



# California Regional Water Quality Control Board San Diego Region



Linda Adams  
Secretary for  
Environmental Protection

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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

In reply refer to:  
NWU:18-2005009.02:haasj

## Action on Request for Clean Water Act section 401 Water Quality Certification and Waiver of Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials

**PROJECT:** Aliso Creek Outlet Maintenance Program Project  
(401 Project No. 05C-009) (WDID no. 9 000001348)

**APPLICANT:** Susan Brodeur  
County of Orange, Resources Development and Management Division  
300 North Flower Street  
Santa Ana, CA 92703-5000

**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 checked="" type="checkbox"/> Waiver of Waste Discharge Requirements |

**STANDARD CONDITIONS:**

The following three standard conditions apply to all certification actions, except as noted under Condition 3 for denials (Action 3).

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

*California Environmental Protection Agency*

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**ADDITIONAL CONDITIONS:**

In addition to the three standard conditions, the **County of Orange** shall satisfy the following:

**A. GENERAL CONDITIONS**

1. This certification is valid for a period of five years or until the associated federal permit or license expires, whichever comes first.
2. The County of Orange shall, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the California Regional Water Quality Control Board, San Diego Region (Regional Board), with this application for 401 Water Quality Certification and all subsequent submittals required as part of this certification. The conditions within this certification shall supersede conflicting provisions within such plans submitted prior to the certification action.
3. The County of Orange shall maintain a copy of this certification at the project site so as to be available at all times to site personnel and agencies.
4. The County of Orange shall permit the Regional Board or its authorized representative at all times, upon presentation of credentials:
  - a) Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
  - b) Access to copy any records required to be kept under the terms and conditions of this certification.
  - c) Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this certification.
  - d) Sampling of any discharge or surface water covered by this Order.
5. The County of Orange shall notify the Regional Board within 24 hours of any unauthorized discharge to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and recovered; and additional Best Management Practices (BMPs) or other measures that will be implemented to prevent future discharges.
6. The County of Orange shall, at all times, maintain appropriate types and sufficient quantities of materials onsite 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 U.S. and/or State.
7. This Certification is not transferable to any person except after notice to the Executive Officer of the Regional Board. The County of Orange shall notify the Regional Board of any change in ownership of the project area. Notification shall include, but not be limited to, a statement that the property owner has provided the purchaser with a

copy of the Section 401 Water Quality Certification and that the purchaser understands the permit requirements and shall implement them; the seller and purchaser shall sign and date the notification. Notification shall be provided within 5 days of the sale of the property.

8. 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.
9. In response to a suspected violation of any condition of this certification, the Regional Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
10. In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

#### **B. PROJECT CONDITIONS**

1. Prior to the start of the each maintenance activity, the County of Orange shall educate all activity personnel on pollution prevention measures, spill response, and BMP implementation.
2. The County of Orange shall notify the Regional Board in writing at least five days prior to actual start dates for the semi-annual maintenance activities and at least three days prior to the first five routine sand-breaching activities.
3. The County of Orange shall comply with the requirements of Regional Board Order No. R9-2002-01 (and as renewed), the National Pollutant Discharge Elimination System Permit for Municipal Storm Water Discharges.
4. Maintenance activities shall be scheduled to minimize disturbance to recreational activities at the beach. Activities shall be scheduled, where feasible, to avoid the peak visitor days (e.g., weekends and holidays) and hours.

5. Dredging activities involving more than 5,000 cubic yards are not authorized by this action. The County of Orange shall notify the Regional Board in accordance with Regional Board Order No. R9-1996-32, *General Waste Discharge Requirements for Maintenance Dredge/Fill Projects Conducted in Navigable Waters within the San Diego Region*, prior to conducting dredging activities involving greater than 5,000 cubic yards of material.
6. Sediment shall be removed, disposed, and handled in a manner that will not cause sustained, significant turbidity increases in the lagoon or ocean.
7. If post-project turbidity is increased in the lagoon 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 County of Orange shall modify its Operations and Maintenance Plan to include appropriate management measures prior to the next maintenance dredging or excavation activity.
8. Maintenance activities shall not be conducted if existing conditions indicate such activity would cause a significant increase and violation of water quality standards for fecal indicator bacteria concentrations at the shoreline. Planned activities shall be postponed until the threat of causing a violation of water quality standards has been abated.
9. Maintenance activities shall not be conducted during times when sewage is present in the lagoon. Prior to conducting any maintenance activities, the project manager shall communicate with the County Health Care Agency to verify that no known sewage spills have recently occurred that could affect the project area. On-site personnel shall cancel operations if site conditions indicate sewage is present in the project area.
10. If post-project data at either the shoreline or lagoon stations indicates the maintenance activities are significantly raising the bacteria concentrations and/or causing a violation of water quality standards, the County of Orange shall modify its Operations and Maintenance Plan to include appropriate management measures prior to the next maintenance dredging or excavation activity.
11. To ensure that the proposed maintenance program does not result in unanticipated adverse effects to the western snowy plover, the County of Orange shall provide a biological monitor on-site at least once per month to survey for the plover in the project vicinity prior to beginning and during maintenance activities. The County shall halt or suspend all activities likely to adversely affect the plover.

### C. WATER QUALITY MONITORING

The County of Orange shall conduct a technical investigation and shall prepare and submit periodic monitoring and technical reports to the Regional Board. The technical reports shall contain, but not be limited to, the following information:

1. **Water Quality Data and Assessment.** Water quality monitoring reports shall be submitted to the Regional Board annually to assess the effects of the ocean outlet maintenance activities. Each report shall contain raw and summary data, an assessment of compliance with applicable water quality standards, and an assessment of the effects of the ocean outlet maintenance activities. Each report shall include data in tabular and graphical form, and electronic data shall be submitted to the Regional Board upon request.<sup>1</sup> A certified contract laboratory or municipal staff certified to conduct the specific analyses shall perform all sampling, laboratory, quality assurance, and analytical procedures.
  - a. **Report Schedule.** The County of Orange shall submit monitoring results annually by **March 1** of each year. The reporting period shall be the calendar year.
  - b. **Report Contents.** Each report shall, at a minimum, contain the following items:
    - i. Monitoring results and a discussion of the results relative to the requirements of this certification and water quality standards;
    - ii. A description of management measures implemented in response to the data;
    - iii. A description of maintenance activities conducted during each monitoring event;
    - iv. Estimates of the volume of material dredged and excavated during each event;
    - v. Estimates of the volume of material deposited within receiving waters and the beach above the high tide line for each event; and
    - vi. A figure depicting the monitoring locations and locations from which material was removed and then deposited.
  - c. **Monitoring locations** shall include the lagoon and in the adjacent shoreline. The lagoon station shall be located downstream of the Coast Highway Bridge and upstream of the sand berm (or within 50 feet of Coast Highway Bridge if no sand berm is present during semi-annual maintenance activities). The shoreline station shall be located within 50 feet of the outfall point created by the maintenance activity.
  - d. **Water quality data** shall be obtained by grab samples (except Secchi disc turbidity monitoring) and reported for the following constituents and at the following frequencies:

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<sup>1</sup> If requested, the data shall be provided as a spreadsheet file that is consistent with the State of California's Surface Water Ambient Monitoring Programs (SWAMPs) template, available at <http://mpsl.mlml.calstate.edu/swdataformats.htm>

Parameter	Reporting Unit	Monitoring Frequency
Turbidity	Secchi disk depth and NTU	<p>One semi-annual maintenance event shall be monitored every two years, and two routine berm-breaching events shall be monitored each calendar year.</p> <p>The lagoon station shall be monitored by Secchi disk prior to maintenance activities (pre-project) and approximately 20 minutes following completion of the project (post-project). If post-project Secchi disk indicates transparency is 50% less than pre-project conditions, measurements shall be taken every 30 minutes until transparency of the lagoon water returns to pre-project conditions.</p> <p>If post-project transparency measured by Secchi Disk is 50% less than pre-project conditions for more than two hours, turbidity for the next two maintenance events shall be monitored in Nephelometric Turbidity Units (NTU) in addition to Secchi Disk measurements at the same frequency as above. If post-project turbidity is increased at the lagoon station by more than 20% over pre-project turbidity, monitoring shall continue every 30 minutes until turbidity levels return to pre-project conditions.</p>
Fecal Coliform	MPN or CFU /100ml	<p>Bacteria monitoring shall be conducted for each semi-annual maintenance event and for no less than two routine berm-breaching events each calendar year. Pre-project and post-project samples shall be collected and analyzed for each station.</p> <p>For semi-annual maintenance events, the pre-project bacteria sample shall be collected and analyzed 36-72 hours prior to conducting the maintenance activity. If lagoon bacteria concentrations exceed objectives for contact recreation (REC-1) but are below 10,000 MPN (or CFU) per 100ml for fecal coliform and/or enterococcus, then the County shall post appropriate public health warning signs at the beach prior to commencing maintenance activities. If pre-project lagoon bacteria samples show concentrations of more than 10,000 MPN (or CFU) per 100ml for fecal coliform and/or enterococcus, the County shall not commence the maintenance activities until a pre-project lagoon sample shows levels under 10,000 MPN (or CFU) per 100ml.</p>
<i>E. Coli</i> Or Enterococcus	MPN or CFU /100ml	
Nitrate	mg/L	<p>Monitoring shall be conducted for each Spring semi-annual maintenance event and for no less than two routine berm-breaching events conducted during the Summer (June through September). Pre-project and post-project samples shall be collected and analyzed for each station.</p>
Total Phosphate (as PO <sub>4</sub> <sup>3-</sup> )	mg/L	
Copper	µg/L	
Iron	µg/L	

Note: mg/L = milligrams per liter    µg/L = micrograms per liter  
 MPN and CFU refer to most probable number and colony forming units, respectively, and refer to different methods for quantifying concentrations of bacteria.

2. Data Quality Assurance. All information submitted in the monthly and final reports shall conform to a Quality Assurance Project Plan compatible with the Surface Water Ambient Monitoring Program (SWAMP).<sup>2</sup>
3. Certification Statement. Each monitoring and technical report submitted to the Regional Board shall include the following certification statement signed by either the principal executive officer, ranking elected official, or duly authorized representative of that person:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person(s) directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

#### **D. COMPENSATORY MITIGATION FOR LOSS OF WATERS OF THE U.S./STATE**

1. The County of Orange shall provide compensatory mitigation at a 1:1 acreage ratio for loss of waters of the State/U.S. resulting from maintenance activities that deposit dredged or excavated material into more than 50 linear feet or 0.01 acre of the meandering stream course. Mitigation shall include enhancement, creation, or restoration of aquatic habitat (e.g., vegetated streambed, unvegetated streambed, or wetlands) within the Aliso Creek watershed. Mitigation shall be completed within 180 days of the discharge.
2. Within 30 days following each maintenance activity that discharges material into more than 50 linear feet or 0.01 acre of the meandering stream course, the County of Orange shall notify the Regional Board with the following information:
  - a. Description of maintenance activity and extent of discharged material; and
  - b. Description and schedule of the compensatory mitigation to be conducted. The description shall include a characterization of the existing conditions at the proposed site, photographs of the proposed site, a description of proposed mitigation activities, and expected results of the mitigation activity.
3. Within 30 days after completion of mitigation activities, the County of Orange shall submit an as-built mitigation report to the Regional Board. The report shall include a description of the activities conducted, deviations from the proposed mitigation plan, photographs of the completed work, maintenance/monitoring plans, and a site map.

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<sup>2</sup> The State Water Resource Control Board (SWRCB) has prepared an electronic template for Quality Assurance Project Plans (QAPP) to assist in QAPP development, to provide a common format that will allow for review to be expedited, and to provide information on SWAMP consistency. Additional information and the template are available on-line at <http://www.waterboards.ca.gov/swamp/qapp.html>.

4. For the purpose of determining mitigation credit for the removal of exotic/invasive plant species, only the actual area occupied by exotic/invasive plant species shall be quantified to comply with mitigation requirements.
5. For purposes of this certification, creation is defined as the creation of vegetated or unvegetated waters of the U.S. where they have never been documented or known to occur (e.g., conversion of nonnative grassland to freshwater marsh). Restoration is defined as the creation of waters of the U.S. where they previously occurred (e.g., removal of fill material to restore a drainage). Enhancement is defined as modifying existing waters of the U.S. to enhance functions and values (e.g., removal of exotic plant species from jurisdictional areas and replacing with native species).
6. Mitigation is required for successive discharges of fill to the same area if the original mitigation for the affected area is partly or wholly unsuccessful.

#### E. REPORTING

1. All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.
2. All applications, reports, or information submitted to the Regional Board shall be signed and 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."*

3. The County of Orange shall submit reports required under this certification, or other information required by the Regional Board, to:

Executive Officer  
California Regional Water Quality Control Board  
San Diego Region  
Attn: 401 Certification; Project No. 05C-009  
9174 Sky Park Court, Suite 100  
San Diego, California 92123



**PUBLIC NOTIFICATION OF PROJECT APPLICATION:**

On February 21, 2005 receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.

**REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:**

Jeremy Haas  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123  
858-467-2735  
jhaas@waterboards.ca.gov

**WATER QUALITY CERTIFICATION:**

I hereby certify that the proposed discharge from the **Aliso Creek Outlet Maintenance Program Project** (Project No. 05C-009) 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 California Regional Water Quality Control Board, San Diego Region, Waiver of Waste Discharge Requirements (Waiver Policy) Nos. 13 and 17. Please note that these waivers are conditional and, should new information come to our attention that indicates a water quality problem, the Regional Board may issue 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 and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).

  
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JOHN H. ROBERTUS  
Executive Officer  
Regional Water Quality Control Board

10/17/2006  
Date

- Attachments:
1. Project Information
  2. Distribution List
  3. Location Maps
  4. Site Maps
  5. Site Photographs

## ATTACHMENT 1 PROJECT INFORMATION

Applicant: Susan Brodeur  
County of Orange, Resources Development and Management  
Division  
300 North Flower Street  
Santa Ana, CA 92703-5000

Applicant  
Representatives: Nardy Drew, County of Orange  
714-834-2340  
Nardy.Drew@rdmd.ocgov.com

Project Name: Aliso Creek Outlet Maintenance Program Project

Project Location: The project is located at the mouth of Aliso Creek, City of Laguna  
Beach.  
Lat: 3330'38.53" Long: -117 45'10.67"

Type of Project: Flood Control, recreation

Project Description: **The County of Orange proposes to implement a channel maintenance program at the mouth of Aliso Creek. The plan includes semi-annual maintenance activities to establish a trapezoidal outlet channel and more frequent "routine" berm-breaching activities that would be conducted as needed to prevent the creek from meandering upcoast or downcoast. No permanent alterations of Aliso Creek are proposed in conjunction with the maintenance program.**

**Routine maintenance activities would involve mechanized grading and excavation of a notch in a natural-forming sand berm, mechanized grading of slopes of the meandering stream course along the beach, and the placement of excavated material within the meandering stream course and/or above the high tide line on the beach. Minimal grading would be necessary to create the notch in cases where the creek was just beginning to meander. In cases where a meander has recently developed, the maintenance activities would cut a notch approximately 38-feet across, 8-feet wide, and 5-feet deep. If a long meander becomes established, the maintenance activities would also include mechanized earthwork to grade back the banks along the meandering stream and the placement of up to approximately 2,500 cubic yards of sand into the meander over 600 linear feet (0.31 acre) of waters of the U.S./State.**

**Semi-annual maintenance activities include the excavation of approximately 37,000 cubic yards of sediment deposited within the 0.42 acres of the channel outlet (approximately 200 linear feet) to increase hydraulic capacity in the area parallel to an existing rock revetment located on the downcoast side of the channel. Disposal of excavated material would occur on the adjacent beach in a 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.**

**The U.S. Fish and Wildlife Service has issued an informal opinion that the proposed maintenance program would not likely adversely affect the federally-endangered western snowy plover or critical habitat for the tidewater goby.**

Federal Agency/Permit:	U.S. Army Corps of Engineers Individual Permit under Section 404 Clean Water Act and Section 10 of the Rivers and Harbors Act
Other Required Regulatory Approvals:	California Department of Fish and Game Streambed Alteration Agreement
California Environmental Quality Act (CEQA) Compliance:	<b>On August 18, 2006 the County of Orange, Resources Development and Management Department, issued a Notice of Exemption (Class 1, section 15301) for the proposed project.</b>
Receiving Water:	Aliso Creek and Pacific Ocean (HSA 901.13)
Impacted Waters of the United States:	Temporary: Ocean <0.01 acre Streambed 850 linear feet (0.73 acre)
Dredge Volume:	Up to 3,000 cubic yards

Related Projects Implemented/to be Implemented by the Applicant(s):

The County had a section 401 water quality certification (no. 02C-094) for the semi-annual maintenance activities. That certification has expired.

The County is also processing a programmatic 401 certification with the State Water Resources Control Board for ocean outlet maintenance activities at several other beaches within jurisdiction of the San Diego and Santa Ana Regional Boards.

Compensatory Mitigation:

The County of Orange shall provide compensatory mitigation at a 1:1 acreage ratio for loss of waters of the State/U.S. resulting from maintenance activities that deposit dredged or excavated material into more than 50 linear feet or 0.01 acre of the meandering stream course.

Best Management Practices (BMPs):

BMPs will be used during maintenance activities. No post-construction treatment BMPs are applicable.

Public Notice:

On February 21, 2005 receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.

Fees:

Total Due: \$4,750

Total Paid: \$4,750

\$1,500 (check No.01-7259242),

\$3,250 (check no. 01-8104129)

**ATTACHMENT 2  
DISTRIBUTION LIST**

Corice Farrar  
U.S. Army Corps of Engineers  
Regulatory Branch  
P.O. Box 532711  
Los Angeles, CA 90053-2325  
(213) 452-4196 (fax)

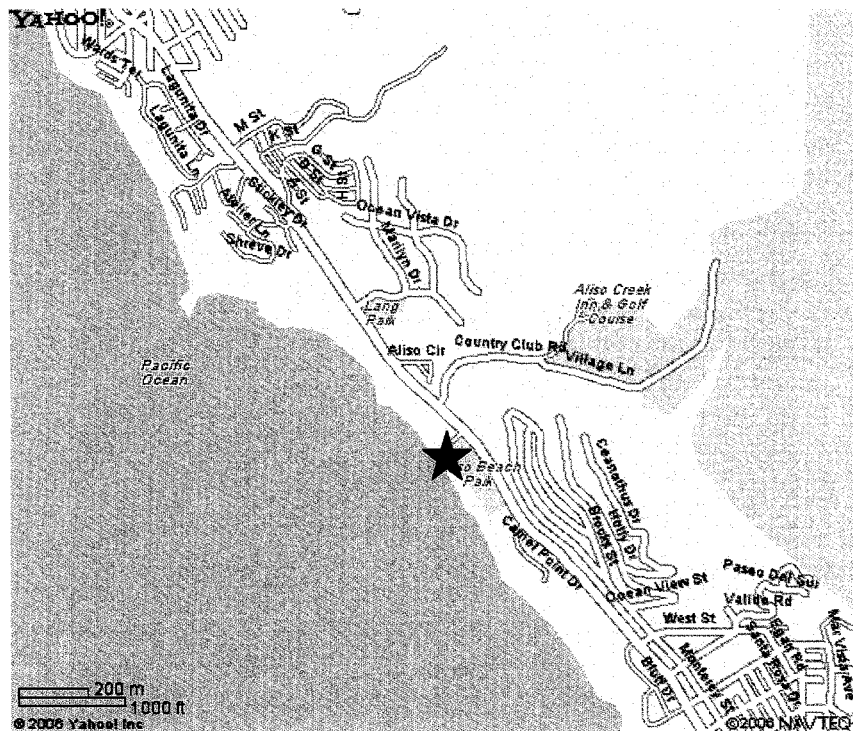
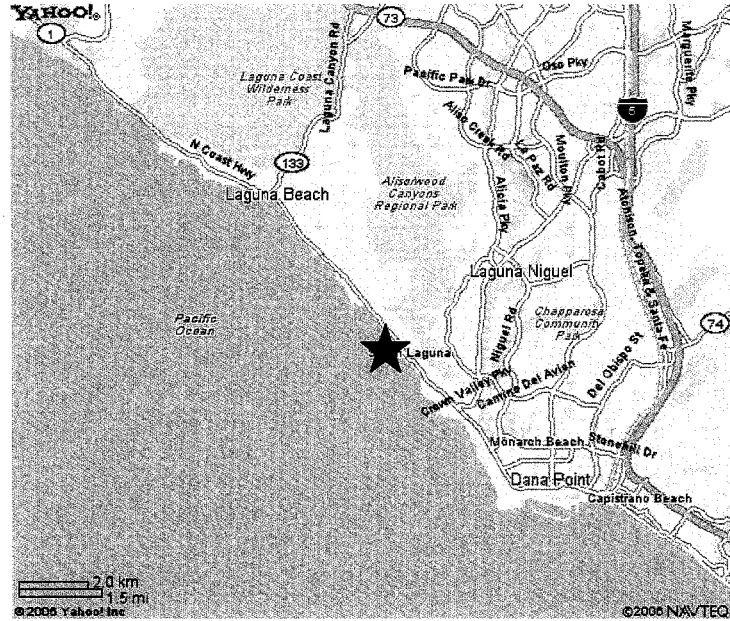
Nardy Drew, Chief  
County of Orange, Resources Development and Management Division  
Regulatory Permits Section  
P.O. Box 4048  
Santa Ana, CA 92702-4048

State Water Resources Control Board  
Division of Water Quality  
401 Water Quality Certification and Wetlands Unit  
Attn: Bill Orme  
P.O. Box 100  
Sacramento, CA 95812-0100

Tim Vendlinsky  
Wetlands Regulatory Office  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

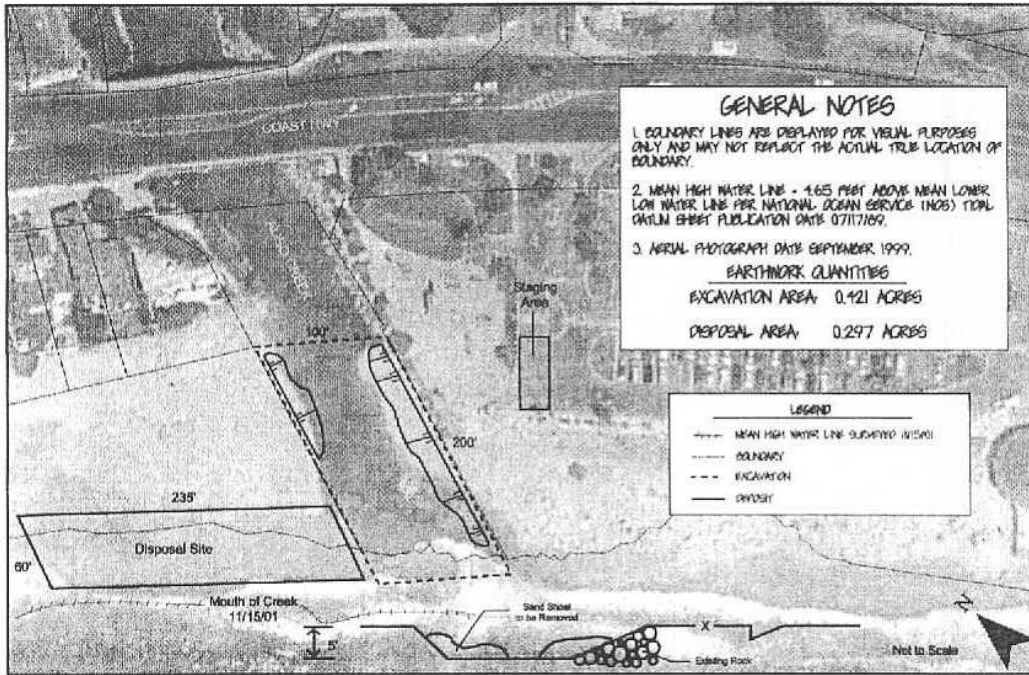
### ATTACHMENT 3 PROJECT LOCATION

The proposed project is located where Aliso Creek outlets to the Ocean in Laguna Beach at Aliso Beach Park.

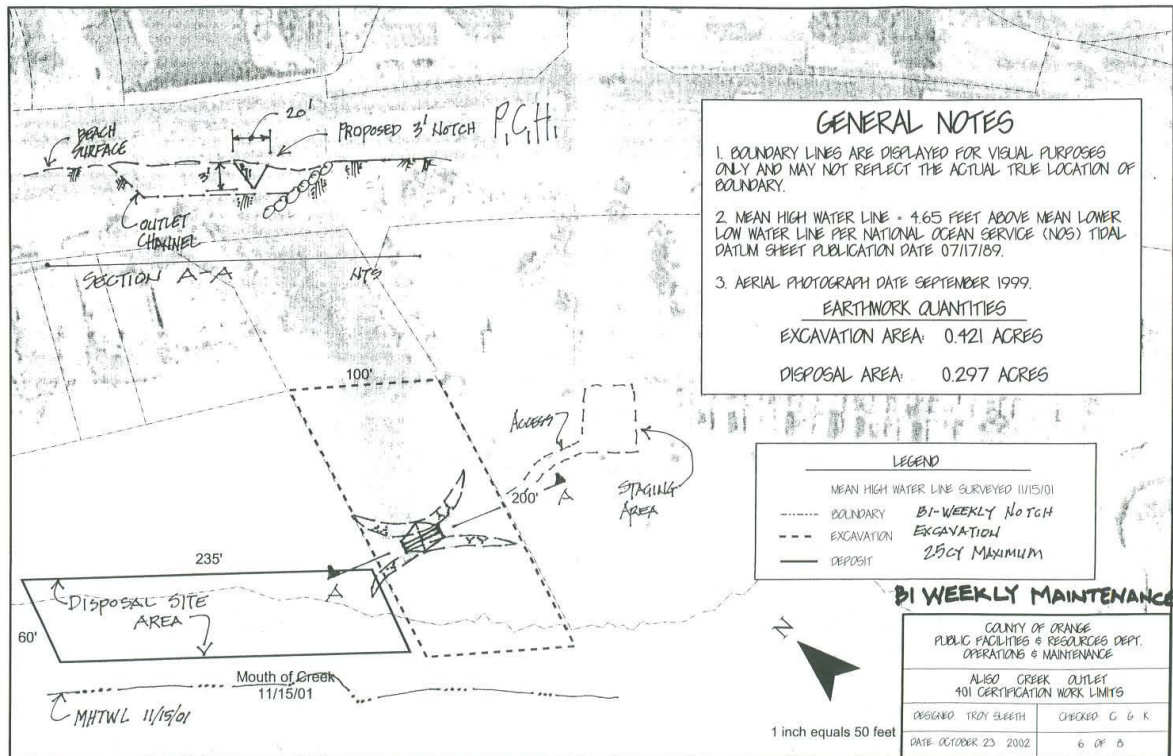


## ATTACHMENT 4 SITE MAPS

### A. Proposed semi-annual maintenance activities.



### B. Proposed bi-weekly maintenance activities.





### ATTACHMENT 5 SITE PHOTOGRAPHS

Figure 1. Example of upcoast meandering creek. Looking upcoast from existing playground on left bank. Photographic condition taken May 19, 2005.

Figure 1. Example of upcoast meandering. Looking upcoast from playground at County Beach. Photograph taken May 19, 2005.



Figure 2. Example of ocean outlet maintenance activities. Looking from Coast Highway. Note the channel cut in the sand berm. Photo taken July 26, 2006.



Figure 3. Example of downcoast meander. Note playground in upper right, which is site of Figure 1. Photo taken August 28, 2005.

