

**DEPARTMENT OF TRANSPORTATION**

LEGAL DIVISION

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*Making Conservation  
a California Way of Life.*

April 13, 2018

*Via Email & U.S. Mail*

Roger Mitchell  
California Regional Water Quality Control Board  
San Diego Region  
2375 Northside Drive, Suite 100  
San Diego, California 92108  
sandiego@waterboards.ca.gov

Re: Tentative Investigation Order No. R9-2018-0021  
Reference No. #656543:RMitchell

Dear Mr. Mitchell:

The California Department of Transportation (Caltrans) appreciates the opportunity to comment on the Tentative Investigation Order (I.O.) No. R9-2018-0021. Caltrans identified the following areas in the Tentative I.O. which require clarification or modification to improve Caltrans' ability to meet the objectives of the I.O.:

- (1) Omitted information from Efforts to Protect Human Health and the San Diego River Watershed;
- (2) The Bacteria TMDL;
- (3) Homeless encampments and assumed facts;
- (4) The conclusions of the Surfer Health Study;
- (5) Sources of human fecal material in the San Diego River Watershed;
- (6) Named Dischargers;
- (7) The Work Plan deadline; and
- (8) The Semiannual progress reports.

These eight areas are addressed below.

***1. Efforts to Protect Human Health and the San Diego River Watershed***

The Tentative I.O. correctly notes that Caltrans' National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements (WDRs) require discharges of pollutants from Caltrans' municipal separate storm sewer systems (MS4s) to be reduced to the maximum extent practicable (MEP). (Finding 45; Order No. 2012-0011-DWQ, page 7, Finding 7, Performance Standards.)

Yet, in the section addressing Efforts to Protect Human Health and the San Diego River Watershed, the Tentative I.O. makes no mention of the numerous pollution prevention and

source control activities Caltrans has engaged in to deal with homeless persons on its rights of way. For instance, Caltrans regularly—meaning weekly—inspects and patrols its rights of way to ensure the safety of drivers and the public in general. Caltrans routinely engages in trash and debris cleanup activities and sweeping. Caltrans also erected fences in the San Diego River Watershed to secure its rights of way. (*Cf.* Findings 15-18, where Caltrans’ cleanup efforts are omitted.)

But, Caltrans’ efforts do not stop here. Caltrans regularly removes homeless encampments from its rights of way. In fact, Caltrans contracts with hazardous waste removal companies to clean its rights of way after homeless encampments have been removed. Such cleanup includes removing any human fecal material. Caltrans also routinely cooperates with the City of San Diego and the San Diego River Park Foundation (Foundation) to remove homeless encampments outside of its rights of way. Based on the foregoing and other activities included in its existing programs, Caltrans maintains that it has complied with the prevention, source control, structural, and treatment efforts in the MEP performance standard contained in its NPDES permit to reduce the discharge of human fecal material in wet weather discharges. Indeed, Table 2 of the Tentative I.O. recognizes Caltrans’ efforts in that *no reduction* is required by Caltrans for the Bacteria TMDL.

- *Findings should be added to include Caltrans’ prevention, source control, structural and treatment efforts to remove or prevent the deposition of fecal material, trash and debris, and to ensure the safety of the public in its rights of way.*
- *Finding 45 should be updated to include Caltrans’ efforts to reduce human fecal material and to meet the MEP performance standard.*

## ***2. Bacteria TMDL***

The Bacteria TMDL discussed in Findings 5 to 9 addresses the same fundamental concerns as this Tentative I.O. Since no reduction is required by Caltrans in the Tentative I.O.’s Table 2, as discussed above, Caltrans requests consideration from the California Regional Water Quality Control Board, San Diego Region (Board) on the need for both mechanisms.

- *Caltrans requests that (1): The Board clarify why Caltrans must engage in further study, and incur further taxpayer costs, if Table 2 shows no further reduction is required from Caltrans, and (2) Clarify the relationship between the existing Bacteria TMDL and this Tentative I.O.*

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### 3. *Homeless Encampments*

Homelessness is a complex social-economic issue involving competing policies, resources, rights, stakeholders, and opinions. Even so, Finding 46 states that:

Assuming individuals living in the San Diego River are not regularly using restroom facilities, they are likely defecating outdoors, resulting in the discharge of human fecal material to the watershed tributary to the San Diego River or directly into the San Diego River. This is an illicit discharge that must be eliminated per . . . Provision B.1 of Order No. 2012-0011-DWQ [Caltrans' NPDES Permit].

Consistent with the efforts described above, Caltrans disagrees with the Board's finding; rather, Caltrans maintains such "discharges" are "effectively prohibited" by Caltrans consistent with Provision B.1 of Order No. 2012-011-DWQ.

Additionally, the Tentative I.O. relies on incomplete data from the Foundation. (See Finding 46, fn. 5.) For instance, the Tentative I.O. references 116 "encampments", with 290 individuals living along the mainstream of the San Diego River from the City of Santee to western Mission Valley, as evidence of homeless encampments' "challenge to MS4 permittees." (Finding 46.) Yet, the encampment data in the Tentative I.O. appears inaccurate when compared to the same data source.<sup>1</sup> When "Active Encampment[s]" are selected from the San Diego River Foundation's mapping tool, almost no *active* encampments appear along the San Diego River. (See Map 1.) Rather, 128 *inactive* encampments are displayed. (See Map 1.) As such, it is difficult to ascertain the true basis of the factual underpinnings of the Tentative I.O.

Moreover, the Foundation's 2018 San Diego River Trash Maps, identified 57 areas with "Encampment Trash", 794 sites that are "No Longer Present", and 92 sites with "Inactive Encampment[s]".<sup>2</sup> (See Map 2.) The vast majority of these sites are tagged in the San Diego River itself and not on or adjacent to Caltrans' rights of way. (See Maps 3 & 4.) Even so, the Tentative Order suggests that most of the homeless encampments are only located on Caltrans' right of way. (See Finding 46 ("[m]any encampments exist on public right-of-way area, including those owned by Caltrans.")) Caltrans' facilities are only a small portion of the publicly-owned lands on or adjacent to this Watershed. The Tentative I.O. should clarify this fact.

Likewise, the Board's use of direct aerial imagery of Caltrans' facilities, such as Interstate 15 and Interstate 805, provides an inaccurate perception of Caltrans' improvements in the Mission Valley area. (See Figures 3 & 4.) Caltrans' highway facilities in the Mission Valley area contain

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<sup>1</sup> See interactive mapping at: <http://immappler.com/sandiego16/>.

<sup>2</sup> See interactive mapping at: <http://immappler.com/sandiegorivertrash/>.

connector ramps, which are elevated causeways that exist high over Mission Valley, and which do not provide effective cover for homeless encampments.

Finally, the Board's statement that: "... Caltrans must use their land use and enforcement authority to prevent and eliminate illicit discharges to the MS4, including discharges from homeless encampments," oversimplifies a delicate and multifaceted issue. (Finding 46; *See e.g., Orange County Catholic Worker et al. v. Orange County et al.*, No. 8:18-cv-0155-DOC-JDE (C.D. Cal., Complaint Filed Jan. 29, 2018).) The Board's statement suggests that Caltrans has total control over the activities of the homeless who transit through its rights of way. As illustrated in numerous lawsuits across the State of California, this is far from the case.

- ***Finding 46 should be removed from the Tentative I.O.***

#### ***4. The Surfer Health Study***

In issuing the Tentative I.O. the Board relies heavily on the Surfer Health Study (SHS) published by the Southern California Coastal Water Research Project (SCCWRP). Indeed, the Tentative I.O. states that: "Results indicated an increased [gastrointestinal] GI illness following ocean exposure compared with not entering the water (25 illnesses/1000 swimmers, vs. 18 illnesses/1000 swimmers). This illness rate increased even further following wet weather (up to 30 illnesses/1000 swimmers)." (Finding 11.) Even so, the SHS concluded that while there was an increase in the rate of GI illness following ocean exposure, the increase was *less* than U.S. Environmental Protection Agency's Guidelines which recommends an average of 32 to 36 cases of GI illness per 1,000 swimmers. (SHS, pp.1-4.) The Board does not include this conclusion in the Tentative I.O. nor robustly explain the necessity of a further work plan and investigation given the SHS's conclusions.

- ***Finding 11 should be updated to include the SHS's conclusions and an explanation for why further study is still required.***

#### ***5. Sources of Human Fecal Material in the San Diego River Watershed***

The Tentative I.O. identifies six possible sources for the discharge of human fecal material into the San Diego River Watershed, including sanitary sewer overflows from public-owned sewer collection systems, sewage spills from privately-owned lateral sewer lines, and exfiltration from publicly-owned sanitary sewer collection systems, privately-owned lateral sewer lines, and privately-owned on-site wastewater treatment systems. (Finding 14.) Caltrans does not own, operate, or discharge to these three potential sources, nor does the Board allege that Caltrans does so. As such, Caltrans cannot control sampling analysis from any these potential sources.

Further, Caltrans has no authority to prevent discharges from such sources or to "determine whether or not the management measures used by the various dischargers in their respective programs are adequately addressing the REC-1, REC-2, and SHELL beneficial use impairments

caused by the presence of human fecal material in the San Diego River, its tributaries, and the downstream beach coastal waters,” i.e., the Board’s stated need for this Tentative I.O. (Finding 62.)

- ***The Board should: (1) clarify that Caltrans is only required to develop a work plan and investigative study for wet weather discharges from its right of way, and (2) remove Directive 1.d from the Tentative I.O.***

#### ***6. Named Dischargers***

The Tentative I.O. omits maps showing real property ownership along the San Diego River Watershed. Such maps inform the Board on whether all parties have been named in the Tentative I.O. Further, ownership maps allow the dischargers and the Board to discuss right-of-way access issues, which will inevitably arise in completing a work plan.

- ***The Board should include ownership maps in the Tentative I.O.***

#### ***7. July 1, 2018, Work Plan Deadline Unfeasible***

The Tentative I.O. proposes a July 1, 2018, deadline for the dischargers’ submission of a work plan and investigative study. (Directive 1.) This deadline is wholly unfeasible for public agencies who must go through a cumbersome budgeting and planning process to secure funding and staffing to respond to an I.O. Caltrans requests that any work plan be submitted no earlier than January 1, 2019.

- ***The Work Plan be submitted no earlier than January 1, 2019.***

#### ***8. Semiannual Progress Reports***

The Tentative I.O. will require all dischargers to submit semiannual progress reports on the 15<sup>th</sup> of January and July of each year. (Directive 2.) Considering the limited number of wet weather events in southern California, semiannual reports would be redundant. Moreover, the Board’s July semiannual deadline coincides with year-end reporting at Caltrans. In particular, Caltrans must prepare the Caltrans Storm Water Management Program Annual Report and the Caltrans Storm Water Management Program District Work Plan for the State Board. As such, Caltrans requests that the Tentative I.O. require no more than annual progress reports, due in January of each year.

- ***Require only annual progress reports due in January of each year.***

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Again, thank you for the opportunity to provide comments on the Tentative I.O. We look forward to the finalized Tentative Order.

Sincerely,



AMY M. SERIEYS  
Deputy Attorney

Cc: Mr. Carl Savage, Chief, Storm Water, Culvert Analysis & Visual Analysis, California  
Department of Transportation

Enclosure

San Diego River Park Foundation, "San Diego River Trash Cleanup 2017 & 2018" Maps 1 to 4.

# San Diego River Trash Cleanup 2017

MAP 1

Log in Mapper.net

San Diego River Park Foundation

San Diego River Park Foundation

Map List Chart

SHOW SITE INFORMATION

Filter

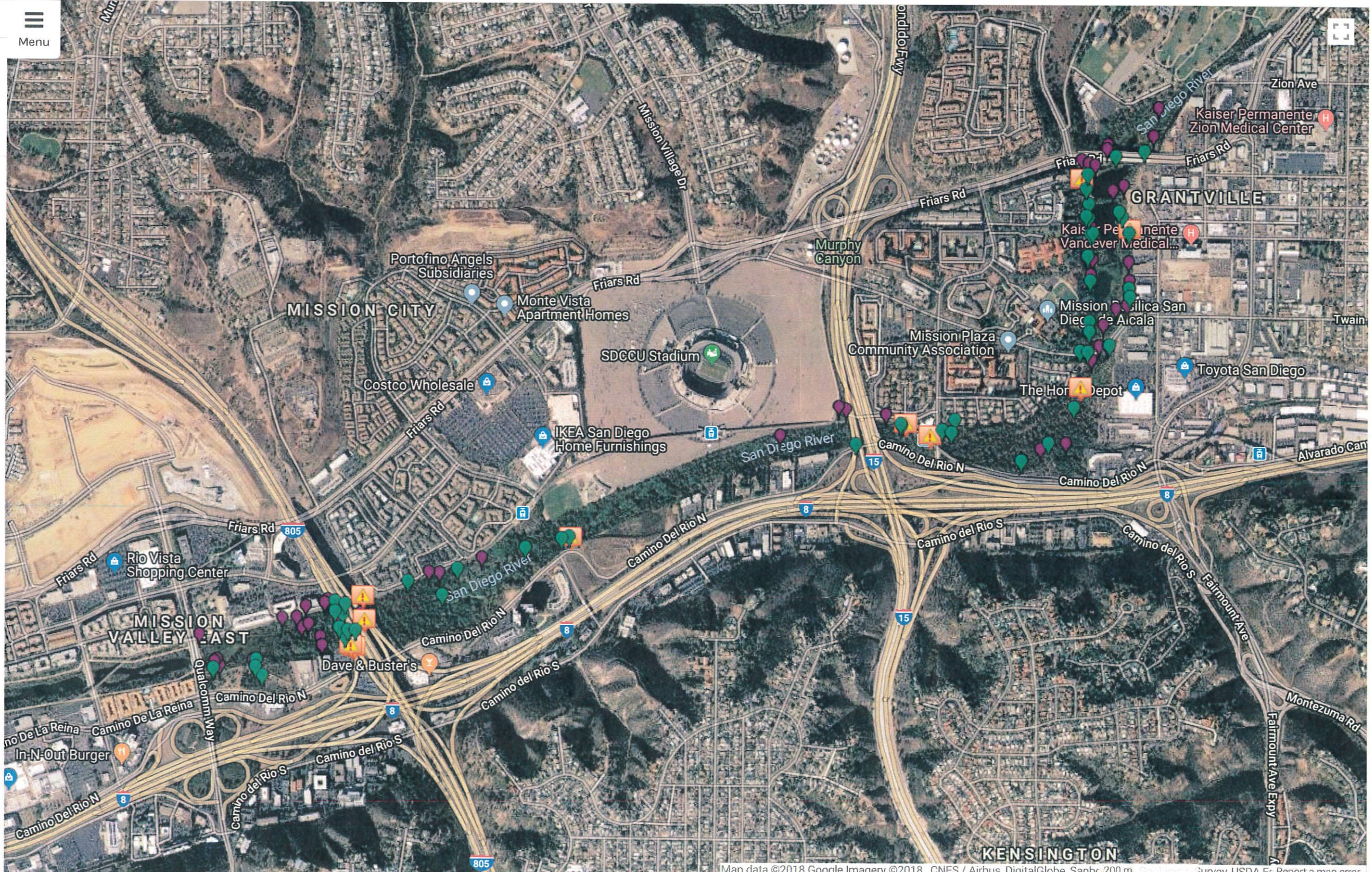
My location Map center Find Address

Density map settings

- Select all
- Litter (21)
- Active Encampment
- Inactive Encampment (128)
- Stormwater Debris (98)
- Dumping (23)
- Encampment Trash (103)
- Special Removal Needed (3)
- Site No Longer Present (235)

Layers

- Watershed Boundary
- parcel boundary
- RiverBlitz Segments
- RiverBlitz Segments
- parcels



# San Diego River Trash Cleanup 2018

MAP 2

Powered by Mappler technology

Map List Chart

SHOW SITE INFORMATION

Filter

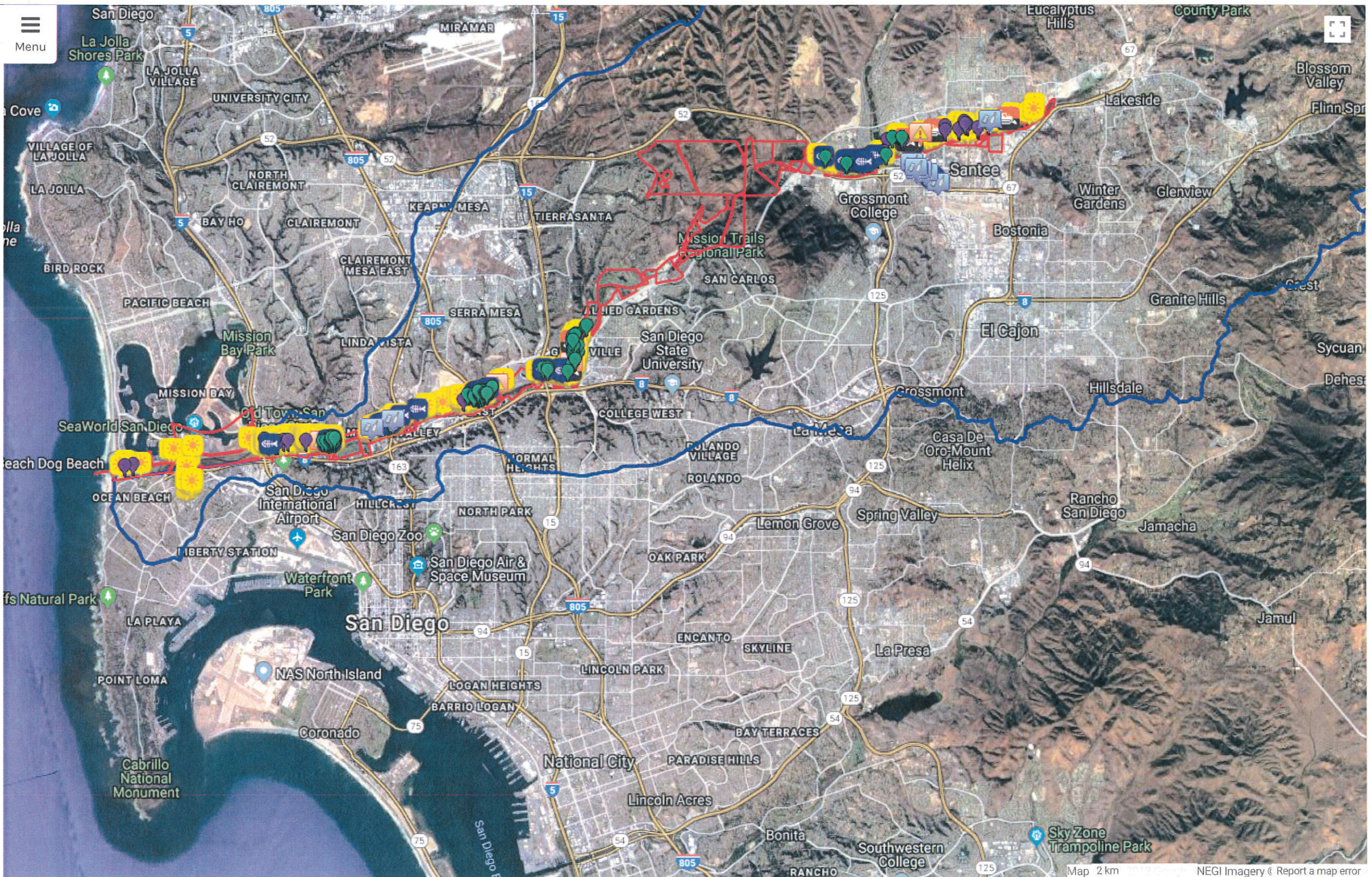
My location Map center Find Address  
Category

Density map settings

- Select all
- Site No Longer Present (794)
- Inactive Encampment (92)
- Encampment Trash (57)
- Stormwater Debris (41)
- Litter (10)
- Dumping (5)
- Special Removal Needed (7)
- Access Issues or Not Surveyed

Layers

- Watershed Boundary
- RiverBlitz Segments
- ParcelBoundary





Map List Chart

SHOW SITE INFORMATION

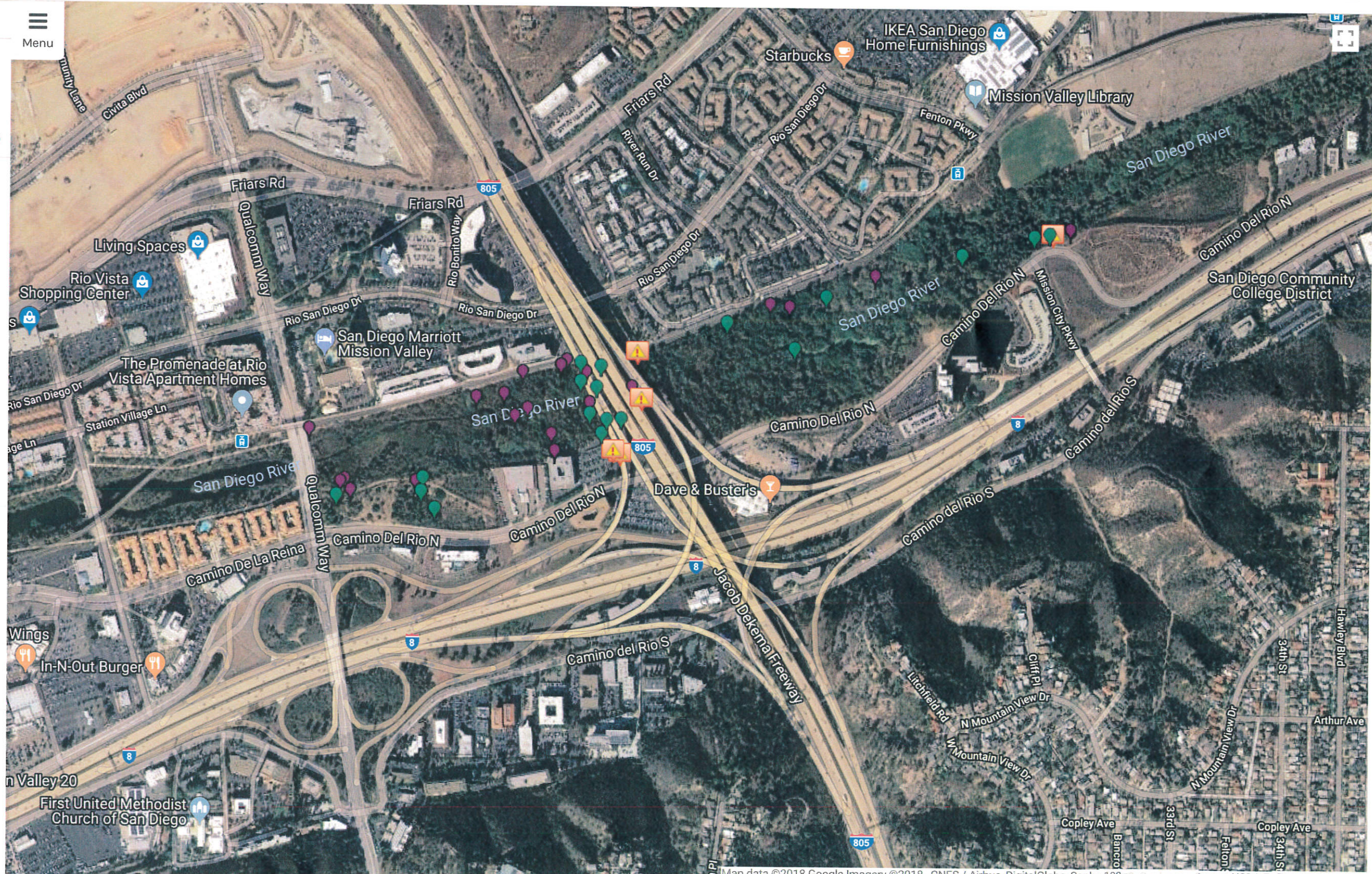
Filter

My location Map center Find Address

Density map settings

- Select all
- Litter (21)
- Active Encampment
- Inactive Encampment (128)
- Stormwater Debris (98)
- Dumping (23)
- Encampment Trash (103)
- Special Removal Needed (3)
- Site No Longer Present (235)

- Layers
- Watershed Boundary
  - parcel boundary
  - RiverBlitz Segments
  - RiverBlitz Segments
  - parcels



# San Diego River Trash Cleanup 2017

MAP 4

Log in Mapper.net

San Diego River Park Foundation

San Diego River Park Foundation

Map List Chart

SHOW SITE INFORMATION

Filter

Menu

My location Map center Find Address

Category

Density map settings

- Select all
- Litter (21)
- Active Encampment
- Inactive Encampment (128)
- Stormwater Debris (98)
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