

**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. 2 to Clean Water Act Section 401
Water Quality Certification No. 04C-154**

**PROJECT: Capistrano Beach Storm Drain Phase II Maintenance Project
Certification Number 04C-154
WDID: 9000001364**

**APPLICANT: City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629**

Reg. Meas. ID: 150591 Place ID: 213131 Party ID: 11074 Person ID: 117556

On August 29, 2005, Clean Water Act Section 401 Water Quality Certification No. 04C-154 (Certification) was issued to the City of Dana Point (Applicant) for the Capistrano Beach Storm Drain Phase II Maintenance Project (Project). On February 26, 2010, the Certification was amended to extend the expiration date of the Certification five additional years until February 26, 2015.

The Certification allows for bi-weekly maintenance activities and the discharge of beach sand and sediment material in tidal waters of the United States and/or State. By email dated July 30, 2014, the Applicant requested the Certification be amended to extend the expiration date of the Certification an additional five years until January 20, 2020. The extension is needed to continue maintenance activities during the annual storm season (October 15th and April 15th).

Based on the Applicant's request, the San Diego Water Board is amending the Certification to extend the expiration date of the Certification to January 20, 2020. The following changes are made to Certification No. 04C-154 and are shown in underline/strikeout format to indicate added and removed language:

1. Page 1, The Standard Conditions 1, 2, and 3 are replaced with the following:

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.

2. Page 2, General Condition 1 is modified as follows:

This Certification shall expire on January 20, 2020 ~~five (5) years from date of this Certification.~~ The City of Dana Point shall submit a complete application prior to termination of this Certification if renewal is requested.

3. Page 4, General Condition 18.a) is modified as follows:

- ~~a) Seasonal restrictions shall be imposed to avoid and minimize impacts to sensitive species, including the federally managed fish species, California grunion (*Leuresthes tenuis*). Routine maintenance may occur during October 15th through April 15th. In the event that maintenance operations extend beyond March 1 into the grunion spawning season, the City of Dana Point shall engage a qualified biological consultant and conduct a survey of site conditions to determine whether grunion are present. The City of Dana Point shall refrain from work below the mean high water mark (within the intertidal zone) and notify and coordinate with the Department of Fish and Game and Regional Board to ensure that impacts to California grunion are minimized to the greatest extent possible.~~
- a) **California grunion.** No excavation, construction, or maintenance activities authorized under this Certification shall be conducted within potential spawning habitat of the California grunion, except as provided below. California grunion (*Leuresthes tenuis*) is a State managed species, and the intertidal zone at the Project site is potential spawning habitat. A fact sheet describing the unique reproductive behavior of grunion is available at:
<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=36316&inline=true>.
- i. To the greatest extent possible, any work seaward of the semilunar high tide line must be scheduled to occur outside of the grunion spawning season, which is March 1 through August 31.

- ii. If work during grunion spawning season is essential for Project effectiveness, the following conditions shall apply from March 1 through August 31.
- a) **Four-day predicted runs.** No project activity that entails sand disturbance seaward of the semilunar high tide line shall be conducted during the four-day periods of predicted grunion runs that are posted by the California Department of Fish and Wildlife (<http://www.dfg.ca.gov/marine/grunionchedule.asp>). As an example, if a predicted run series starts on July 18, no sand-disturbance activity seaward of the semilunar high tide line would be allowed on July 18, 19, 20, or 21.
- b) **Day before the first date of a run series.** Project activity that entails sand disturbance seaward of the semilunar high tide line can 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, sand disturbance seaward of the semilunar high tide line could occur on July 17, which is the day before the first date of the predicted run series that starts July 18 (the predicted four-day run series is July 18, 19, 20, and 21). Sand-disturbance activity performed on the day before the first date of a predicted run series allows time for the intertidal spawning zone to be smoothed by one spring high tide subsequent to the sand disturbance and prior to the first predicted spawning.
- c) **Other days.** Prior to Project activity that entails sand disturbance seaward of the semilunar high tide mark on other days during the spawning season, the presence or absence of egg nests in or near the work area must first be determined by monitoring for the presence of adult grunion on the beach during predicted runs.
1. A qualified biologist or appropriately trained personnel shall monitor for the presence of adult grunion during the predicted grunion runs. Monitoring must be done on all four nights of the predicted run series prior to the work activity, except that if grunion are observed spawning within the work area or a 10-yard buffer on a given night, the presence of egg nests can 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 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 must be surveyed and so forth.

2. Monitoring must start at the time of the high tide and continue for two hours 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).
 3. If grunion spawning is observed within the work area or 10-yard buffer on any night of a four-day run series, then Project activity that entails sand disturbance seaward of the semilunar high tide line shall be postponed until after the egg incubation period (i.e., until the day before the first date of the next predicted run, as described above in ii).
 4. 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 can be assumed and, if needed, Project activity that entails sand disturbance can be conducted seaward of the semilunar high tide line up to and including the day before the date of the next predicted run. For example, if no grunion were observed during the predicted runs on July 4, 5, 6 and 7, and the date of the next predicted run is July 18, then work can occur seaward of the semilunar high tide line from July 8 through July 17.
- d) **April and May.** To protect grunion during their peak spawning season (and closed season for the recreational fishery), Project activity that entails sand disturbance seaward of the semilunar high tide line shall, to the greatest extent possible, be scheduled to avoid April and May.

4. Page 6, Reporting Condition 3. is modified as follows:

The City of Dana Point shall 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 No. 04C-145
9174 Sky Park Court, Suite 100
San Diego, California 92123

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 (MB) 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. 04C-154:PIN 213131
2375 Northside Drive, Suite 100
San Diego, California 92108

Each electronic document must be submitted as a single file, in Portable Document Format (PDF) format, 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. 04C-154:PIN 213131.

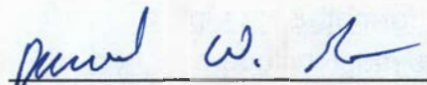
5. Page 6, Regional Board Contact Person is modified as follows:

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

Darren Bradford
619-521-3356
darren.bradford@waterboards.ca.gov

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: http://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. 2 to Certification No. 04C-154 issued on January 20, 2015.



David W. Gibson
Executive Officer
Regional Water Quality Control Board

20 Jan. 2015
Date

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION**

ADDENDUM NO. 1 TO

**CLEAN WATER ACT SECTION 401
WATER QUALITY CERTIFICATION NO. 04C-154**

FOR

CAPISTRANO BEACH STORM DRAIN PHASE II MAINTENANCE PROJECT

PROJECT: Capistrano Beach Storm Drain Phase II Maintenance Project
(401 Project No. 04C-154)
(WDID No. 9 000001364)

CIWQS
Reg. Meas. ID: 150591
Place ID: 213131
Party ID: 11074

APPLICANT: Matthew Sinacori, City Engineer
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

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**

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.

ADDITIONAL CONDITIONS:

In addition to the three standard conditions, the **City of Dana Point** shall satisfy the following:

A. GENERAL CONDITIONS

1. This Certification shall expire **five (5) years** from date of this Amendment. The City of Dana Point shall submit a complete application prior to termination of this Certification if renewal is requested.
2. The City of Dana Point shall, at all times, fully comply with the engineering plans, specifications and technical reports submitted with this application for 401 Water Quality Certification and all subsequent submittals required as part of this certification.
 - a) Based on the application materials, the project includes bi-weekly (once every two weeks) maintenance activities during the storm season (i.e. between October 15th and April 15th), including the discharge of beach sand and sediment material in tidal waters of the U.S. as part of a storm outfall protection and maintenance program for a new storm drain outfall structure at Capistrano Beach. Maintenance would be implemented on an as-needed basis by the City of Dana Point. The activity consists minor grading to deposit beach sand around the outfall site to fill scour holes within the intertidal and supratidal zones of the Pacific Ocean at Capistrano Beach. Each maintenance event would result in temporary fill of approximately 5,800 cf of material over an 0.05-acre area of tidal waters of the U.S.
3. **The City of Dana Point 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/generalorders/go_wdr401regulated_projects.pdf
4. The City of Dana Point shall maintain a copy of this certification at the project site so as to be available at all times to site personnel and agencies.
5. Prior to the start of the project, the City of Dana Point shall educate all personnel on the requirements in this certification, pollution prevention measures, spill response, and BMP implementation and maintenance.

6. The City of Dana Point shall notify the Regional Board in writing at least 10 days prior to actual start dates for grading, mitigation installation, and completion of mitigation installation.
7. The City of Dana Point shall permit the 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.
8. The City of Dana Point 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 BMPs or other measures that will be implemented to prevent future discharges.
9. The City of Dana Point 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 reached a waters of the U.S. and/or State.
10. This Certification is not transferable to any person except after notice to the Executive Officer of the San Diego Regional Water Quality Control Board (Regional Board). The City of Dana Point 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.
11. 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.
12. In response to a suspected violation of any condition of this certification, the Regional Water Quality Control Board (RWQCB) 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 RWQCB 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.

13. In response to any violation of the conditions of this certification, the RWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance.
14. The City of Dana Point shall all standard Best Management Practices to ensure that toxic materials, silt, debris, or excessive erosion do not enter waters of the United States during project activity.
15. Dredged and/or fill material discharged to the ocean and beach as a result of maintenance activities must be essentially free of:
 - a) Material that is floatable or will become floatable upon discharge.
 - b) Settleable material or substances that may form sediments which will degrade benthic communities or other aquatic life.
 - c) Substances which will accumulate to toxic levels in marine waters, sediments or biota.
 - d) Substances that significantly decrease the natural light to benthic communities and other marine life.
 - e) Materials that result in aesthetically undesirable discoloration of the ocean surface.
16. The City of Dana Point 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, plastic, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts.
 - a) The discharge of dredged and/or fill material shall not cause aesthetically undesirable discoloration of the ocean surface.
 - b) Beach sand/rocks used to refill eroded areas shall be of similar grain size to the sand adjacent to the eroded areas.
17. Vehicles shall not be driven or equipment operated in waters of the United States/State on-site, except as necessary to complete the proposed project. The City of Dana Point 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 polluted runoff from entering the beach and waters of the United States/State.
18. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded.
 - a) Seasonal restrictions shall be imposed to avoid and minimize impacts to sensitive species, including the federally managed fish species, California grunion (*Leuresthes tenuis*). Routine maintenance may occur during October 15th through April 15th. In the event that maintenance operations extend beyond March 1 into the grunion spawning season, the City of Dana Point shall engage a qualified biological consultant

and conduct a survey of site conditions to determine whether grunion are present. The City of Dana Point shall refrain from work below the mean high water mark (within the intertidal zone) and notify and coordinate with the the Department of Fish and Game and Regional Board to ensure that impacts to California grunion are minimized to the greatest extent possible.

19. **Final Operations and Maintenance Plan:** At least 45 days prior to initiating maintenance activities, the City of Dana Point shall submit a Final Operations and Maintenance Plan to reflect the revisions to source material location, acreage, and volume of fill material, and frequency of maintenance. Source material shall come from the adjacent beach in areas above the high tide line.
20. **Reports:** The City of Dana Point shall submit an annual written report to the Regional Board by ~~May 15th of each year following the primary maintenance period of October 15th through April 15th~~ **August 1 of each year following the issuance of this Amendment until the project has reached completion.** The report shall summarize all maintenance activities conducted at the ocean outfall throughout the prior storm season and during the interim dry weather season. The reports will include written documentation and photographs of all work performed under the permit during the prior year. Any data collected, such as water quality samples and terrestrial or aquatic sensitive species surveys, will also be included in the annual report. At a minimum, the Report shall include the following information:
 - a) The name, address, and telephone number of:
 - i. The City's Point of Contact
 - ii. The City's agent (if appropriate)
 - b) Full description of the activities conducted during the previous year, including:
 - i. Description of each maintenance event; note any deviations from maintenance operations described in City's Final Operations and Maintenance Manual;
 - ii. Size and description of project area (include maps or drawings showing the area and lineal extent of the project, and pre- and post-construction photographs);
 - iii. Information on federally or State listed or proposed endangered species, designated or proposed critical habitat, Essential Fish Habitat, and federally managed fish species (notification must be provided to FWS and/or NOAA Fisheries as appropriate) including:
 - a) Temporary/permanent adverse impacts
 - b) Mitigation steps (to avoid, minimize)
 - c) Compensatory mitigation

C. MITIGATION

1. No compensatory mitigation is anticipated from this project. Compensatory mitigation may be required by the Regional Board in response to unanticipated impacts to sensitive species or violations of conditions of this Certification.

D. 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 City of Dana Point 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. 04C-145
9174 Sky Park Court, Suite 100
San Diego, California 92123

PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On ~~January 3, 2005~~ December 3, 2009 receipt of the ~~project application~~ **request for amendment of the Certification** was posted on the SDRWQCB web site to serve as appropriate notification to the public.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

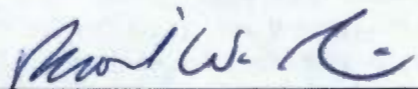
Jeremy Haas **Chad Loflen**
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
~~858-467-2735~~ **858-467-2727**
~~jhaas@waterboards.ca.gov~~ **cloflen@waterboards.ca.gov**

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the **Capistrano Beach Storm Drain Phase II Maintenance Project** (Project No. 04C-145) 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) No. 17. Please note that this waiver is 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.~~

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 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).



 DAVID W. GIBSON
 Executive Officer
 Regional Water Quality Control Board

26 Feb. 2010
 Date

- Attachments:
1. Project Information
 2. Distribution List
 3. Location Map
 4. Site Map

**ATTACHMENT 1
PROJECT INFORMATION**

Applicant: Matthew Sinacori, City Engineer
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629
949-248-3554
f: 949-248-7372
msinacori@danapoint.org

Applicant Representatives: N/a

Project Name: Capistrano Beach Storm Drain Phase II Maintenance Project

Project Location: Capistrano Beach at discharge point of an unnamed tributary storm drain outfall to the Pacific Ocean in Dana Point, Orange County, California.

Type of Project: Coastal storm drain maintenance

Project Description: The City of Dana Point proposes to perform bi-weekly maintenance activities during the storm season (i.e. between October 15th and April 15th), including the discharge of beach sand and sediment material in tidal waters of the U.S. as part of a storm outfall protection and maintenance program for a new storm drain outfall structure at Capistrano Beach. Maintenance would be implemented on an as-needed basis by the City of Dana Point. The activity consists minor grading to deposit beach sand around the outfall site to fill scour holes within the intertidal and supratidal zones of the Pacific Ocean.

Excessive beach erosion may occur at the mouth of the beach outfall during storm events. Additionally, tidal and wave action may cause scouring along the beach outfall structure and could potentially expose the buried 30-inch HDPE pipes. If excessive beach erosion occurs at the mouth of the outfall structure, or if erosion exposes the buried pipes, the City will replenish the beach sands or remove that portion of the exposed pipe(s).

Each maintenance event would result in temporary fill of approximately 5,800 cf of material over an 0.05-acre area of tidal waters of the U.S., none of which are wetlands or Areas of Special Biological Significance.

Federal Agency/Permit: U.S. Army Corps of Engineers Individual Permit for Clean Water Act §404 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:	The City of Dana Point issued a Notice of Determination for the storm drain extension project's Mitigated Negative Declaration on November 25, 2002.
Receiving Water:	Pacific Ocean (HSA 901.30)
Impacted Waters of the United States:	Temporary: Ocean: 0.05 acres
Dredge Volume:	N/a
Related Projects Implemented/to be Implemented by the Applicant(s):	The City has obtained a Section 401 certification (02C-142) to install the storm drain extension for which the maintenance activities of this Certification apply. That Certification required the City submit an operations and maintenance plan.
Compensatory Mitigation:	None: All temporary impacts are expected to quickly
Best Management Practices:	Seasonal restrictions will avoid impacts to grunion. The low-flow runoff within this stormdrain is currently diverted to the sanitary sewer, thus no maintenance is expected to be necessary during the dry season.
Public Notice:	On January 3, 2005 receipt of the project application was posted on the SDRWQCB web site to serve as appropriate notification to the public.
Fees:	Total Due: \$640 Total Paid: \$640 (Check no. 72033)

**ATTACHMENT 2
DISTRIBUTION LIST**

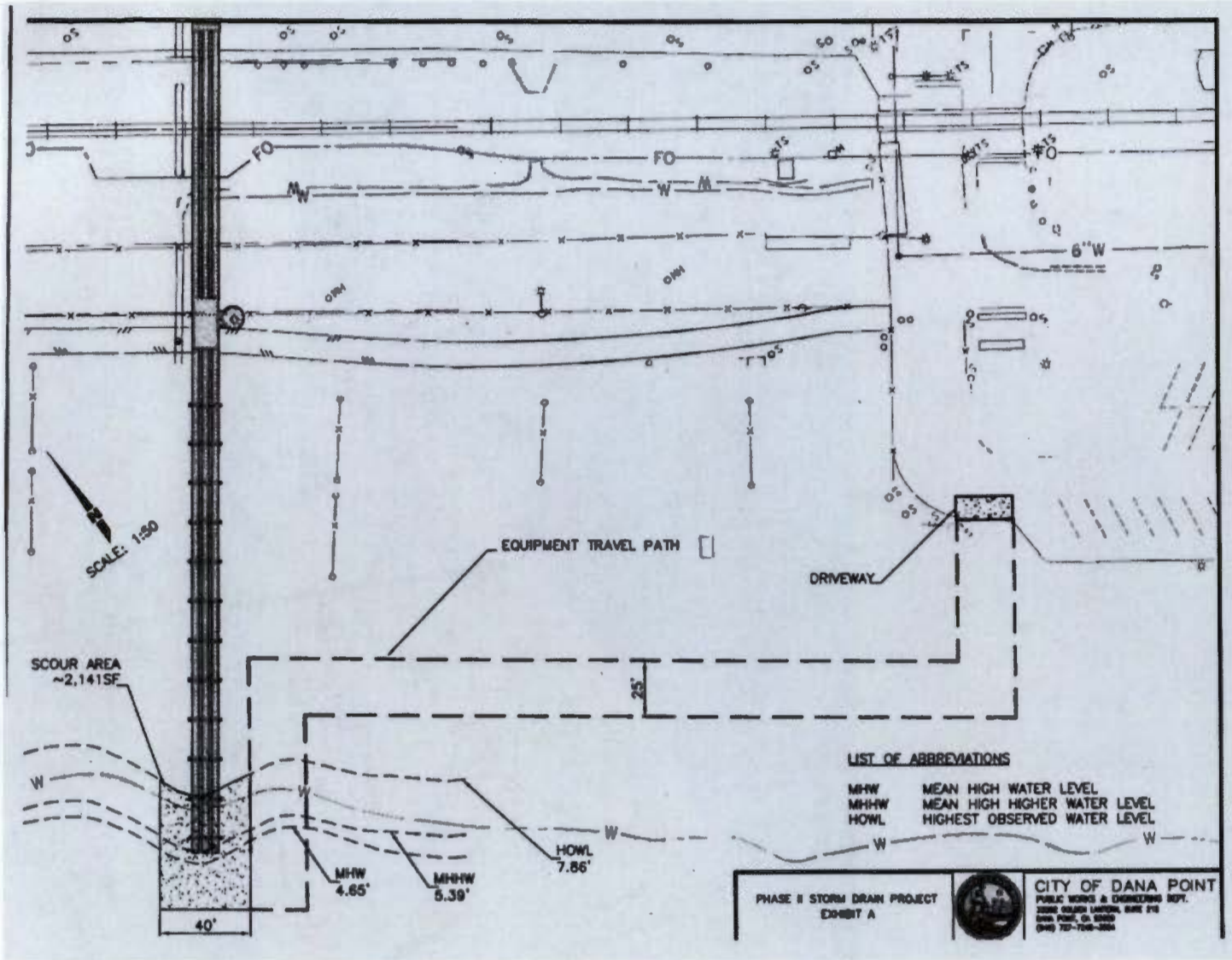
Corice Farrar
U.S. Army Corps of Engineers
Regulatory Branch
P.O. Box 532711
Los Angeles, CA 90053-2325
(213) 452-4196 (fax)

401 Program
State Water Resources Control Board
Division of Water Quality

ATTACHMENT 3 PROJECT LOCATION



ATTACHMENT 4 SITE MAP





California Regional Water Quality Control Board San Diego Region



Alan C. Lloyd, Ph.D.
Agency Secretary

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

Arnold Schwarzenegger
Governor

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

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: Capistrano Beach Storm Drain Phase II Maintenance Project
(401 Project No. 04C-154)
(WDID No. 9 000001364)

In reply refer to:
WPN:18-2004154.02:haasj

APPLICANT: Matthew Sinacori, City Engineer
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

ACTION:

- Order for Low Impact Certification
- Order for Denial of Certification
- Order for Technically-conditioned Certification
- 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

Recycled Paper



ADDITIONAL CONDITIONS:

In addition to the three standard conditions, the **City of Dana Point** shall satisfy the following:

A. GENERAL CONDITIONS

1. This Certification shall expire **five (5) years** from date of this Certification. The City of Dana Point shall submit a complete application prior to termination of this Certification if renewal is requested.
2. The City of Dana Point shall, at all times, fully comply with the engineering plans, specifications and technical reports submitted with this application for 401 Water Quality Certification and all subsequent submittals required as part of this certification.
 - a) Based on the application materials, the project includes bi-weekly (once every two weeks) maintenance activities during the storm season (i.e. between October 15th and April 15th), including the discharge of beach sand and sediment material in tidal waters of the U.S. as part of a storm outfall protection and maintenance program for a new storm drain outfall structure at Capistrano Beach. Maintenance would be implemented on an as-needed basis by the City of Dana Point. The activity consists minor grading to deposit beach sand around the outfall site to fill scour holes within the intertidal and supratidal zones of the Pacific Ocean at Capistrano Beach. Each maintenance event would result in temporary fill of approximately 5,800 cf of material over an 0.05-acre area of tidal waters of the U.S.
3. The City of Dana Point 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. Prior to the start of the project, the City of Dana Point shall educate all personnel on the requirements in this certification, pollution prevention measures, spill response, and BMP implementation and maintenance.
5. The City of Dana Point shall notify the Regional Board in writing at least 10 days prior to actual start dates for grading, mitigation installation, and completion of mitigation installation.
6. The City of Dana Point shall permit the 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.
7. The City of Dana Point 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 BMPs or other measures that will be implemented to prevent future discharges.
 8. The City of Dana Point 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 reached a waters of the U.S. and/or State.
 9. This Certification is not transferable to any person except after notice to the Executive Officer of the San Diego Regional Water Quality Control Board (Regional Board). The City of Dana Point 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.
 10. 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.
 11. In response to a suspected violation of any condition of this certification, the Regional Water Quality Control Board (RWQCB) 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 RWQCB 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.
 12. In response to any violation of the conditions of this certification, the RWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance.
 13. The City of Dana Point shall all standard Best Management Practices to ensure that toxic materials, silt, debris, or excessive erosion do not enter waters of the United States during project activity.

14. Dredged and/or fill material discharged to the ocean and beach as a result of maintenance activities must be essentially free of:
 - a) Material that is floatable or will become floatable upon discharge.
 - b) Settleable material or substances that may form sediments which will degrade benthic communities or other aquatic life.
 - c) Substances which will accumulate to toxic levels in marine waters, sediments or biota.
 - d) Substances that significantly decrease the natural light to benthic communities and other marine life.
 - e) Materials that result in aesthetically undesirable discoloration of the ocean surface.

15. The City of Dana Point 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, plastic, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts.
 - a) The discharge of dredged and/or fill material shall not cause aesthetically undesirable discoloration of the ocean surface.
 - b) Beach sand/rocks used to refill eroded areas shall be of similar grain size to the sand adjacent to the eroded areas.

16. Vehicles shall not be driven or equipment operated in waters of the United States/State on-site, except as necessary to complete the proposed project. The City of Dana Point 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 polluted runoff from entering the beach and waters of the United States/State.

17. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded.
 - a) Seasonal restrictions shall be imposed to avoid and minimize impacts to sensitive species, including the federally managed fish species, California grunion (*Leuresthes tenuis*). Routine maintenance may occur during October 15th through April 15th. In the event that maintenance operations extend beyond March 1 into the grunion spawning season, the City of Dana Point shall engage a qualified biological consultant and conduct a survey of site conditions to determine whether grunion are present. The City of Dana Point shall refrain from work below the mean high water mark (within the intertidal zone) and notify and coordinate with the the Department of Fish and Game and Regional Board to ensure that impacts to California grunion are minimized to the greatest extent possible.

18. **Final Operations and Maintenance Plan:** At least 45 days prior to initiating maintenance activities, the City of Dana Point shall submit a Final Operations and Maintenance Plan to reflect the revisions to source material location, acreage, and volume of fill material, and frequency of maintenance. Source material shall come from the adjacent beach in areas above the high tide line.

19. **Reports:** The City of Dana Point shall submit an annual written report to the Regional Board by May 15th of each year following the primary maintenance period of October 15th through April 15th. The report shall summarize all maintenance activities conducted at the ocean outfall throughout the prior storm season and during the interim dry weather season. The reports will include written documentation and photographs of all work performed under the permit during the prior year. Any data collected, such as water quality samples and terrestrial or aquatic sensitive species surveys, will also be included in the annual report. At a minimum, the Report shall include the following information:
 - a) The name, address, and telephone number of:
 - i. The City's Point of Contact
 - ii. The City's agent (if appropriate)

 - b) Full description of the activities conducted during the previous year, including:
 - i. Description of each maintenance event; note any deviations from maintenance operations described in City's Final Operations and Maintenance Manual;
 - ii. Size and description of project area (include maps or drawings showing the area and lineal extent of the project, and pre- and post-construction photographs);
 - iii. Information on federally or State listed or proposed endangered species, designated or proposed critical habitat, Essential Fish Habitat, and federally managed fish species (notification must be provided to FWS and/or NOAA Fisheries as appropriate) including:
 - a) Temporary/permanent adverse impacts
 - b) Mitigation steps (to avoid, minimize)
 - c) Compensatory mitigation

C. MITIGATION

1. No compensatory mitigation is anticipated from this project. Compensatory mitigation may be required by the Regional Board in response to unanticipated impacts to sensitive species or violations of conditions of this Certification.

D. 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 City of Dana Point 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. 04C-145
9174 Sky Park Court, Suite 100
San Diego, California 92123

PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On January 3, 2005 receipt of the project application was posted on the SDRWQCB web site to serve as appropriate notification to the public.

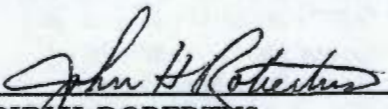
REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

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 **Capistrano Beach Storm Drain Phase II Maintenance Project** (Project No. 04C-145) 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) No. 17. Please note that this waiver is 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).



JOHN H. ROBERTUS
Executive Officer
Regional Water Quality Control Board

29 August, 2005
Date

- Attachments:
1. Project Information
 2. Distribution List
 3. Location Map
 4. Site Map

**ATTACHMENT 1
PROJECT INFORMATION**

Applicant: Matthew Sinacori, City Engineer
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629
949-248-3554
f: 949-248-7372
msinacori@danapoint.org

**Applicant
Representatives:** N/a

Project Name: Capistrano Beach Storm Drain Phase II Maintenance Project

Project Location: Capistrano Beach at discharge point of an unnamed tributary storm drain outfall to the Pacific Ocean in Dana Point, Orange County, California.

Type of Project: Coastal storm drain maintenance

Project Description: **The City of Dana Point proposes to perform bi-weekly maintenance activities during the storm season (i.e. between October 15th and April 15th), including the discharge of beach sand and sediment material in tidal waters of the U.S. as part of a storm outfall protection and maintenance program for a new storm drain outfall structure at Capistrano Beach. Maintenance would be implemented on an as-needed basis by the City of Dana Point. The activity consists of minor grading to deposit beach sand around the outfall site to fill scour holes within the intertidal and supratidal zones of the Pacific Ocean.**

Excessive beach erosion may occur at the mouth of the beach outfall during storm events. Additionally, tidal and wave action may cause scouring along the beach outfall structure and could potentially expose the buried 30-inch HDPE pipes. If excessive beach erosion occurs at the mouth of the outfall structure, or if erosion exposes the buried pipes, the City will replenish the beach sands or remove that portion of the exposed pipe(s).

Each maintenance event would result in temporary fill of approximately 5,800 cf of material over an 0.05-acre area of tidal waters of the U.S., none of which are wetlands or Areas of Special Biological Significance.

Federal Agency/Permit: U.S. Army Corps of Engineers Individual Permit for Clean Water Act §404 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: **The City of Dana Point issued a Notice of Determination for the storm drain extension project's Mitigated Negative Declaration on November 25, 2002.**

Receiving Water: Pacific Ocean (HSA 901.30)

Impacted Waters of the United States: Temporary:
Ocean: 0.05 acres

Dredge Volume: N/a

Related Projects Implemented/to be Implemented by the Applicant(s): The City has obtained a Section 401 certification (02C-142) to install the storm drain extension for which the maintenance activities of this Certification apply. That Certification required the City submit an operations and maintenance plan.

Compensatory Mitigation: None: All temporary impacts are expected to quickly

Best Management Practices: Seasonal restrictions will avoid impacts to grunion. The low-flow runoff within this stormdrain is currently diverted to the sanitary sewer, thus no maintenance is expected to be necessary during the dry season.

Public Notice: On January 3, 2005 receipt of the project application was posted on the SDRWQCB web site to serve as appropriate notification to the public.

Fees: Total Due: \$500
Total Paid: \$500

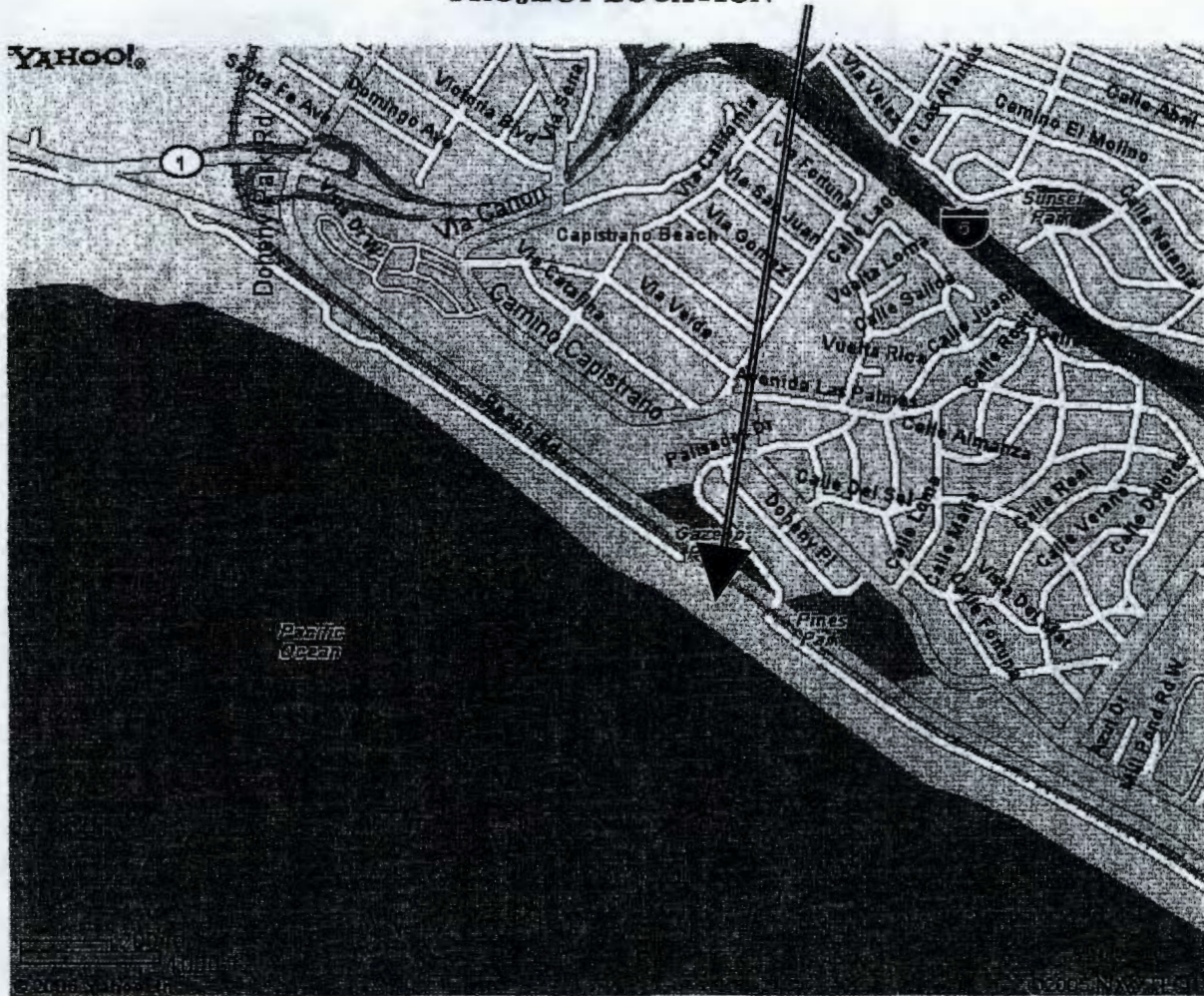
**ATTACHMENT 2
DISTRIBUTION LIST**

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

401 Program
State Water Resources Control Board
Division of Water Quality

Karl Schwing
California Coastal Commission

ATTACHMENT 3 PROJECT LOCATION



ATTACHMENT 4 SITE MAP

