

California Regional Water Quality Control Board

San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA



Linda S. Adams
Acting Secretary for
Environmental Protection

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353 (858) 467-2952 • Fax (858) 571-6972 http:// www.waterboards.ca.gov/sandiego

April 15, 2011

In reply refer to: 761353: cloflen

Nardy Khan County of Orange, Public Works 300 North Flower Street Santa Ana. CA 92703

Dear Nardy Khan:

SUBJECT: ACTION ON REQUEST FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE TRABUCO CREEK ROAD IMPROVEMENT PROJECT WATER QUALITY CERTIFICATION NO. 11C-003

Enclosed find Clean Water Act Section 401 Water Quality Certification for discharges to Waters of the U.S. and acknowledgment of enrollment under State Water Resources Control Board Order No. 2003-017-DWQ for the **Trabuco Creek Road Improvement Project** (Project). A description of the project and project location can be found in the project information sheet, location map, and site maps, which are included as Attachments 1 through 3.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification.

Failure to comply with all conditions of this Certification may subject you to enforcement actions by the California Regional Water Quality Control Board, San Diego Region, including administrative enforcement orders requiring you 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.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Chad Loflen at (858) 467-2727 or cloflen@waterboards.ca.gov.

Respectfully,

for DAVID W. GIBSON
Executive Officer

Enclosures:

Clean Water Act Section 401 Water Quality Certification No. **11C-003** for **Trabuco Road Improvement Project**, with 3 attachments

cc: Refer to Attachment 2 of Certification 11C-003 for Electronic Distribution List.

Tech Staff Info & Use		
File No.	11C-003	
WDID	9000002216	
Reg. Measure ID	377237	
Place ID	761353	
Party ID	525588	
Person ID	377678	



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Over 50 Years Serving San Diego, Orange, and Riverside Counties Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA Edmund G. Brown, Jr.

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340 (858) 467-2952 • Fax (858) 571-6972 http:// www.waterboards.ca.gov/sandiego

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

PROJECT: Trabuco Creek Road Improvement

Project,

Certification Number (11C-003),

WDID: 9 000002115

APPLICANT: Nardy Khan

Orange County Public Works 300 North Flower Street Santa Ana. CA 92703 CIWQS

Reg. Meas. ID: 375340 Place ID: 755733 Party ID: 524033

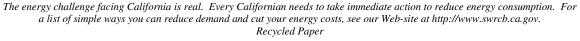
ACTION:

☑ Order for Low Impact Certification	☐ Order for Denial of Certification
☐ Order for Technically-conditioned Certification	☐ Waiver of Waste Discharge Requirements
☑ Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	☐ Enrollment in Isolated Waters Order No. 2004-004 DWQ

PROJECT DESCRIPTION:

The project involves the un-paved portion of Trabuco Creek Road from Trabuco Canyon Road to the United States Forest Service boundary. The project includes the construction of a concrete Arizona-style crossing over an un-named tributary (Crossing E) to Trabuco Creek, as well as the re-grading of the entire roadway and subsequent installation of decomposed granite over an aggregate base. The aggregate base and decomposed granite will also replace existing dirt dip crossings at Crossings A, B and D (0.0133 acres, 25 linear feet), which are causing active erosion into Trabuco Creek. The Arizona-style crossing will replace an existing crossing, composed of earthen fill material, which is above the natural grade of the creek and has disconnected the downstream hydrology. The Arizona crossing requires the permanent placement of fill within 0.0041 acres (estimated 10 linear feet) of non-wetland waters of the United States. Impacts will be mitigated through an in-lieu fee payment to Starr Ranch for 0.08

California Environmental Protection Agency





acres of restoration. A short portion of the roadway (110 linear feet) requires bioengineered rock protection from higher flow events. Buried rock protection will be backfilled with soil and planted with native species. The project is considered self-mitigating, as existing fill will be removed, hydrology will be restored and water quality improved. The installation of the Arizona-style crossing includes the restoration of the downstream grade with native rock. The re-grading and installation of an aggregate base under decomposed granite is expected to reduce existing road erosion and improve water quality in Trabuco Creek.

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I. STANDARD CONDITIONS:

The following three standard conditions apply to <u>all</u> Certification actions, except as noted under Condition 3 for denials (Action 3).

- 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 California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
- B. This Certification action is not intended and must 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.
- C. The validity of any non-denial Certification action (Actions 1 and 2) must be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

II. ADDITIONAL CONDITIONS: GENERAL

- A. Water Quality Certification No. 11C-003 (Certification) is only valid if the project begins no later than 5 (five) years from the date of issuance. If the project has not begun within 5 years from the date of issuance, then this Certification expires.
- B. Orange County Public Works must comply with the requirements of State Water Resources Control Board 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. These General Waste Discharge Requirements are accessible at:
 - http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/gene ralorders/go_wdr401regulated_projects.pdf.
- C. Orange County Public Works must, 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 (San Diego Water Board), to support this Certification and all subsequent submittals required as part of this Certification and as described in Attachment 1. The conditions within this Certification supersede

- conflicting provisions within such plans submitted prior to the Certification action. Any modifications thereto, would require notification to the San Diego Water Board and reevaluation for individual Waste Discharge Requirements and/or Certification amendment.
- D. During construction, Orange County Public Works must maintain a copy of this Certification at the project site so as to be available at all times to site personnel and agencies.
- E. Orange County Public Works must permit the San Diego Water Board or its authorized representative at all times, upon presentation of credentials:
 - 1. Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - 2. Access to copy any records required to be kept under the terms and conditions of this Certification.
 - 3. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
 - 4. Sampling of any discharge or surface water covered by this Order.
- F. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation is 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.
- G. In response to a suspected violation of any condition of this Certification, the San Diego Water Board may, pursuant to Water Code sections 13267 and 13383, require the holder of any permit or license subject to this Certification, to investigate, monitor and report information on the violation. The only restriction is that the burden, including costs, of preparing the reports must bear a reasonable relationship to the need for, and the benefits to be obtained from, the reports.
- H. In response to any violation of the conditions of this Certification, the San Diego Water Board may modify the conditions of this Certification as appropriate to ensure compliance.

III. ADDITIONAL CONDITIONS: BEST MANAGEMENT PRACTICES

- A. Prior to the start of the project, and annually thereafter, Orange County Public Works must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response measures, and Best Management Practices (BMPs) implementation and maintenance.
- B. Orange County Public Works must, 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 United States and/or State.
- C. Orange County Public Works must enroll in and comply with the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity.
- D. The treatment, storage, and disposal of wastewater during the life of the project must be done in accordance with waste discharge requirements established by the San Diego Water Board pursuant to CWC § 13260.
- E. Discharges of concentrated flow during construction or after completion must not cause downstream erosion or damage to properties or stream habitat.
- F. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the U.S. and/or the State or placed in locations that may be subjected to storm flows. Pollutants discharged to areas within a stream diversion area must be removed at the end of each work day or sooner if rain is predicted.
- G. All surface waters, including ponded waters, must be diverted away from areas undergoing 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 water quality objectives of the receiving waters. 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.
- H. All areas that will be left in a rough graded state must be stabilized no later than one week after completion of grading. Orange County Public Works is responsible for implementing and maintaining BMPs to prevent erosion of the rough graded areas to prevent flow from this area from causing adverse effects to beneficial uses. After completion of road grading, all

non-roadway areas disturbed during construction must be revegetated with native species appropriate for the area. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at http://www.cal-ipc.org/ip/inventory/weedlist.php.

- I. Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the U.S. and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.
- J. Removal of vegetation must occur by hand, mechanically, or using EPA approved herbicides deployed using applicable BMPs to prevent impacts to beneficial uses of waters of the State. Use of aquatic pesticides must be done in accordance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, and any subsequent reissuance as applicable. Removal of vegetation must occur outside of the avian nesting season (March 15- August 31) unless supervised by a qualified biologist whom must perform pre-construction nesting surveys, set buffers and setback distances from nests, and monitor construction activities.

IV. ADDITIONAL CONDITIONS: COMPENSATORY MITIGATION

- A. Mitigation for permanent discharges to less than 0.04 acres of nonwetland waters of the United States (180 linear feet) must include:
 - 1. Removal of the existing above-grade crossing and subsequent restoration of the creek grade and contours following installation of the Arizona-style crossing (Crossing E).
 - 2. Restoration of upstream and downstream grade for the aggregate and decomposed granite crossings (Crossings A,C,D).
 - 3. Purchase of 0.08 acres of restoration credit through Starr Ranch.
- B. Orange County Public Works must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the United States/State. Restoration must include grading of disturbed areas to pre-project contours, unless the temporary impacts involve the removal of pre-project fill, and subsequent revegetation with native species. Orange County Public Works must implement all necessary BMPs to control erosion and runoff from areas associated with this project.
- C. For purposes of this Certification, establishment is defined as the creation of vegetated or unvegetated waters of the United States/State where the

resource has never previously existed (e.g. conversion of nonnative grassland to a freshwater marsh). Restoration is divided into two activities: re-establishment and rehabilitation. Re-establishment is defined as the return of natural/historic functions to a site where vegetated or unvegetated waters of the United States/State previously existed (e.g., removal of fill material to restore a drainage). Rehabilitation is defined as the improvement of the general suite of functions of degraded vegetated or unvegetated waters of the United States/State (e.g., removal of a heavy infestation or monoculture of exotic plant species from jurisdictional areas and replacing with native species). Enhancement is defined as the improvement to one or two functions of existing vegetated or unvegetated waters of the United States/State (e.g., removal of small patches of exotic plant species from an area containing predominantly natural plant species). Preservation is defined as the acquisition and legal protection from future impacts in perpetuity of existing vegetated or unvegetated waters of the United States/State (e.g., conservation easement).

V. NOTIFICATION REQUIREMENTS:

- A. Orange County Public Works must report to the San Diego Water Board any noncompliance which may endanger human health or the environment. Any information shall be provided orally within 24 hours from the time the Orange County Public Works becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Orange County Public Works becomes aware of the circumstances. The written submission shall contain a written description of the incident and its cause, the period of the noncompliance including exact dates and times, and if the 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 reoccurrence of the noncompliance. The San Diego Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours.
- B. This Certification is not transferable in its entirety or in part to any person except after notice to the Executive Officer of the San Diego Water Board in accordance with the following terms:
 - 1. Transfer of Property Ownership: Orange County Public Works 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 Orange County Public Works 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 Executive Officer of the San Diego Water Board no later than 10 days following the transfer of ownership.

- 2. Transfer of Compliance Responsibility. Upon properly noticed transfers of responsibility, the transferee assumes responsibility for compliance with this Certification and references in this Certification to Orange County Public Works will be interpreted to refer to the transferee as appropriate. Transfer of responsibility does not necessarily relieve Orange County Public Works of this Certification in the event that a transferee fails to comply.
- C. Orange County Public Works must notify the San Diego Water Board in writing at least 5 days prior to the actual commencement of dredge, fill, and discharge activities. The notification must include proof of payment to Starr Ranch for 0.08 acres of restoration of waters of the State.

VI. REPORTING REQUIREMENTS:

- A. The submittal of information under this Certification is required pursuant to California Water Code (CWC) sections 13267 and 13383. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit information pursuant to CWC sections 13268 or 13385.
- B. All reports and information submitted to the San Diego Water Board must be submitted in both hardcopy and electronic format. The preferred electronic format for each report submission is one file in PDF format that is also Optical Character Recognition (OCR) capable.
- C. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified 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.
- D. All applications, reports, or information submitted to the San Diego Water Board must 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."

E. Orange County Public Works must submit reports required under this Certification, or other information required by the San Diego Water Board, to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification; Project No. 10C-065
9174 Sky Park Court, Suite 100
San Diego, California 92123

VII. CEQA FINDINGS:

- A. The County of Orange is the lead agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq. (CEQA)) for the Trabuco Creek Road Improvement Project. The County of Orange conducted an Initial Study and determined that the project, with mitigation, would not have a significant effect on the environment. On October 29, 2010, the County of Orange filed a Notice of Determination for a Mitigated Negative Declaration (MND) under CEQA for the Trabuco Creek Road Improvement Project.
- B. The San Diego Water Board is a responsible agency under CEQA and has reviewed and considered the lead agency's MND for the Trabuco Creek Road Improvement Project. The San Diego Water Board finds that the Trabuco Creek Road Improvement Project, as proposed, will not have a significant effect on the environment with mitigation measures incorporated. Therefore, the San Diego Water Board has determined that issuance of this Section 401 Water Quality Certification is consistent with the MND for the Trabuco Creek Road Improvement Project.

X. WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the Trabuco Creek Road Improvement Project (Project No. 11C-003) 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 the attention of the San Diego Water Board that indicates a water quality problem, the San Diego Water 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 Water Quality Control Plan for the San Diego Basin Region (9) (Basin Plan).

James 6. Smith, AEO

DAVID W. GIBSON

Executive Officer

Regional Water Quality Control Board

Attachments:

1. Project Information

2. Distribution List

3. Location and Site Maps

VIII. PUBLIC NOTIFICATION OF PROJECT APPLICATION:

A. On January 18, 2011, receipt of the project application was posted on the San Diego Water Board web site to serve as appropriate notification to the public. No public comments were received.

IX. SAN DIEGO WATER BOARD CONTACT PERSON:

Chad Loflen
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
858-467-2727, cloflen@waterboards.ca.gov

ATTACHMENT 1 PROJECT INFORMATION

Applicant: Orange County Public Works

Attention: Nardy Khan 300 North Flower Street Santa Ana, CA 92703 Telephone: 714-834-2340 Facsimile: 714-667-7520

Email: nardy.khan@ocpw.ocgov.com

Applicant Bonterra Consulting

Representatives: Attention: Gary Medeiros

151 Kalmus Drive, Suite E-200

Costa Mesa, CA 92626 Telephone: 714-444-9199 Facsimile: 714-444-9599

Email: gmedeiros@bonterraconsulting.com

Project Name: Trabuco Creek Road Improvement Project

Project Location: Latitude: 33.6674N Longitude: -117.5672W

Type of Project: Transportation Improvement

Need for Project: The project is needed to improve traffic access for residents

and emergency personnel in Trabuco Canyon.

Project Description: The project involves the un-paved portion of Trabuco Creek

Road from Trabuco Canyon Road to the United States Forest Service boundary. The project includes the construction of a concrete Arizona-style crossing over an un-named tributary (Crossing E) to Trabuco Creek, as well as the re-grading of

the entire roadway and subsequent installation of

decomposed granite over an aggregate base. The aggregate base and decomposed granite will also replace existing dirt dip crossings at Crossings A, B and D (0.0133 acres, 25 linear feet), which are causing active erosion into Trabuco Creek. The Arizona-style crossing will replace an existing crossing, composed of earthen fill material, which is above the natural grade of the creek and has disconnected the downstream hydrology. The Arizona crossing requires the permanent placement of fill within 0.0041 acres (estimated 10 linear feet) of non-wetland waters of the United States. Impacts will be mitigated through an in-lieu fee payment to Starr Ranch for 0.08 acres of restoration. A short portion of the roadway (110

linear feet) requires bio-engineered rock protection from higher flow events. Buried rock protection will be backfilled with soil and planted with native species. The project is considered self-mitigating, as existing fill will be removed, hydrology will be restored and water quality improved. The installation of the Arizona-style crossing includes the restoration of the downstream grade with native rock. The regrading and installation of an aggregate base under decomposed granite is expected to reduce existing road erosion and improve water quality in Trabuco Creek.

Federal

U.S. Army Corps of Engineers §404 NWP, ACOE Staff:

Agency/Permit: Richard Van Sant

Other Required Regulatory Approvals:

California Department of Fish and Game Streambed Alteration Agreement, CDFG Staff: Russell Barabe

California

Environmental Quality |

Act (CEQA) Compliance:

Initial Study/Mitigated Negative Declaration,

SCH#2010101099, Lead Agency: County of Orange

Receiving Water: Unnamed Tributary to Trabuco Creek, San Juan HU, Mission

Viejo HA, Upper Trabuco HSA

Affected Waters of the

Permanent:

United States:

Streambed: 0.04 acres (180 linear feet)

Dredge Volume: n/a

Related Projects
Implemented/to be
Implemented by the

Applicant(s):

None.

Compensatory

Mitigation:

Removal of the existing crossings and restoration of creek

grades. The project will also purchase 0.08 acres of

restoration through Starr Ranch.

Mitigation Location: On-site. In-lieu fee payment mitigation will occur at Starr

Ranch.

Best Management Construction

Practices (BMPs): In accordance with State Water Resources Control Board

Water Quality Order No. 2009-0009-DWQ

Post Construction

The existing dirt road will be re-graded and replaced with an unpaved decomposed granite road with aggregate base.

Public Notice: On January 18, 2011 receipt of the project application was

posted on the San Diego Water Board web site to serve as appropriate notification to the public. No comments from the

public were received.

Inspection: n/a

Fees: Total Due: \$640.00

Total Paid: \$1,218.00 Overpayment: \$578.00

CIWQS: Regulatory Measure ID: 375340

Place ID: 755733 Party ID: 524033

ATTACHMENT 2 E-MAIL DISTRIBUTION LIST

R.J. Van Sant U.S. Army Corps of Engineers, Regulatory Branch richard.j.vansant@usace.army.mil

Russell Barabe California Department of Fish and Game rbarabe@dfg.ca.gov

USEPA, Region 9 R9-WTR8-Mailbox@epa.gov

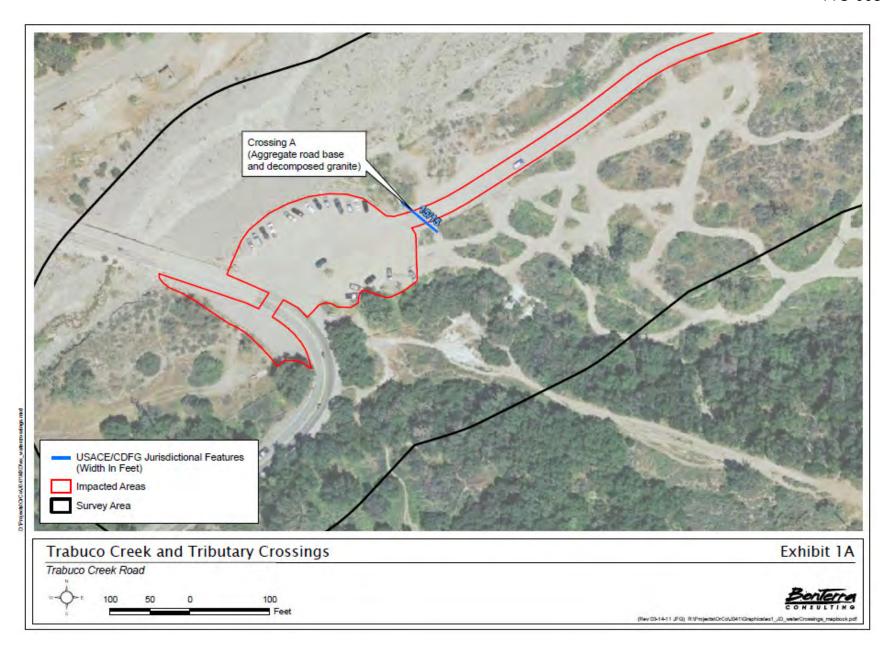
State Water Resources Control Board, Division of Water Quality 401 Water Quality Certification and Wetlands Unit Stateboard401@waterboards.ca.gov

Gary Medeiros
Bonterra Consulting
GMedeiros@bonterraconsulting.com

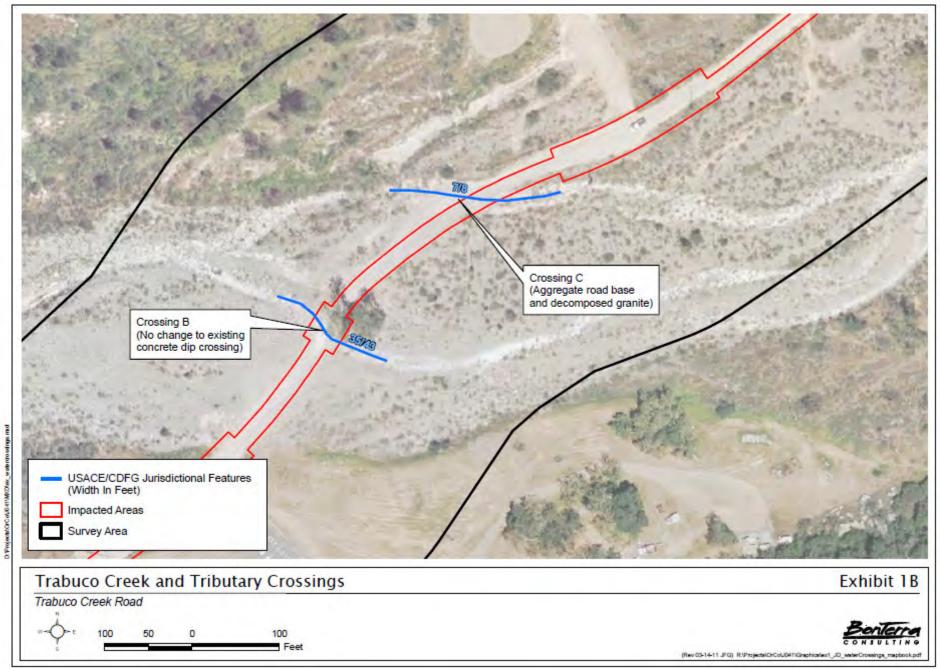
ATTACHMENT 3 PROJECT AND SITE MAPS



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