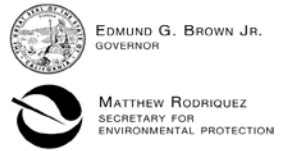
~~**Term of Certification.** Water Quality Certification No. R9-2017-0087 (Certification) shall expire upon a) the expiration or retraction of the Clean Water Act section 404 (33 USC Title 33, section 1344) permit issued by the U.S. Army Corps of Engineers for this Project, or b) five (5) years from the date of issuance of this Certification, whichever occurs first.~~ **Term of Certification.** This Certification is valid until October 18, 2027.

Notification: Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with the California Code of Regulations, title 23, sections 3867 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Certification Amendment. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:
https://www.waterboards.ca.gov/public_notices/petitions/water_quality/ or will be provided upon request.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Amendment No. 1 to Certification No. R9-2017-0087 issued on August 29, 2022.

David W. Gibson
Executive Officer
San Diego Water Board

August 29, 2022
Date



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Diego Regional Water Quality Control Board

October 18, 2017

Certified Mail – Return Receipt Requested

Article Number: 7016 2140 0000 3904 3093

Mr. Mark Estoque
Orange County Parks
13042 Old Myford Road
Irvine, CA 92602

In reply/refer to:
R9-2017-0087: 835350:dbradford

**Subject: Clean Water Act Section 401 Water Quality Certification No. R9-2017-0087
for the Outlet Maintenance Program Project**

Mr. Estoque:

Enclosed find Clean Water Act Section 401 Water Quality Certification No. R9-2017-0087 (Certification) issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) in response to the application submitted by Orange County Parks for the Outlet Maintenance Program Project (Project). A description of the Project and Project location can be found in the Certification and site maps which are included as attachments to the Certification.

Orange County Parks is enrolled under State Water Resources Control Board Order No. 2003-017-DWQ as a condition of the Certification and is required to implement and comply with all terms and conditions of the Certification in order to ensure that water quality standards are met for the protection of wetlands and other aquatic resources. Failure to comply with this Certification may subject Orange County Parks to enforcement actions by the San Diego Water Board including administrative enforcement orders requiring Orange County Parks to cease and desist from violations or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

Please submit all reports and information required under this Certification in electronic format via e-mail to SanDiego@waterboards.ca.gov. Documents over 50 megabytes will not be accepted via e-mail and must be placed on a disc and delivered to the San Diego Water Board, 2375 Northside Drive, San Diego, CA 92108. Each electronic document must be submitted as a single file, in Portable Document Format (PDF), and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Certification No. R9-2017-0087:835350:dbradford.

For questions or comments regarding the Certification, please contact Darren Bradford by telephone at (619) 521-3356 or by email at darren.bradford@waterboards.ca.gov.

Respectfully,



DAVID W. GIBSON
Executive Officer

Enclosure:

Clean Water Act Section 401 Water Quality Certification No. R9-2017-0087 for the Outlet Maintenance Program Project

DWG:jgs:eb:dlb

cc:

Chambers Group, Inc.
Lisa Louie
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Branch
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U.S. EPA
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State Water Resources Control Board,
Division of Water Quality
401 Water Quality Certification and
Wetlands Unit
Stateboard401@waterboards.ca.gov

Mr. Eric Becker
San Diego Water Board
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Mr. David Barker
San Diego Water Board
David.Barker@waterboards.ca.gov

Tech Staff Information	
Certification No.	R9-2017-0087
Party ID	551427
Reg. Meas. ID	413328
Place ID	835350
Person ID	524862
WDID	9000003176

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION

2375 Northside Drive, Suite.100, San Diego, CA 92108
Phone (619) 516-1990 • Fax (619) 516-1994
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Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials

PROJECT: **Outlet Maintenance Program Project**
 Certification Number R9-2017-0087
 WDID: 9000003176

Reg. Meas. ID: 413328
Place ID: 835350
Party ID: 551427
Person ID: 524862

APPLICANT: **Orange County Parks**
 13042 Old Myford Road
 Irvine, CA 92602

ACTION:

<input type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input checked="" type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004-DWQ
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017-DWQ	

PROJECT DESCRIPTION

An application dated May 22, 2017 was submitted by Orange County Parks (hereinafter Applicant), for Water Quality Certification pursuant to section 401 of the Clean Water Act (United States Code (USC) Title 33, section 1341) for the proposed Outlet Maintenance Program Project (Project). The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) deemed the application to be complete on August 11, 2017. The Applicant proposes to discharge dredged or fill material to waters of the United States and/or State associated with construction activity at the Project site. The Applicant has also applied for a Clean Water Act section 404 permit from the United States Army Corps of Engineers for the Project (USACE File No. SPL-2010-00849-SME).

The Project is located at multiple sites in Orange County, California. The Project center readings of each location are as follows:

- Aliso Creek Ocean Outlet (AC Outlet) at latitude 33.51056 and longitude -117.75194;
- Poche County Beach Outlet (PB Outlet) at latitude 33.44109 and longitude -117.64513;
- Capistrano Beach Outlet No.1 (CB Outlet) at latitude 33.45388 and longitude -117.66648.

The Applicant has paid all required application fees for this Certification in the amount of \$7,450.00. On an annual basis, the Applicant shall also pay all active discharge fees and post discharge monitoring fees, as appropriate¹. On August 16, 2017, the San Diego Water Board provided public notice of the Project application pursuant to California Code of Regulations, title 23, section 3858 by posting information describing the Project on the San Diego Water Board's web site and providing a period of twenty-one days for public review and comment. No comments were received.

The Applicant proposes to conduct reoccurring maintenance activities in non-wetland, tidal waters of the United States and/or State at the AC Outlet, PB Outlet, and CB Outlet. The outlet maintenance regime includes semi-annual outlet maintenance events as well as minor weekly, biweekly, or monthly events, as needed. Impacts will occur to unvegetated sandy beach. Activities at each location will occur as follows:

AC Outlet

Semi-annual maintenance entails grading and excavation of approximately 37,000 cubic yards of sediment deposited in the channel outlet (approximately 200 linear feet) to increase hydraulic capacity in the area parallel to the rock revetment located on the south side of the outlet. The semi-annual maintenance will impact approximately 0.42-acre at the mouth of the creek and disposal of excavated sand and related earthwork will occur on the adjacent beach in an approximately 0.3-acre area above the high tide line, but could be within the cut-off meandering stream course after the straightened outlet is established. Boulders and rock riprap will be retrieved and replaced during these maintenance events. Excavation and grading activities will be conducted using a bulldozer or front loader.

PB Outlet

Semi-annual maintenance activities will typically occur in the fall before the wet season and in the spring before the summer recreation season. These maintenance activities will include excavation of sediment deposits at the end of the outlets, discharge of excavated sediment onto the adjacent beached above the high tide line, and grading to prepare the adjacent beach areas for recreational use. Semi-annual maintenance at the PB Outlet would include grading of an approximately 0.179-acre area and excavation of approximately 960 (+/- 192) cubic yards of sediment deposited within the PB Outlet. The discharge of excavated sediment and related earthwork would occur on the beach adjacent to the PB Outlet in an approximately 0.576-acre area above the high tide line.

¹ The Applicant shall pay an annual active discharge fee each fiscal year or portion of a fiscal year during which discharges occur until the regional water board or the State Water Resources Control Board (State Water Board) issues a Notice of Completion of Discharges Letter to the discharger. Dischargers shall pay an annual post-discharge monitoring fee each fiscal year or portion of a fiscal year commencing with the first fiscal year following the fiscal year in which the regional water board or State Water Board issued a Notice of Completion of Discharges Letter to the discharger, but continued water quality monitoring or compensatory mitigation monitoring is required. Dischargers shall pay the annual post-discharge monitoring fee each fiscal year until the regional water board or the State Water Board issues a Notice of Project Complete Letter to the discharger. Additional information regarding fees can be found electronically at the following location:

http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/dredgefillcalculator.xlsx

CB Outlet

Semi-annual maintenance activities will typically occur in the fall before the wet season and in the spring before the summer recreation season. These maintenance activities will include excavation of sediment deposits at the end of the outlets, discharge of excavated sediment onto the adjacent beach areas above the high tide line, grading to prepare the adjacent beach areas for recreational use, and backfilling of the CB Outlet to prevent ponding. Fall semi-annual maintenance at the CB Outlet will include grading of an approximately 0.103-acre area and excavation of approximately 486 (+/- 97) cubic yards of sediment deposited within the CB Outlet. The discharge of excavated sediment and related earthwork will occur on the beach adjacent to the CB Outlet to prevent ponding and improve beach-related recreational opportunities. Backfilling will occur over an approximately 0.13-acre area (which is inclusive of the 0.103-acre area described above) with the discharge of approximately 243 (+/- 97) cubic yards of sediment from the beach directly adjacent to the CB Outlet.

Maintenance of the AC, PB, and CB Outlets have been ongoing under previous authorizations from the San Diego Water Board and the State Water Resources Control Board.

The Project application includes a description of the design objective, operation, and degree of treatment expected to be attained from equipment, facilities, or activities (including construction and post-construction BMPs) to treat waste and reduce runoff or other effluents which may be discharged. Compliance with the Certification conditions will help ensure that construction and post-construction discharges from the Project will not cause on-site or off-site downstream erosion, damage to downstream properties, or otherwise damage stream habitats in violation of water quality standards in the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan).

Project construction will result in maximum recurring temporary impacts of 0.73 acre (265 linear feet) of ocean waters of the United States and/or State. The Applicant reports that the Project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impacts to aquatic resources considering all potential practicable alternatives, such as the potential for alternate available locations, designs, reductions in size, configuration or density.

Additional Project details are provided in Attachments 1 through 3 of this Certification.

TABLE OF CONTENTS

I.	STANDARD CONDITIONS	5
II.	GENERAL CONDITIONS.....	5
III.	CONSTRUCTION BEST MANAGEMENT PRACTICES.....	8
IV.	POST-CONSTRUCTION BEST MANAGEMENT PRACTICES.....	12
V.	PROJECT IMPACTS AND COMPENSATORY MITIGATION	13
VI.	MONITORING AND REPORTING REQUIREMENTS.....	13
VII.	NOTIFICATION REQUIREMENTS	16
VIII.	CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE	18
IX.	SAN DIEGO WATER BOARD CONTACT PERSON.....	18
X.	WATER QUALITY CERTIFICATION	19

Attachments:

1. Definitions
2. Project Location Maps
3. Project Site Plans

I. STANDARD CONDITIONS

Pursuant to section 3860 of title 23 of the California Code of Regulations, the following three standard conditions apply to all water quality certification actions:

- A. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the Water Code and chapter 28, article 6 (commencing with title 23, section 3867), of the California Code of Regulations.
- B. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to California Code of Regulations title 23, section 3855 subdivision (b), and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- C. This Certification action is conditioned upon total payment of any fee required under title 23, chapter 28 (commencing with section 3830) of California Code of Regulations and owed by the applicant.

II. GENERAL CONDITIONS

- A. **Term of Certification.** Water Quality Certification No. R9-2017-0087 (Certification) shall expire upon a) the expiration or retraction of the Clean Water Act section 404 (33 USC Title 33, section 1344) permit issued by the U.S. Army Corps of Engineers for this Project, or b) five (5) years from the date of issuance of this Certification, whichever occurs first.
- B. **Duty to Comply.** The Applicant must comply with all conditions and requirements of this Certification. Any Certification noncompliance constitutes a violation of the Water Code and is grounds for enforcement action or Certification termination, revocation and reissuance, or modification.
- C. **General Waste Discharge Requirements.** The requirements of this Certification are enforceable through Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Discharges of Dredged or Fill Material that have Received State Water Quality Certification* (Water Quality Order No. 2003-0017-DWQ). This provision shall apply irrespective of whether a) the federal permit for which the Certification was obtained is subsequently retracted or is expired, or b) the Certification is expired. Water Quality Order No. 2003-0017-DWQ is accessible at:

http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/gowdr401regulated_projects.pdf.

- D. Project Conformance with Application.** All water quality protection measures and BMPs described in the application and supplemental information for water quality certification are incorporated by reference into this Certification as if fully stated herein. Notwithstanding any more specific conditions in this Certification, the Applicant shall construct, implement and comply with all water quality protection measures and BMPs described in the application and supplemental information. The conditions within this Certification shall supersede conflicting provisions within the application and supplemental information submitted as part of this Certification action.
- E. Project Conformance with Water Quality Control Plans or Policies.** Notwithstanding any more specific conditions in this Certification, the Project shall be constructed in a manner consistent with the Basin Plan, California Ocean Plan, and any other applicable water quality control plans or policies adopted or approved pursuant to the Porter Cologne Water Quality Act (Division 7, commencing with Water Code Section 13000) or section 303 of the Clean Water Act (33 USC section 1313). The Basin Plan and Ocean Plan are accessible at:

Basin Plan

http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/index.shtml

Ocean Plan

http://www.waterboards.ca.gov/water_issues/programs/ocean/docs/cop2015.pdf

- F. Project Modification.** The Applicant must submit any changes to the Project, including Project operation, which would have a significant or material effect on the findings, conclusions, or conditions of this Certification, to the San Diego Water Board for prior review and written approval. If the San Diego Water Board is not notified of a significant change to the Project, it will be considered a violation of this Certification.
- G. Certification Distribution Posting.** During Project construction, the Applicant must maintain a copy of this Certification at the Project site. This Certification must be available at all times to site personnel and agencies. A copy of this Certification shall also be provided to any contractor or subcontractor performing construction work, and the copy shall remain in their possession at the Project site.
- H. Inspection and Entry.** The Applicant must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents as may be required under law, to:
1. Enter upon the Project or Compensatory Mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Certification;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Certification;

3. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Certification; and
 4. Sample or monitor, at reasonable times, for the purposes of assuring Certification compliance, or as otherwise authorized by the Clean Water Act or Water Code, any substances or parameters at any location.
- I. **Enforcement Notification.** In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
- J. **Certification Actions.** This Certification may be modified, revoked and reissued, or terminated for cause including but not limited to the following:
1. Violation of any term or condition of this Certification;
 2. Monitoring results indicate that continued Project activities could violate water quality objectives or impair the beneficial uses of the Pacific Ocean, unnamed drainage at Capistrano (Capo) Beach, Aliso Creek, Prima Deshecha Creek, or their tributaries;
 3. Obtaining this Certification by misrepresentation or failure to disclose fully all relevant facts;
 4. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; and
 5. Incorporation of any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
- The filing of a request by the Applicant for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Certification condition.
- K. **Duty to Provide Information.** The Applicant shall furnish to the San Diego Water Board, within a reasonable time, any information which the San Diego Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Certification or to determine compliance with this Certification.
- L. **Property Rights.** This Certification does not convey any property rights of any sort, or any exclusive privilege.

- M. **Petitions.** Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with the California Code of Regulations, title 23, sections 3867 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Certification. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

III. CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. **Approvals to Commence Construction.** The Applicant shall not commence Project construction until all necessary federal, State, and local approvals are obtained.
- B. **Personnel Education.** Prior to the start of the Project, and annually thereafter, the Applicant must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response measures, and BMP implementation and maintenance measures.
- C. **Spill Containment Materials.** The Applicant must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.
- D. **General Construction Storm Water Permit.** Prior to start of Project construction, the Applicant must, as applicable, obtain coverage under, and comply with, the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activity*, (General Construction Storm Water Permit) and any reissuance. If Project construction activities do not require coverage under the General Construction Storm Water Permit, the Applicant must develop and implement a runoff management plan (or equivalent construction BMP plan) to prevent the discharge of sediment and other pollutants during construction activities.
- E. **Water Quality Management.** At a minimum, the Applicant must implement the *Ocean Outfall Maintenance Water Quality Monitoring Plan for the County of Orange OC Community Resources (OC Parks) & OC Public Works*, dated March 2014 to monitor and prevent the discharge of sediment and other pollutants causing or contributing to violations of water quality standards during construction activities.
- F. **Waste Management.** The Applicant must properly manage, store, treat, and dispose of wastes in accordance with applicable federal, state, and local laws and regulations. Waste management shall be implemented to avoid or minimize exposure of wastes to precipitation or storm water runoff. The storage, handling, treatment, or disposal of waste shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050. Upon Project completion, all Project generated debris, building materials, excess material, waste, and trash shall be removed from the Project site(s) for disposal at an authorized landfill or other disposal site in compliance with federal, state and local laws and regulations.

- G. **Sediment Placement.** Sediment shall not be deposited in a location that may cause significant adverse effects to aquatic life, fish, shellfish, or wildlife or may harm the beneficial uses of the receiving waters.
- H. **Turbidity Control.** Sediment shall be removed, disposed, and handled in a manner that will not cause sustained, significant turbidity increases in the Pacific Ocean, unnamed drainage at Capistrano (Capo) Beach, Aliso Creek, Prima Deshecha Creek, or their tributaries. If post-project turbidity is increased for more than one hour over pre-project turbidity, or if visual monitoring indicates that a sediment plume is persisting in the ocean longer than 30 minutes following a maintenance activity, the Applicant shall stop work and implement appropriate management measures to reduce Project related turbidity prior to the next maintenance dredging or excavation activity.
- I. **Waste Management.** Except for a discharge permitted under this Certification, the dumping, deposition, or discharge of trash, rubbish, unset cement or asphalt, concrete, grout, damaged concrete or asphalt, concrete or asphalt spoils, wash water, organic or earthen material, steel, sawdust or other construction debris waste from Project activities directly into waters of the United States and or State, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited.
- J. **Downstream Erosion.** Discharges of concentrated flow during construction or after Project completion must not cause downstream erosion or damage to properties or stream habitat.
- K. **Construction Equipment.** All equipment must be washed prior to transport to the Project site and must be free of sediment, debris, and foreign matter. All equipment used in direct contact with surface water shall be steam cleaned prior to use. All equipment using gas, oil, hydraulic fluid, or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (e.g., motors, pumps, generator, etc.) shall be positioned over drip pans or other types of containment.
- L. **Process Water.** Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or State or placed in locations that may be subjected to storm water runoff flows. Pollutants discharged to areas within a stream diversion must be removed at the end of each work day or sooner if rain is predicted.
- M. **Surface Water Diversion.** All surface waters, including ponded waters, must be diverted away from areas of active grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. Diversion activities must not result in the degradation of beneficial uses or exceedance of the receiving water quality objectives. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.

- N. **Re-vegetation and Stabilization.** All areas that have 14 or more days of inactivity must be stabilized within 14 days of the last activity. The Applicant shall implement and maintain BMPs to prevent erosion of the rough graded areas. After completion of grading, all areas must be re-vegetated with native species appropriate for the area. The re-vegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be accessed at <http://www.cal-ipc.org/ip/inventory/>.
- O. **Hazardous Materials.** Except as authorized by this Certification, substances hazardous to aquatic life including, but not limited to, petroleum products, unused cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each Project activity involving hazardous materials.
- P. **Trash and Anthropogenic Debris.** The excavated material and ponded water associated with berm maintenance and breaching will be free of trash and anthropogenic debris. The Applicant will be responsible for the collection and disposal of trash and debris during the semi-annual and minor maintenance activities. Trash and debris will be disposed in compliance with local, state, and federal regulations.
- Q. **Vegetation Removal.** Removal of vegetation must occur by hand, mechanically, or through application of United States Environmental Protection Agency (USEPA) approved herbicides deployed using applicable BMPs to minimize adverse effects to beneficial uses of waters of the United States and/or State. Discharges related to the application of aquatic pesticides within waters of the United States must be done in compliance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, the *Statewide General National Pollution Discharge Elimination System Permit for the Discharge of Aquatic Weed Control in Waters of the United States*, and any subsequent reissuance as applicable.
- R. **Limits of Disturbance.** The Applicant shall clearly define the limits of Project disturbance to waters of the United States and/or State using highly visible markers such as flag markers, construction fencing, or silt barriers prior to commencement of Project construction activities within those areas.
- S. **On-site Qualified Biologist.** The Applicant shall designate an on-site qualified biologist to monitor Project construction activities within or adjacent to waters of the United States and/or State to ensure compliance with the Certification requirements. The biologist shall be given the authority to stop all work on-site if a violation of this Certification occurs or has the potential to occur. Records and field notes of the biologist's activities shall be kept on-site and made available for review upon request by the San Diego Water Board.
- T. **Beneficial Use Protection.** The Applicant must take all necessary measures to protect the beneficial uses of waters of the Pacific Ocean, unnamed drainage at Capistrano (Capo) Beach, Aliso Creek, Prima Deshecha Creek, or their tributaries. This

Certification requires compliance with all applicable requirements of the Basin Plan and Ocean Plan. If at any time, an unauthorized discharge to surface waters (including rivers or streams) occurs or monitoring indicates that the Project is violating, or threatens to violate, water quality objectives, the associated Project activities shall cease immediately and the San Diego Water Board shall be notified in accordance with Notification Requirement VII.A of this Certification. Associated Project activities may not resume without approval from the San Diego Water Board.

- U. **Groundwater Dewatering.** If groundwater dewatering is required for the Project, the Applicant shall enroll in and comply with the requirements of San Diego Water Board Order No. R9-2008-0002 NPDES No. CAG919002, *General Waste Discharge Requirements For Groundwater Extraction Waste Discharges From Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters within the San Diego Region Except for San Diego Bay* or its successor permit.
- V. **Western snowy plover.** From March 1 through September 30, no construction or maintenance activities authorized under this Certification will be conducted within 300 feet of breeding Western snowy plovers. The Western snowy plover (*Charadrius alexandrinus nivosus*) is a federally threatened and State species of concern that has the potential to occur in the project area. The on- site qualified biologist shall document the presence or absence of breeding Western snowy plovers.
- V. **Grunion.** California grunion is a State managed species and the intertidal zone at the disposal sites are potential spawning habitat. To the greatest extent possible, the Applicant must avoid shoreline fill activities during the grunion spawning season (March 15 – August 31). If shoreline disposal activities must occur during grunion spawning season, the Applicant must conduct a preconstruction survey of potential grunion spawning habitat at each proposed beach disposal site.
 - 1. The preconstruction survey must be conducted by a biological monitor no more than one month prior to the expected start date of the shoreline dredged material disposal activities and must include photo documentation.
 - 2. The biological monitor shall determine whether the shoreline discharge areas are unsuitable for use as spawning habitat for grunion. Unsuitable habitat includes cobble beaches, beaches that are inundated during high tides to the extent that no beach above the high tide water mark is available for grunion spawning, beaches that do not have enough sand substrate for the grunion to bury eggs, and beaches with no historic grunion runs.

If shoreline disposal activities occur during grunion spawning season between March 15 – August 31 and suitable grunion habitat is located in the proposed shoreline disposal area, the Applicants must avoid and minimize potential impacts to grunion by complying with the following conditions:

- 3. Shoreline dredged material disposal activities that entail sand disturbance seaward of the semilunar high tide line may be conducted on the day before the first date of a predicted run series. This day constitutes a narrow window of time during which egg

nests and developing larvae are unlikely to be present in the sand; larvae from the previous run series likely would have been flushed by the previous night's high tide, and new eggs likely won't be deposited for at least 24 hours. As an example, mechanized equipment could be used on July 8, 2017, which is the day before the first date of the predicted run series that starts July 9 (the predicted four-day run series is July 9, 10, 11, and 12 according to the DFW website, <https://www.wildlife.ca.gov/fishing/ocean/grunion#28352306-2017-runs>).

4. To conduct dredged material disposal activities beyond the dates in item V.3. above, a biological monitor, must survey for the presence of adult grunion during the predicted grunion runs prior to the disposal activities. Monitoring must be done on all four nights of the predicted run series, except that if grunion are observed spawning within the work area or a 10-yard buffer area between the grunion spawn site and the work area on a given night, the presence of egg nests may be assumed and surveys on subsequent nights are not required. For example, if grunion are observed in the work area or the 10-yard buffer and the work area, on night 1, then monitoring on nights 2, 3, and 4 would not be required. If grunion are not observed within the work area or the 10-yard buffer on night 1, then night 2 would be surveyed and so forth.
5. Monitoring must occur from the time of the high tide to two hours following the tide, or until the grunion stop running, whichever is later. For each night of monitoring, recorded information must include the time period monitored, grunion run time and duration, approximate grunion density within the work area and 10-yard buffer, and approximate grunion density in a broader area (i.e., within approximately 50 yards up-coast or 50 yards down-coast of the work area).
6. If grunion spawning is observed within the work area or the 10-yard buffer on any night of a four-day run series, then spawning areas must be clearly marked and avoided by heavy equipment and machinery until after the egg incubation period (i.e., until the day before the first date of the next predicted run, as described).
7. If grunion spawning is not observed within the work area or 10-yard buffer on all four nights of a predicted run series, then the absence of egg nests and incubation activity near the work area may be assumed and, if needed, project activity that entails sand disturbance may be conducted seaward of the semilunar high tide line up to and including the day before the date of the next predicted run.
8. Where the shoreline discharge area is currently unsuitable for use as spawning habitat for grunion, beach disposal may occur in the designated areas without a biological monitor.

IV. POST-CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. **Post-Construction Discharges.** The Applicant shall not allow post-construction discharges from the Project site to cause or contribute to on-site or off-site erosion or damage to properties or stream habitats.

V. PROJECT IMPACTS AND COMPENSATORY MITIGATION

- A. **Project Impact Avoidance and Minimization.** The Project must avoid and minimize adverse impacts to waters of the United States and/or State to the maximum extent practicable.
- B. **Project Impacts and Compensatory Mitigation.** Unavoidable Project impacts to Pacific Ocean, unnamed drainage at Capistrano (Capo) Beach, Aliso Creek, Prima Deshecha Creek, or their tributaries within the San Juan Watershed must not exceed the type and magnitude of impacts described in the table below:

	Impacts (acres)	Impacts (linear ft.)	Mitigation for Impacts (acres)	Mitigation Ratio (area mitigated :area impacted)	Mitigation for Impacts (linear ft.)	Mitigation Ratio (linear feet mitigated :linear feet impacted)
Temporary Impacts¹						
Ocean	0.73	265	NA	NA	NA	NA

1. Recurring temporary impacts.

- C. **Compensatory Mitigation.** Impacts are limited to unvegetated sandy beach. The Project will restore sand based marine habitat and recreational opportunities. Therefore, no compensatory mitigation is required.
- D. **Temporary Project Impact Areas.** The Applicant must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge of pollutants to waters of the United States and/or State. The Applicant must implement all necessary BMPs to control erosion and runoff from areas associated with the Project.

VI. MONITORING AND REPORTING REQUIREMENTS

- A. **Representative Monitoring.** Samples and measurements taken for the purpose of monitoring under this Certification shall be representative of the monitored activity.
- B. **Monitoring Reports.** Monitoring results shall be reported to the San Diego Water Board at the intervals specified in section VI of this Certification.
- C. **Monitoring and Reporting Revisions.** The San Diego Water Board may make revisions to the monitoring program at any time during the term of this Certification and may reduce or increase the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.

D. Records of Monitoring Information. Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

E. Discharge Commencement Notification. The Applicant must notify the San Diego Water Board in writing **at least 5 days prior to** the start of Project maintenance activities.

F. Geographic Information System Data. The Applicant must submit Geographic Information System (GIS) shape files of the Project impact sites within 30 days of the start of project maintenance activities. All impact site shape files must be polygons. Two GPS readings (points) must be taken on each line of the polygon and the polygon must have a minimum of 10 points. GIS metadata must also be submitted.

G. Annual Project Progress Reports. The Applicant must submit annual Project progress reports describing status of BMP implementation and compliance with all requirements of this Certification to the San Diego Water Board prior to **March 1** of each year following the issuance of this Certification. Annual Project Progress Reports must be submitted even if Project construction has not begun. The monitoring period for each Annual Project Progress Report shall be January 1st through December 31st of each year. Annual Project Progress Reports must include, at a minimum, the following:

1. **Project Status and Compliance Reporting.** The Annual Project Progress Report must include the following Project status and compliance information:
 - a. The names, qualifications, and affiliations of the persons contributing to the report;
 - b. The status, progress, and anticipated annual schedule for Project maintenance activities; including estimates of the volume of material dredged and excavated during each channel maintenance event;
 - c. Estimates of the volume of material deposited within receiving waters and on the beach above the high tide line for each channel maintenance event;
 - d. A description of each incident of noncompliance during the annual monitoring period and its cause, the period of the noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is

- expected to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance;
- e. Water quality monitoring data required under section III.E of this Certification; and
 - f. For each channel maintenance event, appropriately trained personnel shall take photographs from established photo points to show conditions immediately before and immediately after maintenance activities. At least one photo point must provide an overview of the project in relation to permanent landmark(s) and the shoreline. Photo-documentation must be done in reasonable accordance with guidance at:
http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf, including the use of Geographic Positioning System (GPS) coordinates for each of the photo points referenced. Each month, appropriately trained personnel shall inspect the channel to assess the physical condition and determine if re-construction or repair is needed to maintain the function in directing flow. Photo-documentation shall be incorporated into an assessment of physical condition and function in the annual monitoring report;
- H. **Reporting Authority.** The submittal of information required under this Certification, or in response to a suspected violation of any condition of this Certification, is required pursuant to Water Code section 13267 and 13383. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit information pursuant to Water Code sections 13268 or 13385.
- I. **Electronic Document Submittal.** The Applicant must submit all reports and information required under this Certification in electronic format via e-mail to SanDiego@waterboards.ca.gov. Documents over 50 megabytes will not be accepted via e-mail and must be placed on a disc and delivered to:

California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification No. R9-2017-0087:835350:dbradford
2375 Northside Drive, Suite 100
San Diego, California 92108

Each electronic document must be submitted as a single file, in Portable Document Format (PDF), and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Certification No. R9-2017-0087:835350:dbradford.

J. Document Signatory Requirements. All applications, reports, or information submitted to the San Diego Water Board must be signed as follows:

1. For a corporation, by a responsible corporate officer of at least the level of vice president.
2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
3. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
4. A duly authorized representative may sign applications, reports, or information if:
 - a. The authorization is made in writing by a person described above.
 - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
 - c. The written authorization is submitted to the San Diego Water Board Executive Officer.

If such authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the Project, a new authorization satisfying the above requirements must be submitted to the San Diego Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

K. Document Certification Requirements. All applications, reports, or information submitted to the San Diego Water Board must be certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

VII. NOTIFICATION REQUIREMENTS

- A. Twenty Four Hour Non-Compliance Reporting.** The Applicant shall report any noncompliance which may endanger health or the environment. Any such information shall be provided orally to the San Diego Water Board within **24 hours** from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The

San Diego Water Board, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

- B. Hazardous Substance Discharge.** Except as provided in Water Code section 13271(b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the State, shall as soon as (a) that person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the County of Orange, in accordance with California Health and Safety Code section 5411.5 and the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State toxic disaster contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.17), and immediately notify the State Water Board or the San Diego Water Board of the discharge. This provision does not require reporting of any discharge of less than a reportable quantity as provided for under subdivisions (f) and (g) of section 13271 of the Water Code unless the Applicant is in violation of a Basin Plan prohibition.
- C. Oil or Petroleum Product Discharge.** Except as provided in Water Code section 13272(b), any person who without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, shall, as soon as (a) such person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State oil spill contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.1). This requirement does not require reporting of any discharge of less than 42 gallons unless the discharge is also required to be reported pursuant to Clean Water Act section 311, or the discharge is in violation of a Basin Plan prohibition.
- D. Anticipated Noncompliance.** The Applicant shall give advance notice to the San Diego Water Board of any planned changes in the Project or the Compensatory Mitigation project which may result in noncompliance with Certification conditions or requirements.
- E. Transfers.** This Certification is not transferable in its entirety or in part to any person or organization except after notice to the San Diego Water Board in accordance with the following terms:
- 1. Transfer of Property Ownership:** The Applicant must notify the San Diego Water Board of any change in ownership of the Project area. Notification of change in ownership must include, but not be limited to, a statement that the Applicant has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands and accepts the certification requirements and the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification

to the San Diego Water Board **within 10 days of the transfer of ownership.**

2. **Transfer of Mitigation Responsibility:** Any notification of transfer of responsibilities to satisfy the mitigation requirements set forth in this Certification must include a signed statement from an authorized representative of the new party (transferee) demonstrating acceptance and understanding of the responsibility to comply with and fully satisfy the mitigation conditions and agreement that failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the San Diego Water Board under Water Code section 13385, subdivision (a). Notification of transfer of responsibilities meeting the above conditions must be provided to the San Diego Water Board **within 10 days of the transfer date.**
3. **Transfer of Post-Construction BMP Maintenance Responsibility:** The Applicant assumes responsibility for the inspection and maintenance of all post-construction structural BMPs until such responsibility is legally transferred to another entity. At the time maintenance responsibility for post-construction BMPs is legally transferred the Applicant must submit to the San Diego Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer specifications. The Applicant must provide such notification to the San Diego Water Board **within 10 days** of the transfer of BMP maintenance responsibility.

Upon properly noticed transfers of responsibility, the transferee assumes responsibility for compliance with this Certification and references in this Certification to the Applicant will be interpreted to refer to the transferee as appropriate. Transfer of responsibility does not necessarily relieve the Applicant of responsibility for compliance with this Certification in the event that a transferee fails to comply.

VIII. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

- A. The Orange County Parks is the lead agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)), and promulgated Notice of Exemptions on August 18, 2006 and October 26, 2010 under CEQA Guidelines Title 14, California Code of Regulations. The San Diego Water Board has determined the project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15301.

IX. SAN DIEGO WATER BOARD CONTACT PERSON

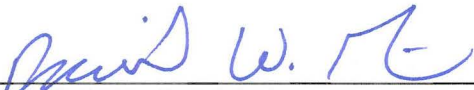
Darren Bradford, Environmental Scientist
Telephone: (619) 521-3356
Email: darren.bradford@waterboards.ca.gov

X. WATER QUALITY CERTIFICATION

I hereby certify that the proposed discharge from the **Outlet Maintenance Program** (Certification No. R9-2017-0087) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "*Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)*," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017-DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the San Diego Water Board may issue individual waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited to, and all proposed mitigation being completed in strict compliance with, the applicants' Project description and/or the description in this Certification, and (b) compliance with all applicable requirements of the Basin Plan.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Certification No. R9-2017-0087 issued on October 18, 2017.



DAVID W. GIBSON
Executive Officer
San Diego Water Board

18 October 2017
Date

ATTACHMENT 1

DEFINITIONS

Activity - when used in reference to a permit means any action, undertaking, or project including, but not limited to, construction, operation, maintenance, repair, modification, and restoration which may result in any discharge to waters of the state.

Buffer - means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

California Rapid Assessment Method (CRAM) - is a wetland assessment method intended to provide a rapid, scientifically-defensible and repeatable assessment methodology to monitor status and trends in the conditions of wetlands for applications throughout the state. It can also be used to assess the performance of compensatory mitigation projects and restoration projects. CRAM provides an assessment of overall ecological condition in terms of four attributes: landscape context and buffer, hydrology, physical structure and biotic structure. CRAM also includes an assessment of key stressors that may be affecting wetland condition and a "field to PC" data management tool (eCRAM) to ensure consistency and quality of data produced with the method.

Compensatory Mitigation Project - means compensatory mitigation implemented by the Applicant as a requirement of this Certification (i.e., applicant -responsible mitigation), or by a mitigation bank or an in-lieu fee program.

Discharge of dredged material – means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States and/or State.

Discharge of fill material – means the addition of fill material into waters of the United States and/or State.

Dredged material – means material that is excavated or dredged from waters of the United States and/or State.

Ecological Success Performance Standards – means observable or measurable physical (including hydrological), chemical, and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Enhancement – means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment – means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist. Creation results in a gain in aquatic resource area.

Fill material – means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body.

Isolated wetland – means a wetland with no surface water connection to other aquatic resources.

Mitigation Bank – means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing mitigation for impacts authorized by this Certification.

Preservation - means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/ historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/ historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Start of Project Construction - For the purpose of this Certification, "start of Project construction" means to engage in a program of on-site construction, including site clearing, grading, dredging, landfilling, changing equipment, substituting equipment, or even moving the location of equipment specifically designed for a stationary source in preparation for the fabrication, erection or installation of the building components of the stationary source within waters of the United States and/or State.

Uplands - means non-wetland areas that lack any field-based indicators of wetlands or other aquatic conditions. Uplands are generally well-drained and occur above (i.e., up-slope) from nearby aquatic areas. Wetlands can, however, be entirely surrounded by uplands. For example, some natural seeps and constructed stock ponds lack aboveground hydrological connection to other aquatic areas. In the watershed context, uplands comprise the landscape matrix in which aquatic areas form. They are the primary sources of sediment, surface runoff, and associated chemicals that are deposited in aquatic areas or transported through them.

Water quality objectives and other appropriate requirements of state law – means the water quality objectives and beneficial uses as specified in the appropriate water quality control plan(s); the applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act; and any other appropriate requirement of state law.

Orange County Parks
Outlet Maintenance Program Project
Certification No. R9-2017-0087

ATTACHMENT 2
PROJECT LOCATION MAPS

Figure 1 – Project Vicinity Map

Figure 2 – Project Location Map(s): Aliso Creek; Capistrano (Capo) Beach;
Poche Beach



Legend

★ Project Location



0 0.5 1 2
Miles

Figure 1
Project Vicinity Map



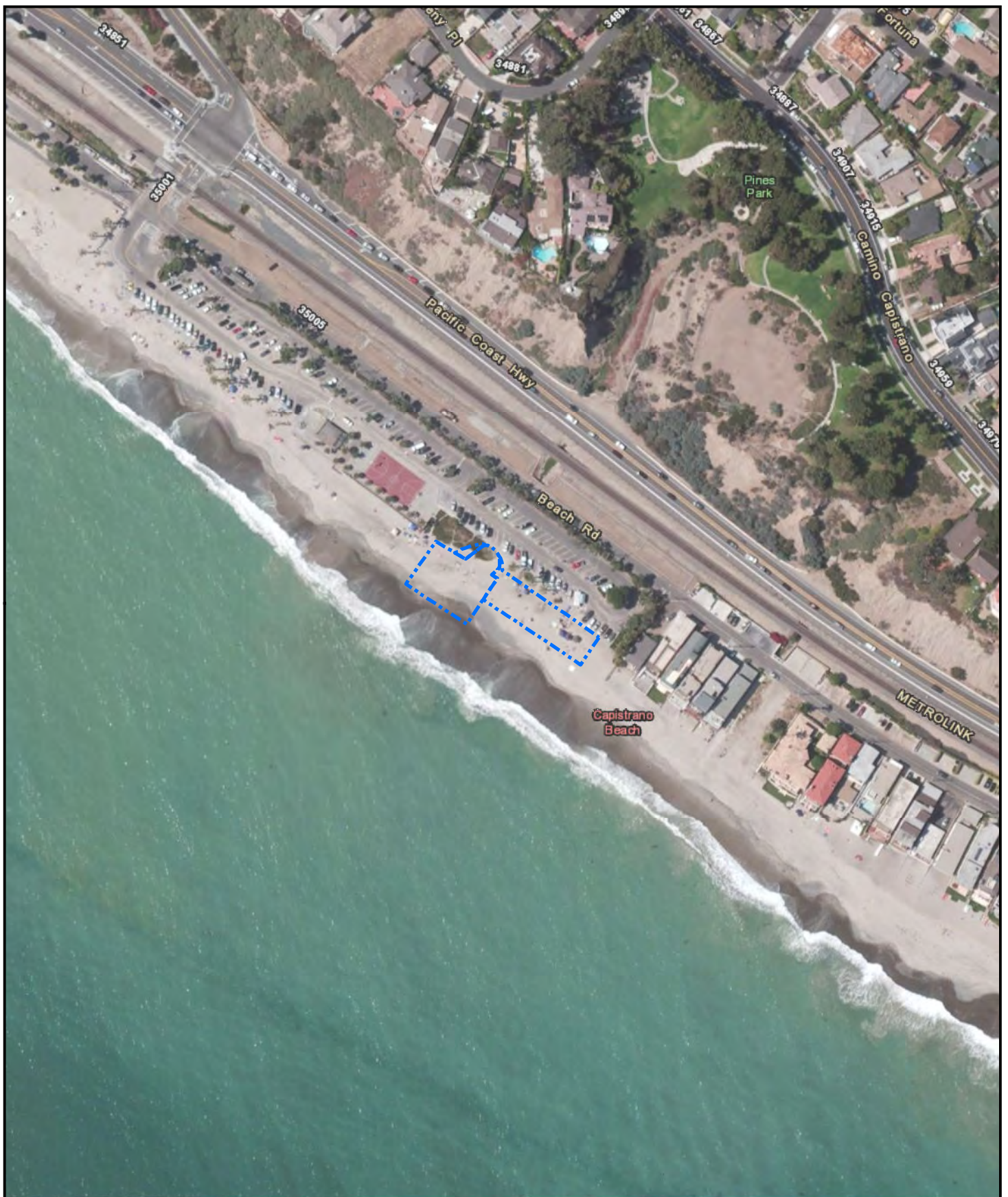
Legend

 Work Area



0 100 200 400
Feet

Figure 2
Project Location Map
Aliso Creek



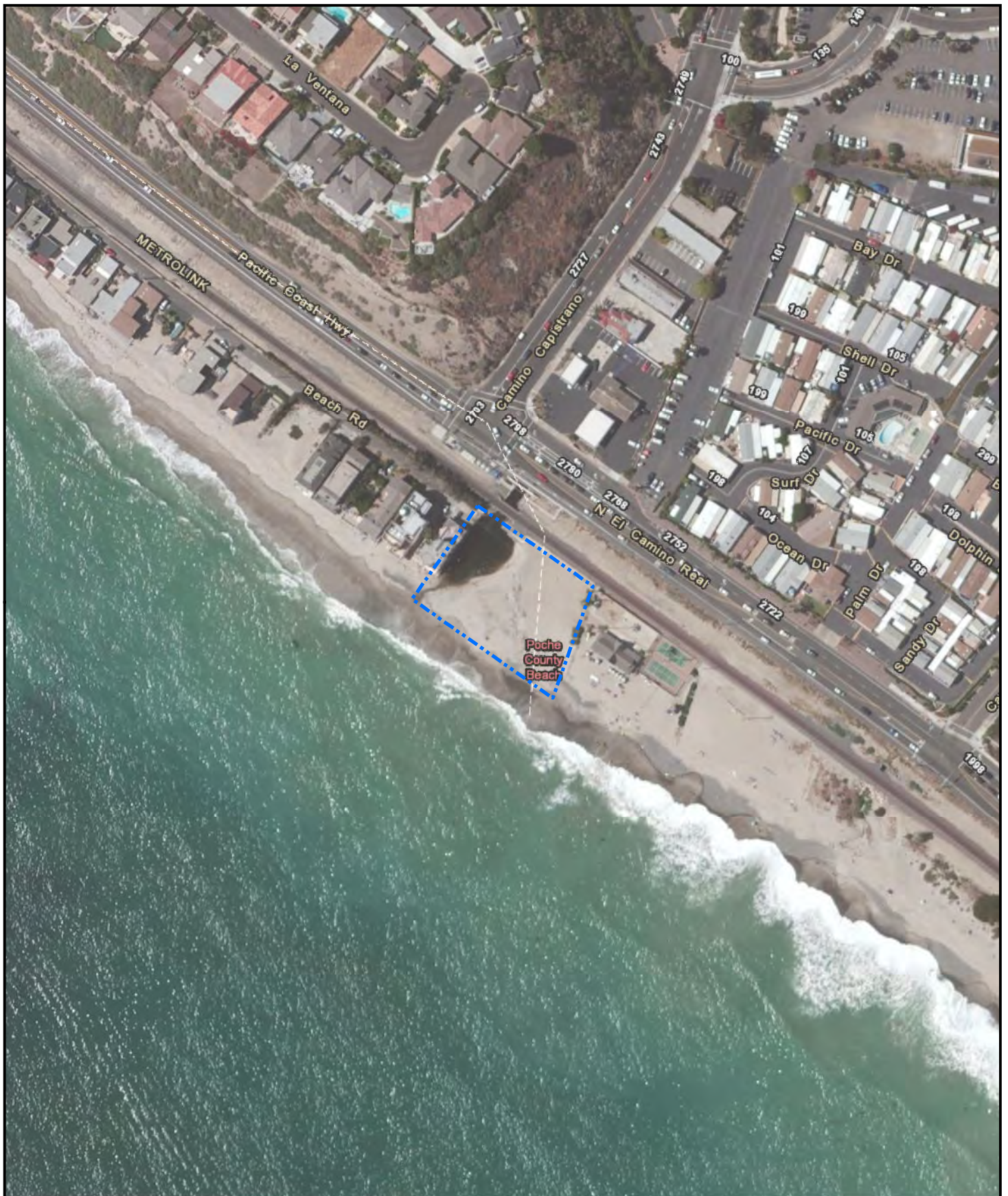
Legend

 Work Area



0 100 200 400
Feet

Figure 2
Project Location Map
Capo Beach



Legend

 Work Area



0 100 200 400
Feet

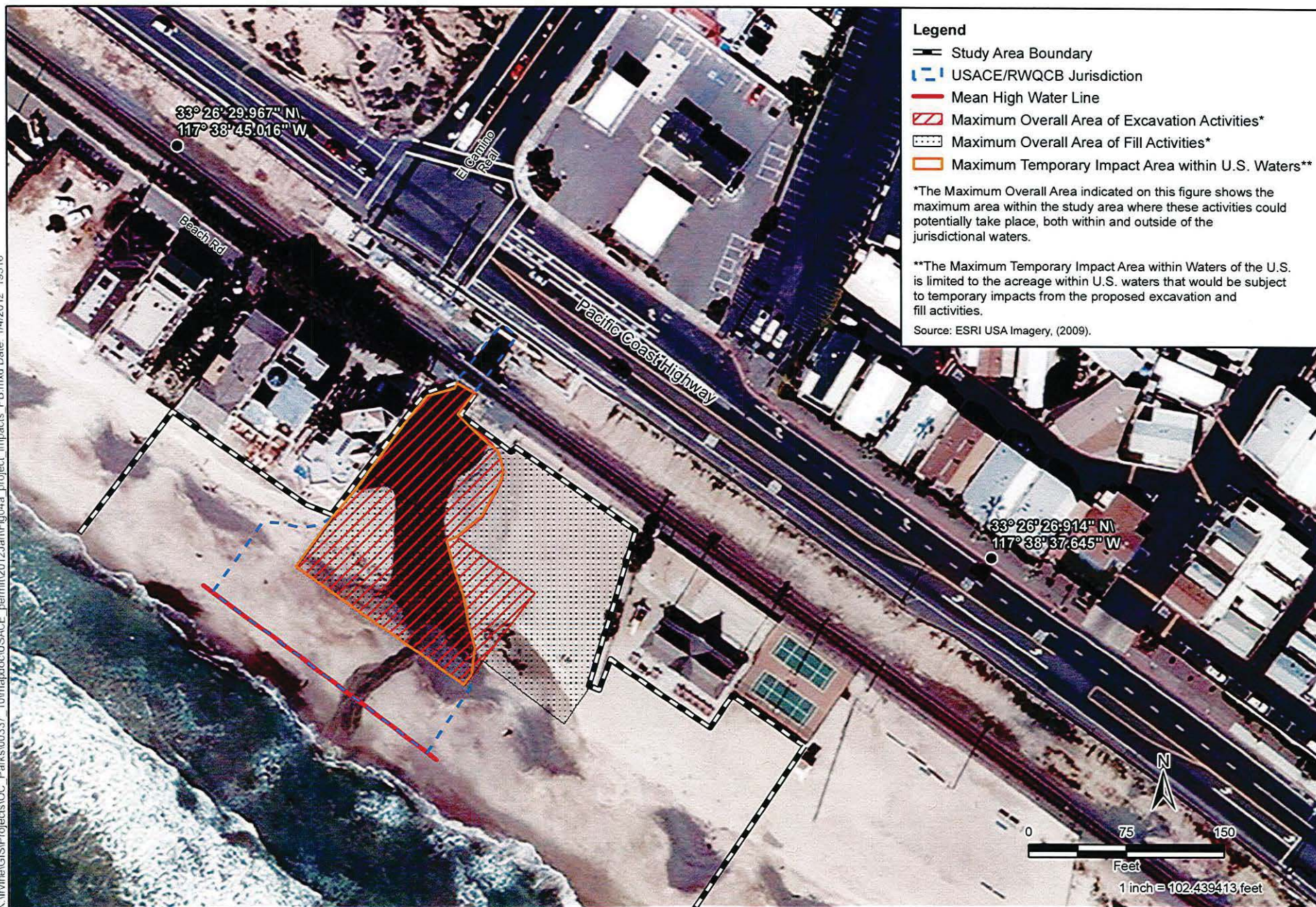
Figure 2
Project Location Map
Poche

Orange County Parks
Outlet Maintenance Program Project
Certification No. R9-2017-0087

ATTACHMENT 3
PROJECT SITE PLANS

Exhibit 4 – Aliso Creek Outlet Maintenance Jurisdictional Map
Figure 4a – Poche Beach Outlet Project Impact Map
Figure 4b – Capistrano Beach Outlet No. 1 Project Impact Map



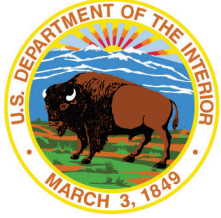


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Figure 4b
Project Impact Map
Capistrano Beach Outlet No. 1
Ocean Outlet Maintenance

Enclosure 2



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



In Reply Refer to:
2024-0083076-S7-I-001-OR

June 18, 2024
Sent Electronically

Eric Sweeney
Regulatory Division
U.S. Army Corps of Engineers - Los Angeles District
Carlsbad Field Office
5900 La Place Court
Suite 100
Carlsbad, California 92008

Subject: Informal Section 7 Consultation for Reauthorization of Regional General Permit 88,
Orange County Parks Ocean Outlet Maintenance Project, Orange County, California

Dear Eric Sweeney:

This letter is in response to your April 5, 2024, request for concurrence that the proposed reauthorization of Regional General Permit (RGP) 88, Ocean Outlet Maintenance Project, Orange County, California, is not likely to adversely affect the federally endangered California least tern [*Sterna antillarum browni* (*Sterna a. b.*); least tern] or the threatened western snowy plover {Pacific Coast population DPS [*Charadrius nivosus nivosus* (*C. alexandrinus n.*)]}; snowy plover}. Your request for concurrence is made in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*).

Project Description

The proposed Orange County Parks (OC Parks) Ocean Outlets Maintenance Project includes two ocean outlets in Orange County, California: Capistrano Beach outlet Number 1 (Capistrano Beach outlet) in the City of Dana Point and the Poche Beach outlet in the City of San Clemente. The project will consist of recurring maintenance activities and as-needed minor maintenance activities at these two outlets. We issued a previous informal consultation on U.S. Army Corps of Engineers (Corps) File No. SPL-2005-00740 and SPL-2010-00849-SME on July 25, 2011 (FWS-OR-10B0664-11I0494), for maintenance activities at Capistrano Beach outlet and Poche Beach outlet and again on March 21, 2019 (FWS-OR-19B0013-19I0184), for maintenance activities at Capistrano Beach outlet, Poche Beach outlet, and Aliso Creek outlet in Laguna Beach. The Aliso Creek Outlet has been removed from the project that we are consulting on.

An ocean outlet is the point at which flood control channels¹ discharge flows onto the beach, bay, or ocean. Ocean outlets can become blocked with sand and sediment when the sand is

¹ Flood control channels are typically natural or man-made channels with the specific intent of controlling floodwaters, which include natural storm waters and various runoff flows, and directs them into a bay or the ocean.

dropped out of storm waters or flows from upstream and when seasonal sand accretion² occurs seaward of the outlets. Sediment buildup in these two Orange County outlets occurs predominantly as a result of coastal sediment movement, rather than from fluvial sources. Outlet discharges may also meander across the beach instead of flowing directly into the ocean and can close entirely causing a lagoon-type pool of water due to the buildup of sand within and around the outlet. Water that is allowed to pool at the outlets can result in poor water quality, which can be a health risk for beach users if they enter pooled areas at a smaller outlet. Sediment buildup within the outlets and adjacent areas are subject to tidal and weather patterns. Thus, although maintenance may be identified as recurring, it is typically not scheduled to occur on a set schedule but will occur based on the individual site's needs. In general, maintenance activities include semi-annual activities in the fall and spring and minor, as needed, repairs throughout the year. OC Parks will conduct regular visual inspections of the ocean outlets and their associated facilities to determine when maintenance activities are necessary. The recurring and as-needed maintenance activities are described in more detail below.

Poche Beach outlet is the terminus of the Prima Deschecha Cañada Channel which captures flows from surrounding urban areas and natural freshwater sources. Flows exit the channel through a rectangular concrete channel with a riprap revetment into the Poche Beach outlet. Tidal events can inundate Poche Beach outlet with salt water and can move sand, creating a sand berm at the mouth of the outlet that forms a barrier limiting or preventing the freshwater flows from draining into the ocean. The freshwater flows then back up, forming a brackish pool adjacent to the outlet, which can flood the access catwalk and prevent or limit beach access at this location.

Capistrano Beach outlet is the terminus of an unnamed, rectangular concrete channel that captures freshwater flows primarily from the surrounding urban areas. Flows exit the upstream channel through a trapezoidal concrete channel into the Capistrano Beach outlet. Tidal events can inundate Capistrano Beach outlet and move sand, creating a sand berm at the mouth of the outlet that forms a barrier limiting or preventing the freshwater flows from draining into the ocean. The freshwater flows then back up, forming a brackish pond adjacent to the outlet, which can prevent or limit beach access at this location.

Semi-Annual Maintenance

Semi-annual maintenance will occur two times a year, an autumn event (prior to the wet season) and a spring event (prior to the summer recreational season). Maintenance activities will include excavation of sediment from within the outlet, from the mouth of the outlet, and between the outlet mouth to the Pacific Ocean. Excavated sediment will be placed within dry sandy beach areas above or at the high tide line, and then the sediment will be graded to re-contour the outlet and to allow for recreational use. Maintenance activities will use heavy equipment which may

Natural channels are usually streambeds that convey flows to a floodplain. Man-made channels are engineered to specific flood carrying capacities and may be connected to other flood control facilities. Flood control channels can also be a combination of natural channels and man-made channels.

² Sand accretion is the accumulation of sand over time along coastal areas. Sand movement along a sustainable foreshore beach often goes through cycles where sand is eroded or moved away from visible portions of the beach during rough weather to submerged nearshore regions and is later redeposited onto visible portions of the beach during calmer periods of weather.

include an excavator, a bulldozer, and a pickup truck if transportation of workers or equipment is needed.

Poche Beach Outlet

Each semi-annual maintenance event at the Poche Beach outlet will include excavation of up to approximately 1,152 cubic yards of sediment from the outlet channel, grading around the mouth of the outlet to remove or minimize any sand berm present, and re-contouring the approximately 0.18-acre excavation and maintenance footprint. Excavated sediment will be placed within an about 0.58-acre sediment placement footprint above the high tide to the south of the outlet (Figure 1). A bulldozer will grade the sand within the sediment placement footprint to create a uniform beach surface that matches the existing top of the slope to allow for recreational use. When smaller amounts of sediment are excavated, the placement site will be proportionally smaller.

Capistrano Beach Outlet

The fall semi-annual maintenance event at the Capistrano Beach outlet will include excavation of up to approximately 583 cubic yards of sediment from the outlet channel, grading around the mouth of the outlet to remove or minimize the naturally occurring sand berm that builds up at the downstream end of the outlet, and re-contouring the approximately 0.10-acre excavation and maintenance footprint. Excavated sediment will be placed within an approximately 0.23-acre sediment placement footprint above the high tide line located to the north and south of the outlet (Figure 2). A bulldozer will grade the sand within the sediment placement footprint to create a uniform beach surface that matches the existing top of the slope to allow for recreational use. When smaller amounts of sediment are excavated, the placement site will be proportionally smaller. The spring event at the Capistrano Beach outlet will grade and remove sand from within the 0.23-acre sediment placement footprint to backfill the outlet (up to 0.10 acre) in order to provide a more uniformly consistent beach surface to allow for increased recreational use opportunities during the summer when seasonal flows are low.

Minor, As-Needed Maintenance

OC Parks will conduct periodic inspections of the outlets to determine what maintenance is needed. Minor, as-needed maintenance will occur year-round at Poche Beach outlet and Capistrano Beach outlet in order to re-establish channel flow when ponding occurs.

Poche Beach Outlet

At Poche Beach Outlet, as-needed maintenance activities will include removing the sand berm to restore the outlet channel's connectivity to the ocean. To reestablish connectivity, heavy machinery will be used to remove the naturally occurring sand berm (about 40 +/- 10 cubic yards of sediment) at the downstream end of the outlet and to grade an approximately 0.25-acre area around the outlet to re-contour the mouth of the outlet. Excavated sediment will be placed above the high tide line within an approximately 0.50-acre area within the sediment placement footprint (Figure 1) and will then be graded to create a uniform beach surface to continue to allow for recreational use.

Capistrano Beach Outlet

At the Capistrano Beach outlet, as-needed maintenance activities will only occur to re-establish outlet channel flow when ponding occurs, and public use beach access impairment is imminent. Maintenance activities to re-establish channel flow will include heavy machinery use to excavate a notch in the naturally occurring sand berm at the downstream end of the outlet. Excavated sediment will be placed within the sediment placement footprint (Figure 2) and an area of approximately 0.25-acre will be graded to re-contour the area around the mouth of the outlet and to create a uniform beach surface to continue to allow for recreational use.

Conservation Measures

The Corps and OC Parks will incorporate the following conservation measures (CM) to avoid and minimize adverse effects to snowy plovers and least terns:

- CM 1. The project work area will be limited to the site identified in the project and Figure 1 and Figure 2. Access to the project site will use existing roads and access. Parking, driving, lay-down, stockpiling, and vehicle and equipment storage will be limited to developed areas and the designated staging areas. No off-road vehicle use will be permitted in sandy beach areas beyond the project footprints as delineated in Figure 1 and Figure 2 and designated ingress and egress routes which may need to travel along sandy beach habitat.
- CM 2. All project-related activities including grading, excavations, and vehicle use will occur within the designated project boundaries to minimize the likelihood of unanticipated impacts to listed species and their habitats. All maintenance activities will be limited to the amount of excavation and grading as defined in the Project Description above. If semi-annual or minor maintenance events require excavation and/or grading in excess of the maximum anticipated impact areas, the applicant will coordinate with the Carlsbad Fish and Wildlife Office (CFWO) to determine if additional conservation measures may be necessary.
- CM 3. The project will have a clearly defined footprint on project reference maps and in the field, maintenance personnel will remain within the limits of the project footprint for the duration of the project. All temporary fencing materials (i.e., mesh, stakes, etc.) will be removed following project completion.
- CM 4. An education program will be conducted for staff and will cover the potential impacts to federally listed species; the requirements and boundaries of the project; the importance of complying with avoidance and minimization measures; problem reporting and resolution methods; and safe beach driving techniques.
- CM 5. Excavated sediment will be placed above the high tide line and will not be placed within the swash zone (i.e., the area between the high tide line and the water line) of the beach.

- CM 6. OC Parks will prepare and implement Storm Water Pollution best management practices to prevent the release of sediment and contaminants from within the staging areas that could be harmful to federally listed species.
- CM 7. Equipment fueling and maintenance will take place within existing paved areas or identified staging areas. Equipment fueling and maintenance will not occur within 50 feet of any drainage, wetland, or the Pacific Ocean.
- CM 8. Vehicles accessing the beach will travel at speeds no greater than 10 mph.
- CM 9. The project site will be kept as clean as possible to avoid attracting predators of federally listed species. All food-related trash produced will be placed in predator-proof (i.e., corvids, rodents, squirrels, and meso-mammals) sealed bins and removed from the site daily. All project related debris will be disposed of properly and will not be discarded on site.
- CM 10. Project workers will be prohibited from bringing domestic pets to the project site, including the staging areas and parking areas, to ensure that domestic pets do not disturb or depredate wildlife in adjacent native habitats.
- CM 11. All individuals that will work in the field (i.e., equipment and vehicle drivers and staff/contractors that will be working in sandy beach areas on any maintenance event) will watch the Audubon Society of Portland's Plover Patrol online training Module 1 Life history, Threats, and Decline (1 hour 15 minutes) prior to working on a maintenance event. Workers that will work on multiple events or will regularly work during maintenance events will watch the Audubon video a minimum of one time on an annual basis. In situations where staff changes create short timelines between maintenance activities and onboarding staff, OC Parks will ensure that new staff will watch the [online training](https://audubonportland.org/get-involved/community-science/snowy-plover-patrol/)³ at their earliest convenience.
- CM 12. Maintenance Activity Reporting:
- a. If snowy plovers or least terns are observed during maintenance activities by OC Parks staff, a monitoring report will be submitted to the CFWO within 60 days of completing maintenance activities. This report will document the length of time that maintenance activities were conducted, a general description of the nature of the maintenance activities, number and location of least terns or snowy plovers in the area and observed effect of maintenance activities on least terns or snowy plovers (i.e., birds flew away, birds stayed within 500 feet of project vehicles, or similar observations).
 - b. If no snowy plovers or least terns are observed during maintenance activities, then OC Parks will submit only a brief annual report documenting the length of time that each maintenance event was conducted and a general description

³ <https://audubonportland.org/get-involved/community-science/snowy-plover-patrol/>

of the nature of the maintenance activities. Annual reports for the previous year's maintenance events will be provided to the CFWO by January 31.

- CM 13. All contractors that conduct any portion of any of the outlet maintenance work for OC Parks will incorporate and implement all of the conservation measures above including required monitoring and reporting. OC Parks will be responsible for ensuring that all contractors understand and agree to this measure.

Poche Beach and Capistrano Beach are both publicly accessible beaches. At Poche Beach, the beach immediately north of the outlet is very narrow, with the entirety of the beach covered by water at high tide. Additionally, privately-owned house parcels abut the beach. Immediately south of the outlet, there is a stretch of wider beach about 1,500 feet in length, and south of this wider stretch, the beach is again very narrow due to privately-owned house parcels abutting the beach. The wider section of beach is owned by the Shorecliffs Community, which operates the Shorecliffs Beach Club of San Clemente. Shorecliffs Beach Club supports recreational beach use, picnic tables, a basketball court, tennis courts, and a very limited number of fire rings. The sandy beach habitat along the wider section of beach abuts the Amtrack Pacific Surfliner railroad tracks and shrinks to about 75 feet of dry sandy beach available at high tide. Sandy beach habitat at the northern end of this section is predominantly free of vegetation, and the southern end is vegetated with primarily non-native vegetation above the high tide line. The Capistrano Beach outlet is located immediately in front of the approximately 1,000-foot-long paved beach parking lot for OC Parks' Capistrano Beach Park. Recreational facilities include picnic tables, publicly accessible bathrooms, and the parking area. The beach is very narrow, with most of the beach underwater at high tide. Immediately south of the parking lot, privately-owned house parcels abut the beach. Immediately north of the parking lot is the beginning of the southern end of Doheny State Beach. Capistrano Beach supports picnic tables and publicly accessible bathrooms located within the developed parking lot. These facilities are subject to heavy use by individuals and various groups. Capistrano Beach has historically supported a number of fire rings and a basketball court, although coastal erosion has resulted in severe beach loss in front of the parking lot, limiting the type of recreational facilities that are supported.

Snowy plovers are present on Orange County beaches year-round, either as resident birds which breed and winter locally or as migrating birds that are either breeding or wintering locally. Non-breeding and wintering snowy plovers use established roosting areas (sandy beach habitat where snowy plovers regularly congregate in groups to forage and rest/shelter) on Orange County beaches⁴ throughout most of the year. Non-breeding snowy plovers, individuals that have successfully or unsuccessfully nested, are unpaired, or are not fully mature, appear to use Orange County beaches as roosting (resting and/or sheltering habitat), foraging, and migration habitat from April to August and as migration and wintering habitat from September to March. Therefore, because non-breeding, wintering, and migrating snowy plovers will be moving along the beaches and between established roosting sites through much of the year, small flocks or individual snowy plovers could be present within or within adjacent habitat to the OC Parks Outlets project areas at any one time. However, because the beaches are so narrow, it is likely that snowy plovers only use the sandy beach habitat at Capistrano and Poche beaches at low tide for foraging and roosting

⁴ City of Seal Beach, Naval Weapons Station Seal Beach, Surfside Beach, Sunset Beach, Bolsa Chica Ecological Reserve, Huntington State Beach, Newport Beach, Balboa Beach, Crystal Cove SB, Salt Creek/Monarch Beach, Doheny SB, San Clemente SB.

and primarily use it as dispersal habitat between higher quality roosting and foraging habitat and as migration habitat.

Least terns have been documented using Orange County beaches and near-shore and shallow water habitat for breeding, feeding, sheltering (roosting) and migrating since the early 1900s. Least terns breed at six locations in Orange County.⁵ Least tern migration is often quite short in the spring, arriving as early as late March, with the majority of the breeding population arriving at their nesting site throughout the month of April. Least terns begin leaving their breeding grounds as early as June depending on nesting success, traveling in small, loose groups, with the majority of the rangewide fall migration finishing by the end of September and into the first couple weeks of October at the latest. Due to the distance of the established least tern breeding sites to the project areas, least terns are unlikely to be foraging offshore of the project areas during the breeding season. However, least terns can utilize all sandy beach shorelines as roosting habitat during migration and could forage offshore of the project area in shallow water habitat during migration.

Because migrating least terns will be moving along the beaches and between established nesting sites through a portion of the year, small flocks or individual least terns could be present within or within adjacent habitat to the OC Parks Outlets project areas during these migration windows. Although snowy plovers could use these very narrow beaches at low tide for foraging and roosting and least terns could use these beaches at low tide for roosting during migration, it is unlikely that these species regularly utilize these beaches as foraging and/or roosting habitat, and no suitable breeding habitat for snowy plovers or least terns is present within or adjacent to the Capistrano and Poche outlet footprints.

Outlet maintenance activities have the potential to disturb foraging and/or roosting adult snowy plovers and least terns in the project areas and adjacent habitat. Snowy plovers foraging and roosting as they disperse between higher quality habitat or migrate and migrating least terns will be exposed to increased noise, vibrations, and visual disturbance from mechanized equipment, vehicle use, and the presence of workers within the project areas and adjacent sandy beach habitat when outlet maintenance activities are occurring. Noise, vibrations, and visual disturbance during project activities have the potential to disturb snowy plover and least tern behaviors in adjacent habitat, discouraging snowy plovers and least terns from roosting and/or foraging in the project area, startling birds. Project activities have a very small potential to result in vehicle strikes.

Despite the potential effects described above, adult snowy plovers and least terns are fully capable of flight and thus are highly mobile and will generally be capable of reacting to the presence of mechanized equipment and vehicles on the beach and avoiding vehicle strikes. In addition, OC Parks will implement conservation measures including participation in a snowy plover identification training (CM 11), a maximum speed limit (CM 8), and safe driving techniques for driving in sandy beach habitat (CM 4). Therefore, the potential that adult snowy plovers and least terns will be exposed to potential injury and death from vehicle strikes associated with operation of project equipment and vehicles is discountable (i.e., extremely

⁵ Regularly breeding at Naval Weapon Station Seal Beach/Seal Beach National Wildlife Refuge, Bolsa Chica Ecological Reserve, Huntington SB, and Upper Newport Bay Ecological Reserve and irregularly breeding at Burris Basin and Anaheim Lake.

unlikely to occur). Furthermore, because the project area is used only by dispersing and migrating individuals, occasional disturbance from project activities is unlikely to substantively affect essential breeding, feeding, and sheltering activities, and with implementation of the conservation measures above, including implementation of Storm Water Pollution best management practices (CM 6 and CM 7), limiting the speed of project vehicles (CM 8), limiting maintenance activities to areas within the project footprints (CM 1 and CM 2), disposing of project related debris and trash appropriately (CM 9), we anticipate that outlet maintenance activities will have an insignificant effect (i.e., unable to be effectively measured, detected, or evaluated) on snowy plover and least tern survival and reproduction.

Based on the above analysis, the Service concurs with your determination that the proposed action may affect, but is not likely to adversely affect, the snowy plover or the least tern. With this determination, the interagency consultation requirements of section 7 of the Act have been satisfied. This determination shall be reconsidered if: (1) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered, (2) this action is subsequently modified in a manner that was not considered in this assessment, or (3) a new species is listed or critical habitat designated that may be affected by the action.

If you have any questions regarding this consultation, please contact [Katy Kughen](#)⁶ at 760-431-9440, extension 201.

Sincerely,

JONATHAN SNYDER
Digitally signed by
JONATHAN SNYDER
Date: 2024.06.18
14:11:20 -07'00'

Jonathan D. Snyder
Assistant Field Supervisor

LITERATURE CITED

PERSONAL COMMUNICATIONS

Estoque, M. 2024. Regulatory Specialist, OC Parks, Irvine, California. Email Correspondence to Katy Kughen, USFWS, Carlsbad, California. Dated: January 17, 2024. Subject: [EXTERNAL] RE: Draft Project Description and Conservation Measures.

⁶ Katy_kughen@fws.gov.

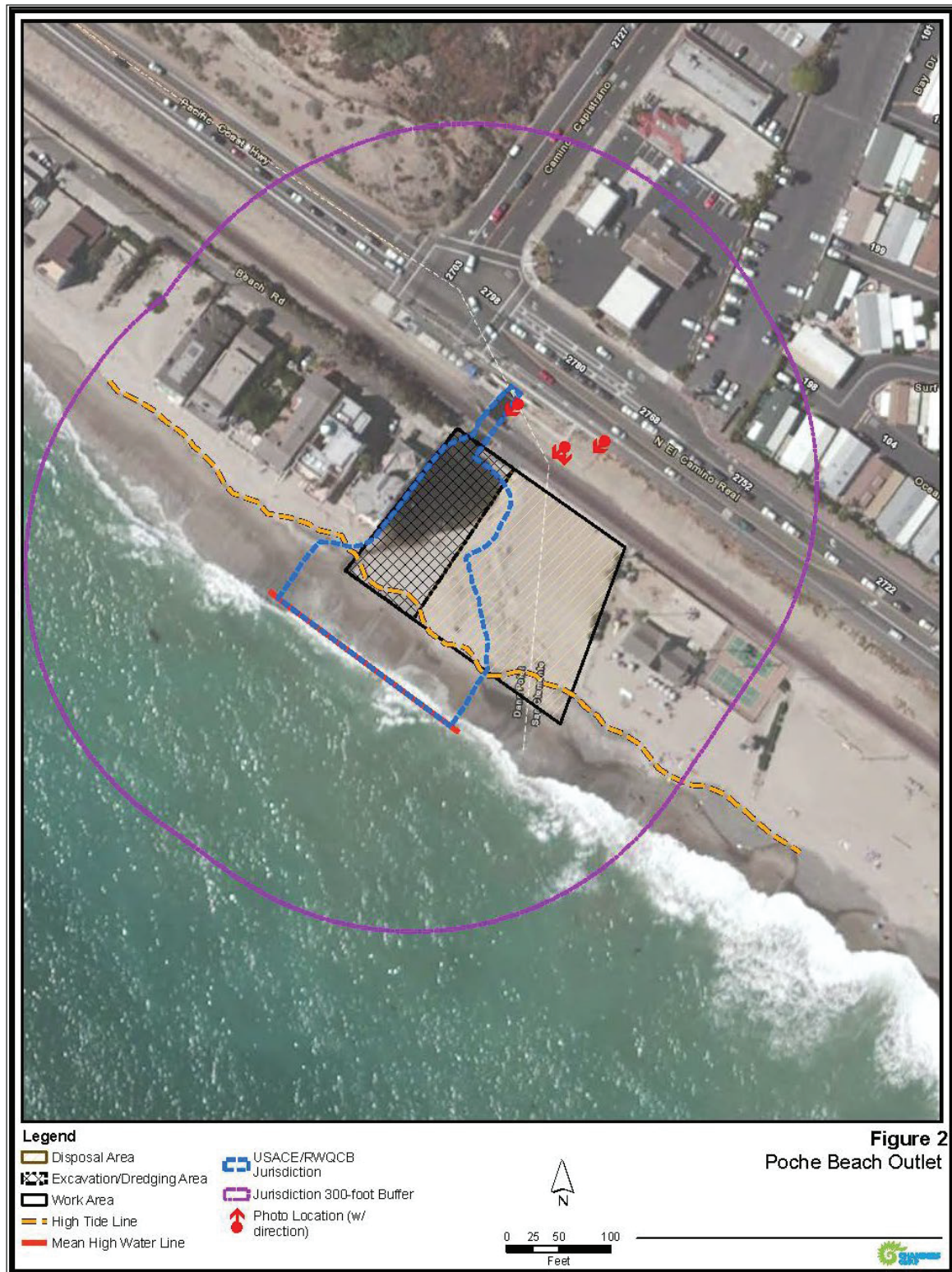


Figure 1. Poche Beach Maintenance Area Footprint (Estoque 2024, pers. comm.).



Figure 2. Capistrano Beach Maintenance Area Footprint (Estoque 2024, pers. comm).