LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310
Pacifica, California 94044
(650) 219 3187 Phone brian@gaffneylegal.com **(650) 733 7793 Fax**

March 5, 2015

Via Certified Mail - Return Receipt Requested

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
15 MAR 13 A10:20

Bijan Sartipi
Caltrans District 4 Director
111 Grand Avenue
P.O. Box 23660
Oakland, CA 94623-0660

Malcolm Dougherty
Caltrans Director
1120 N Street
Sacramento, CA 95814

Mayor Karen Ervin[1]
City Manager Lorie D. Tinfow
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044

Michael J. Scanlon
Executive Director
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA, 94070

Re: NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT

Pacificans for a Scenic Coast, Pacificans for Highway 1 Alternatives and the Center for Biological Diversity provide 60-day notice of intent to file a citizen suit against the California Department of Transportation,[2] the City of Pacifica and the San Mateo County Transportation Authority (collectively hereafter "Caltrans") under Section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below.

Caltrans has violated and continues to violate Sections 401 and 404 of the CWA, 33 U.S.C. §§ 1341 and 1344, by approving the State Route 1/Calera Parkway/Highway 1 Widening Project ("Project"), a highway widening project which will discharge dredged and/or fill material to the waters of the United States which will affect water quality without the required 404 permit from the United States Army Corps of Engineers ("Corps") and 401 certification from the State of California.

This notice is sent at this time in an excess of caution given the Federal Register (73 FR 73390) stated that, pursuant 23 U.S.C. 139(l)(1), alleged violations of the Clean Water Act must be brought within 150 days of December 10, 2014. The allegations herein are based on review of documents in the files of the Corps released under the Freedom of Information Act.

This Notice is served on behalf of Pacificans for a Scenic Coast [411 Maitland Road, Pacifica, CA 94044 (650-355-3523)]), Pacificans for Highway 1 Alternatives [351 Keith

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[1] Federal regulations require that if an alleged violator is a local agency, service of notice must be by certified mail addressed to the head of the agency. (40 C.F.R. § 135.2(a)(2).)

[2] On or about July 1, 2007, the Federal Highway Administration assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. §§ 326 & 327.

Avenue, Pacifica, CA 94044 (650-355-6716)], and the Center for Biological Diversity [Attn: Aruna Prabhala, 351 California Street, Suite 600, San Fransisco, CA 94104 (415-436-9682 x322)] (collectively hereafter "the Notifiers"). Any response to this letter should be addressed to the letterhead address above.

Caltrans has taken final action which grants licenses, permits, and approvals for the Project. Dredged and/or fill material will be discharged to waters of the U.S in the construction and operation of the Project in violation of the CWA, 33 U.S.C. §1341 and 1344, as described further below.

On or about February 12, 2003 the City of Pacifica applied for a Section 404 Clean Water Act permit from the U.S. Army Corps of Engineers for fill of Corps jurisdictional wetlands for the Calera Creek/Highway 1 Project. **The City's 404 permit application was never withdrawn or modified**. The City described its Highway-widening project as affecting 5 jurisdictional waters/wetlands (WW) in the Project area: **"WW#1, #2, #3 and #4 will be impacted in entirety by the Project. WW#1, #2 and #3 will be filled as a result of the construction. Road construction will cut off the water supply to WW#4."** "Within all waters/wetlands areas, when water levels and flow are sufficiently high, all waters will flow downslope towards the Pacific Ocean." Although there have been changes to the Project design since 2003, the Project will continue to result in discharge of dredge and fill to waters of the U.S. as a result of Project construction, operation and maintenance, in violation of Section 404 of the CWA.

On July 3, 2003, the Corps wrote to the City of Pacifica, in regards to the proposed Project, that the "proposed work is within our jurisdiction **and a [Section 404] permit is required**." The Corps withdrew or modified its conclusion that a 404 permit was required for this Project. The Corps explained that **all proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act** (CWA) 33 U.S.C. 1344). Waters of the United States generally include **tidal waters, lakes, ponds, rivers, streams (including intermittent streams) and wetlands.** The Corps at that time provided a map showing the extent and location of the Corps jurisdiction which had been field verified on June 5, 2003. A copy of that map is attached hereto.

On February 10, 2010, the California Department of Transportation requested a Corps jurisdictional determination, and told the Corps that 0.87 acres of wetlands, waters and other waters of the United States had been identified in their surveys for jurisdictional waters, including 0.69 acres of wetlands and other waters of the U.S., and 0.18 other waters of the U.S.. Caltrans' proposed delineation report likely under-estimated the amount of waters affected as the surveys were expressly limited to a "narrow band which paralleled State Route 1 (SR 1) extending east and west only into the Caltrans easement areas" and "did not include" waters of the U.S. on land privately held on either side of SR 1. (H.T. Harvey, August 2009 Report.)

Even with subsequent changes to the Project, dredged and/or fill material will be discharged to waters of the U.S. in the construction and operation of the Project in violation of the CWA. At a minimum such dredging and filling will occur from construction of footings/piers for the proposed bridge/flyover, from installation of ESA and WEF fencing, from construction of retaining walls, from deposition of dredged and fill material as a byproduct of construction and operation of the Project without minimum setbacks required by California Coastal Commission.

A 404 permit for the Project has never been issued. Despite this, the Project has been granted final approval by the California Department of Transportation. (73 FR 73390; Final Project Report (AR003-127)[3].)

In addition, Caltrans' applications for federal licenses and permits, including *inter alia*, a 404 permit, may result in discharge into navigable waters, but Caltrans has failed to seek or provide the Corps with a certification from the State that any such Project discharges will comply with the applicable provisions of 33 U.S.C. sections 1311, 1312, 1313, 1316, and 1317.

The Project would widen Highway 1 through the City of Pacifica, San Mateo County, California from four lanes to six lanes from approximately 1,500 feet south of Fassler Avenue (PM 41.7) to approximately 2,300 feet north of Reina Del Mar Avenue (PM 43.0), a distance of 1.3 miles. The California Department of Transportation estimates that approximately 0.87 acres of jurisdictional wetlands, water and other waters of the United States are identified in its delineation report, but because of changes in Project design the acreage of waters of the U.S. affected may be larger. Attached to this Notice are three maps identifying (in color) waters of the United States and the Project boundaries. One is a map from Corps showing the extent and location of the Corps jurisdiction which was field verified on June 5, 2003.

The City of Pacifica's 404 permit application described its Highway-widening project as affecting 5 jurisdictional waters/wetlands (WW) in the Project area:

1) The northmost jurisdictional waters/wetlands is found on the eastern side of Highway One, north of Reina Del Mar Avenue and south of the entrance to the Pacifica Police Station. This waters/wetlands (WW#5) is 0.02 acres (871 sq. ft.) in extent. Approximately one half mile south, there are the remaining four jurisdictional waters/wetlands (WW#1; WW#2; WW#3; and WW#4), located at the toe of the slope of Highway One, to the highway's western side between Fassler Avenue and Reina Del Mar Avenue. Topographic relief between the highway's edge-of-pavement and the waters/wetlands is approximately 10 feet.

2) A wetlands mosaic consisting of approximately 85% wetlands and 15% uplands (WW #4) is found at the northernmost extent of this west-of-Highway cluster of wetlands. WW #4 is 0.07 acres (3.048 sq. ft) in extent. It is hydrologically connected to waters/wetlands #1, #2 and #3 directly or by culvert. **"WW#4 will be 100% impacted by the Project."**

3) WW #3 is directly adjacent to and south of WW #4. WW #3 is 0.38 acres (16,547 sq. ft.) in extent and runs from north to south parallel to Highway 1 for approximately 600 feet. WW#3 is hydrologically connected to WW #1, WW#2 and WW#4, either directly or by culvert. **"WW#3 will be 100% impacted by the Project."**

4) Directly south of WW #3 and physically separated by a dirt access road (Old Quarry Road) is WW#1. WW#3 and WW#1 are hydrologically connected by a 24" diameter galvanized metal pipe. WW#1 is 0.13 acres (5,661 sq. ft.) in extent.

5) WW#2 is a ditch excavated through wetlands for transporting water from WW #3 southward through WW#1 towards the Pacific Ocean. It is hydrologically connected to WW#2, WW#3 and WW#4, either directly or by culvert. **WW#2 "will be 100% impacted by the Project."** WW#2 serves as a drainage basin for a culvert from the upland (eastern) section of the Project area and connects to WW#1 through a culvert. WW#2 is 0.004 acres (174 sq. ft.) in extent. It is hydrologically connected to WW#1, WW#3 and WW#4 either directly or by culvert.

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[3] The "AR" is the administrative record in San Mateo Superior Court case #CIV523973, *Pacificans for a Scenic Coast v. California Department of Transportation*, and citation is for reference purposes only.

It will be 100% impacted by the Project. WW#2 receives water directly from the eastern side of Highway 1. Water in WW#2 will pond up to 3 inches deep when water levels are low; however, when water levels are sufficiently high, the water will pass through a culvert and enter the southern section of WW#1.

In addition, the Project will affect the seasonal wetlands (never delineated) on the west side of the Highway north of Reina Del Mar Avenue which are perched on top of the man-made embankment. Here the Project will require removal of 3,600,000 cu. ft. of hillside (AR4190; AR4193) with dimensions 60 feet deep, 60 feet wide and 1,000 feet long. (AR706).

The Project is jointly proposed by the Caltrans Department of Transportation in conjunction with the San Mateo County Transportation Authority and the City of Pacifica. The California Department of Transportation approved the Project on August 2, 2013. Each and every day since Project approval without a 404 permit and 401 certification violates the CWA, and the violations are ongoing. In the alternative, each and every day of Project implementation which involves ground disturbing activity, without a 404 permit and 401 certification, will violate the CWA.

The above-described violations are based on currently available information. These violations are ongoing. The Notifiers intend to sue for all violations, including those yet to be uncovered and those committed after the date of this notice of intent to sue. Litigation will seek injunctive relief and all other relief permitted by law.

The Notifiers believe that this Notice of Intent to Sue sufficiently states grounds for filing suit. At the close of the 60-day notice period, or shortly thereafter, the Notifiers intend to file a citizen suit for violations of the Clean Water Act described herein by the California Department of Transportation, the City of Pacifica and the San Mateo County Transportation Authority.

During the 60-day notice period, the Notifiers would be willing to discuss effective remedies for the violations in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, the Notifiers suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed before the end of the 60-day notice period. The Notifiers do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends. If you have any questions, wish to discuss this matter, or feel that this notice is in error, please contact this office.

Sincerely,

Brian Gaffney

Brian Gaffney

Cc (*Via Certified Mail - Return Receipt Requested*):

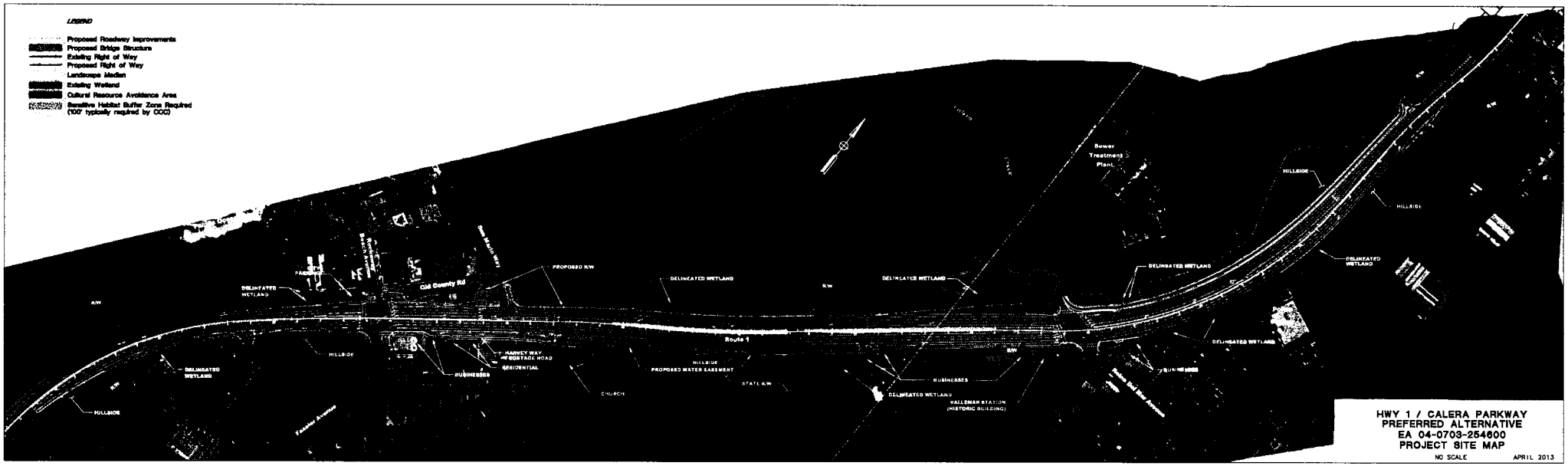
Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Hon. Eric H. Holder, Jr.
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

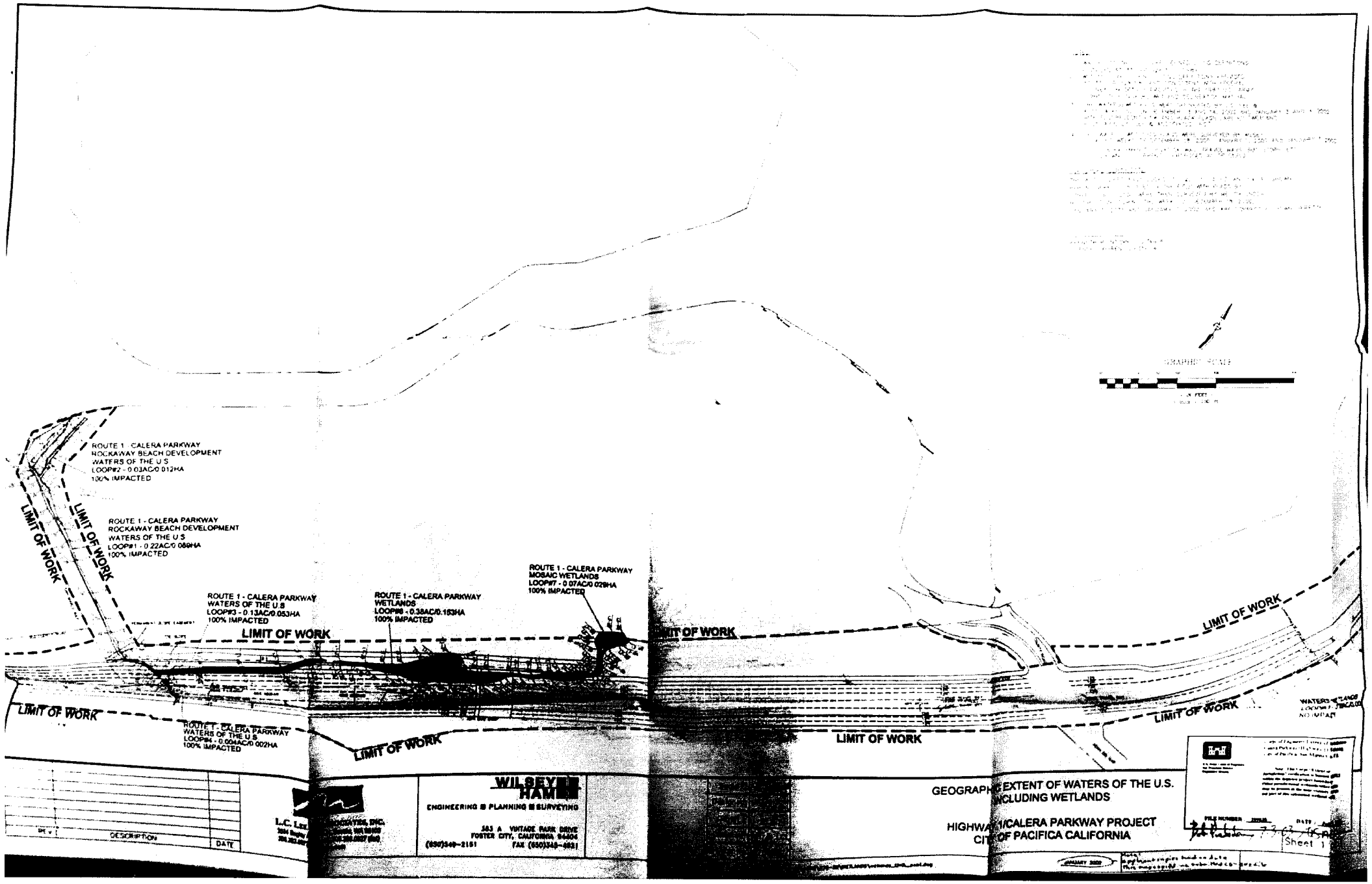
Bruce H. Wolfe, Executive Officer
Region 2 – San Francisco Bay Region
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612



HWY 1 / CALERA PARKWAY
PREFERRED ALTERNATIVE
EA 04-0703-254600
PROJECT SITE MAP

NO SCALE APRIL 2013

AR00072


ROUTE 1 - CALERA PARKWAY
ROCKAWAY BEACH DEVELOPMENT
WATERS OF THE U.S
LOOP#2 - 0.03AC/0.012HA
100% IMPACTED
ROUTE 1 - CALERA PARKWAY
ROCKAWAY BEACH DEVELOPMENT
WATERS OF THE U.S
LOOP#1 - 0.22AC/0.089HA
100% IMPACTED
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WATERS OF THE U.S
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WETLANDS
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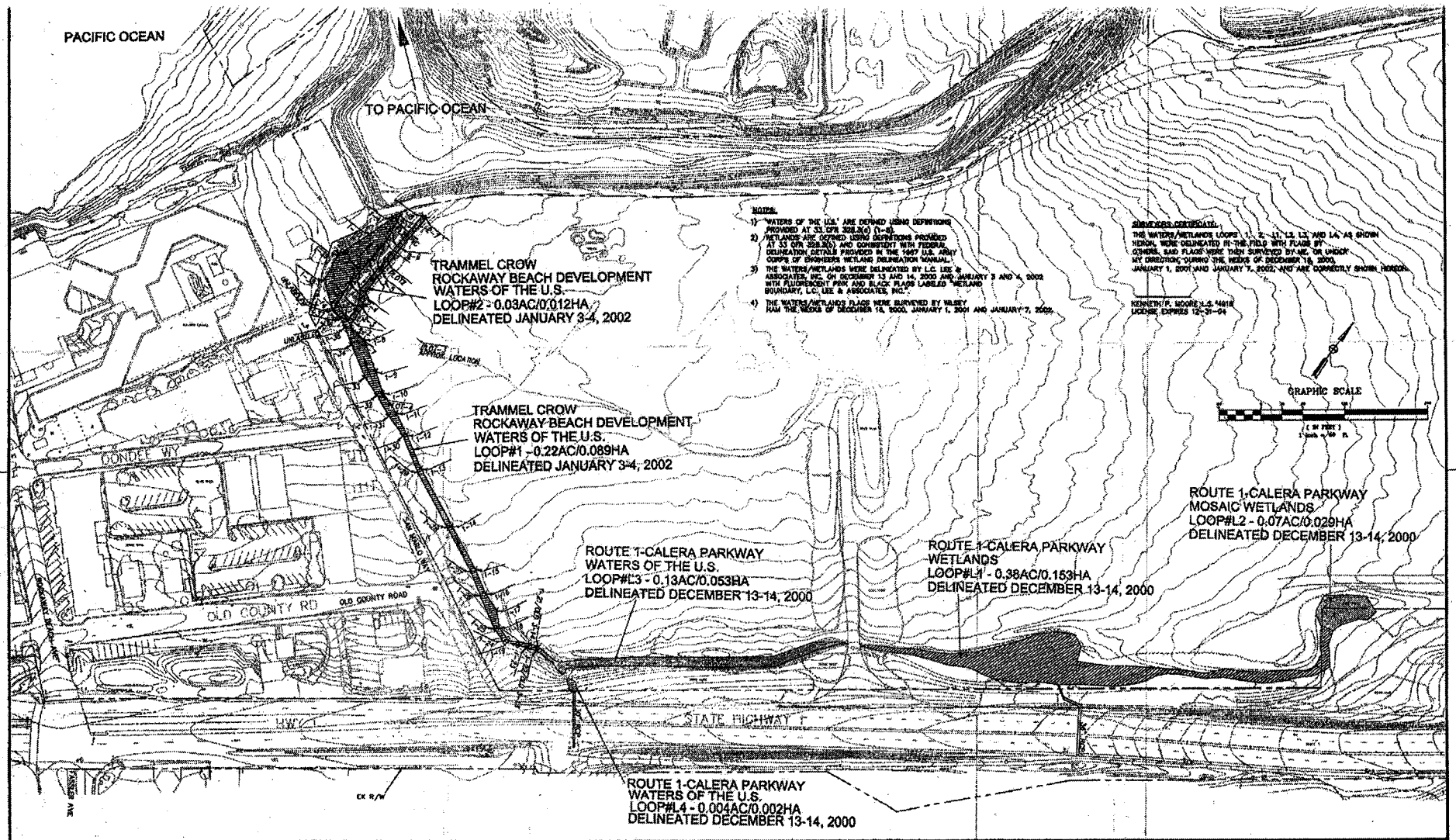
DATE
WILSEY HAM
ENGINEERING ■ PLANNING ■ SURVEYING
383 A VINTAGE PARK DRIVE
FOSTER CITY, CALIFORNIA 94404
(650)349-2151
FAX (650)349-6931
GEOGRAPHIC EXTENT OF WATERS OF THE U.S.
INCLUDING WETLANDS
HIGHWAY 1/CALERA PARKWAY PROJECT
CITY OF PACIFICA CALIFORNIA
FILE NUMBER
DATE
Sheet 1



REV.	DESCRIPTION	DATE

L.C. LEE & ASSOCIATES, INC.
221 1st Avenue W., Suite 415, Seattle, WA 98119
206-283-0673 (phone), 206-283-0677 (fax)

WILSEY HAM
ENGINEERING ■ PLANNING ■ SURVEYING
303 A VINTAGE PARK DRIVE
FOSTER CITY, CALIFORNIA 94404
(650)349-2181 FAX (650)349-4921

Scale	AS SHOWN
Designed	LCL
Drawn	WEA
Checked	WH & LCL
WH Job No.	075-26

EXISTING CONDITIONS
GEOGRAPHIC EXTENT OF WATERS OF THE U.S.,
INCLUDING WETLANDS IN THE PROPOSED
TRAMMEL CROW ROCKAWAY BEACH DEVELOPMENT
PACIFICA, CALIFORNIA

Sheet 1 of 1

JANUARY 2002

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RECEIPT

Hon. Eric H. Holder, Jr.
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001