California Regional Water Quality Control Board
Santa Ana Region

ORDER NO. R8-2003-0107

Amending Cease and Desist Order (CDO) No. 00-87 (as amended by Order WQ 2001-08) to Extend the Deadline for Cessation of Direct Discharges of Waste to Part of the Irvine Coast Area of Special Biological Significance (ASBS) (Crystal Cove), Order No. R8-2003-107

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. On November 16, 2000, the Board adopted CDO No. 00-87. The Order requires, in part, that direct discharges of waste to the Irvine Coast ASBS (now also referred to as State Water Quality Protection Area) from areas (including roadways) where construction began on or before November 16, 1996, shall cease by November 16, 2002 and that affected discharges shall submit plans for eliminating these discharges of waste by May 16, 2001. The CDO was issued to The Irvine Company, the California Department of Transportation (Caltrans) and the California Department of Parks and Recreation.

2. Caltrans petitioned the California State Water Resources Control Board (State Board) to review Order No. 00-87, asking that the State Board find the action of the Regional Board to have been inappropriate or improper, or both and asked State Board to rescind the Order. After a Public Hearing, State Board upheld Order No. 00-87, but granted Caltrans an additional year to prepare their plans for eliminating their discharges and to implement those plans and cease the discharge. The amended due date for delivery of plans for eliminating the direct discharge of waste was May 16, 2002 and the amended date for cessation of those discharges was November 16, 2003.

3. In compliance with the amended Order, Caltrans submitted their Plan of Action on May 14, 2002, which was approved by Regional Board staff. The implementation of the approved plan would have eliminated all direct discharges of wastes to the Irvine Coast ASBS from Caltrans facilities. However, unavoidable delays in the permitting processes of other agencies and work restrictions during the nesting seasons of endangered and/or threatened species will result in Caltrans being unable to meet the November 16, 2003 deadline for cessation of discharges to the Irvine Coast ASBS.

4. Caltrans has requested that the date for cessation of direct discharges of waste to the Irvine Coast ASBS from areas (including roadways) where construction began on or before November 16, 1996, be extended to February 28, 2005.

5. In accordance with Water Code Section 13389, the amendment of Order No. 00-87, as amended by WQ 2001-08, is exempt from those provisions of the California Environmental Quality Act contained in Chapter 3 (commencing with Section 21100), Division 13 of the Public Resources Code.

6. The Board has notified Caltrans and other interested agencies and persons of its intent to amend Order No. 00-87, as amended by WQ 2001-08, and has provided them with an opportunity to submit their written views and recommendations.

7. The Regional Board, in a public meeting, heard and considered all comments pertaining to the amendment.

IT IS HEREBY ORDERED that CDO No. 00-87, as amended by WQ Order No. 2001-08, be amended as follows:

CDO No. 00-87, revise Provision (c) as follows:

c) Direct discharges of waste to the Irvine Coast ASBS from areas (including roadways) where construction began on or before November 16, 1996, shall cease by February 28, 2005. Affected dischargers shall submit plans by May 16, 2002 for eliminating these discharges of waste. The plans shall include detailed proposals and time schedules for eliminating the discharges and shall be implemented as approved by the Executive Officer.

All other conditions and requirements of Order No. 00-87, as amended by WQ 2001-08 shall remain unchanged.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on October 3, 2003.

Gerard J. Thibeault
Executive Officer

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

CEASE AND DESIST ORDER NO. 00-87
AS AMMENDED BY WQ 2001-08 AND R8-2003-0107

Requiring The Irvine Company, the California Department of Transportation, and the California Department of Parks and Recreation to Cease and Desist From Discharging or Threatening to Discharge Wastes Directly to Crystal Cove, Part of the Irvine Coast Area of Special Biological Significance

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. The area of coastal waters generally between Cameo Shores Road, in the City of Newport Beach and Abalone Point, in the City of Laguna Beach, is designated as the Irvine Coast Area of Special Biological Significance (ASBS) pursuant to State Water Resources Control Board (State Board) Resolution Nos. 74-28 and 74-32 (Figure 1). Areas of Special Biological Significance are defined as "Those areas designated by the State Water Resources Control Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable."

2. The Irvine Company has started the development of the Crystal Cove development which is approximately bounded on the north by Los Trancos Creek, on the east by the San Joaquin Toll Road, on the south by Muddy Canyon Creek and on the west by Pacific Coast Highway. Both existing and planned drainage facilities of this development will result in the discharge of storm water and non-storm flows directly to the ASBS via several discharge points. These discharge points include: a 30-inch reinforced concrete pipe that discharges to Los Trancos Creek immediately above the ASBS; a 3-foot by 4-foot box culvert that discharges to the beach southeast of Los Trancos Creek; and a 24-inch reinforced concrete pipe that discharges to the bluffs above the ASBS northwest of Muddy Canyon Creek (Figure 2).

3. Pacific Coast Highway parallels the ASBS to the northeast. The California Department of Transportation (Caltrans) maintains the highway and is responsible for the drainage facilities that transport storm water and non-storm water flows off Pacific Coast Highway and to several reinforced concrete and reinforced metal pipes, which discharge to the bluffs above the ASBS, to Los Trancos Creek immediately above the ASBS or to the Crystal Cove beach (Figure 2).

4. The California Department of Parks and Recreation (State Parks) owns and manages the Crystal Cove State Park and Beach, which includes part of the Irvine Coast ASBS. Direct discharges to the ASBS from State Parks' facilities include runoff from parking lots, public showers and maintenance facilities, as well as runoff and septic tank/subsurface disposal system discharges from bungalows in the 'historic district' of Crystal Cove State Park.

5. The Water Quality Control Plan for Ocean Waters of California (Ocean Plan), State Board Resolution No. 97-26, last amended in 1997, establishes beneficial uses and water quality objectives for waters of the Pacific Ocean along the California Coast. Chapter 5 of the Ocean Plan identifies discharge prohibitions and states "Waste shall not be discharged to areas designated as being of special biological significance."

6. The aforementioned discharges to the Irvine Coast ASBS may contain waste, and as such threaten to violate or violate the discharge prohibition in the Ocean Plan. This order, therefore, requires the dischargers to eliminate any direct discharges of waste to the Irvine Coast ASBS.

7. The Regional Board has notified the dischargers and interested agencies and persons of its intent to issue this order and has provided them with the opportunity for a public hearing and to submit their written views and recommendations.

8. The Regional Board, in a public hearing, heard and considered all comments pertaining to this matter.

9. This order is an action for the protection of the environment and is categorically exempt from the California Environmental Quality Act, pursuant to Section 15321, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to Section 13301, of Division 7 of the California Water Code, that the The Irvine Company, the California Department of Transportation, and the California Department of Parks and Recreation shall cease and desist from threatening to violate or violating the waste discharge prohibition specified in the Ocean Plan as follows:

a) Direct discharges of waste to the Irvine Coast ASBS from areas where construction has not been initiated as of November 16, 2000 are prohibited;

b) Direct discharges of waste to the Irvine Coast ASBS that result from areas where construction began after November 16, 1996 shall cease by November 16, 2001; and,

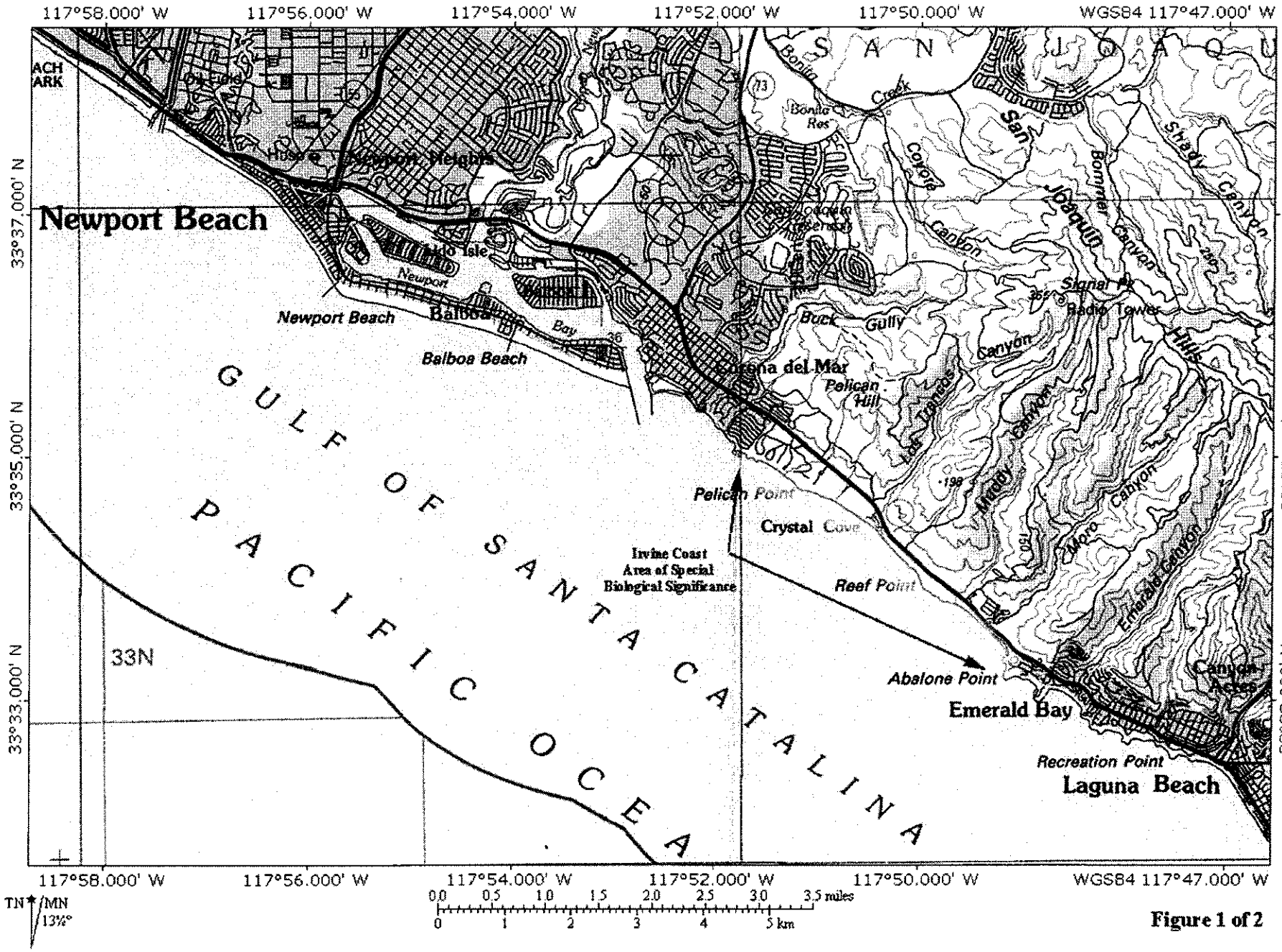
c) Direct discharges of waste to the Irvine Coast ASBS from areas (including roadways) where construction began on or before November 16, 1996, shall cease by February 28, 2005. Affected dischargers shall submit plans by May 16, 2002 for eliminating these discharges of waste. The plans shall include detailed proposals and time schedules for eliminating the discharges and shall be implemented as approved by the Executive Officer.

If, in the opinion of the Executive Officer, any of the dischargers listed in this order fail to comply with this order, the Executive Officer is directed to file a complaint assessing administrative civil liability or to request that the Attorney General pursue judicial enforcement action against that discharger, including an injunction and civil monetary penalties, if appropriate, pursuant to Section 13331 or 13350 of the California Water Code.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on October 3, 2003.

GJ Thibeault

GERARD J. THIBEAULT
Executive Officer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Newport Beach
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Balboa
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Newport Bay
Corona del Mar
Pelican Hill
Buck Gully
Bonita Creek
Bonita Res
Coyote Canyon
San Joaquin
Bommer Canyon
Shady Canyon
Signal Pk
Radio Tower
Hills
Los Trancos Canyon
Muddy Canyon
Moro Canyon
Emerald Canyon
Pelican Point
Crystal Cove
Irvine Coast
Area of Special
Biological Significance
Reef Point
Abalone Point
Emerald Bay
Canyon Acres
Recreation Point
Laguna Beach
GULF OF SANTA CATALINA
PACIFIC OCEA
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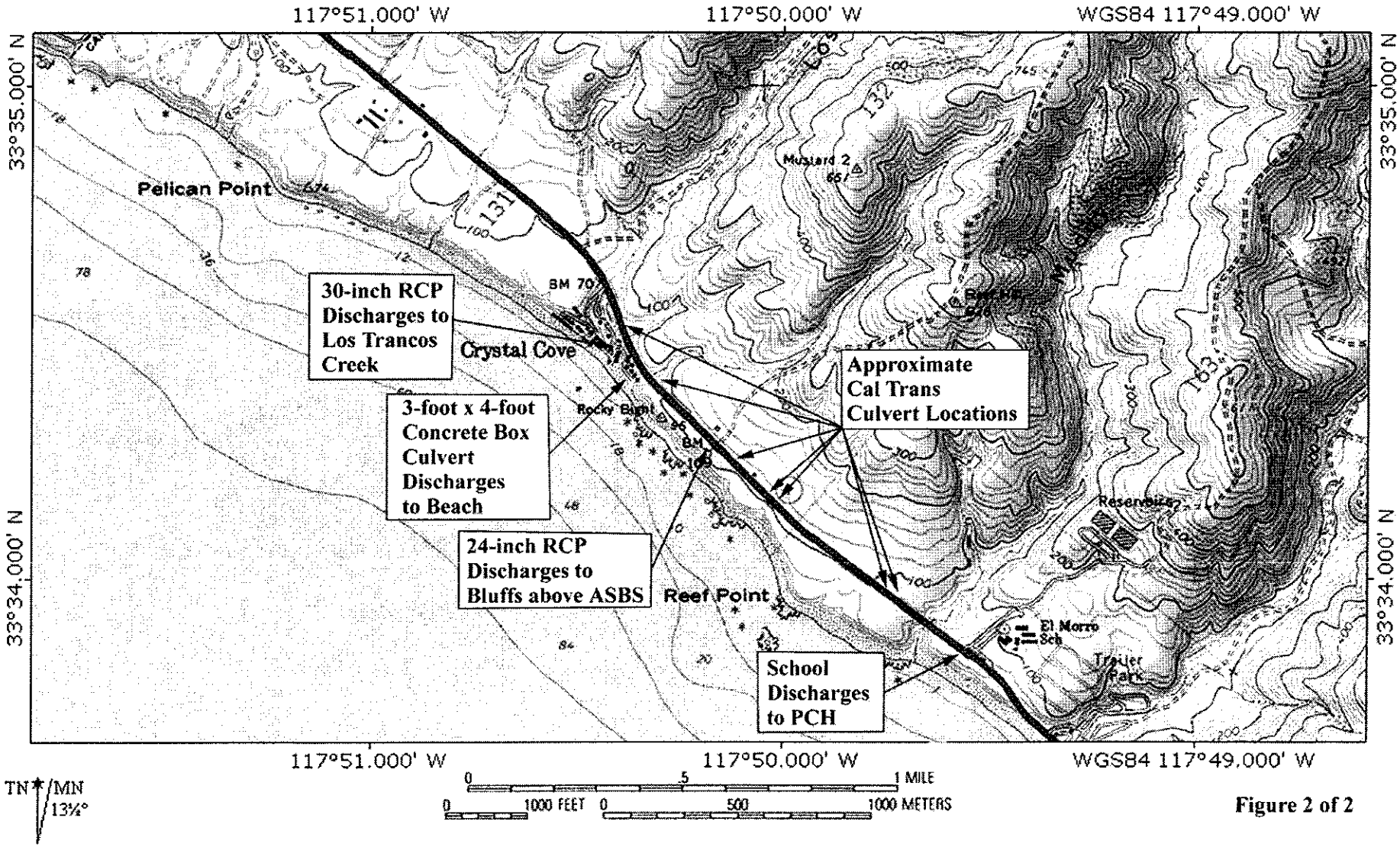
Figure 1 of 2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Pelican Point
Crystal Cove
Reef Point
Rocky Point
Mustard 2
El Morro Sch
Trailer Park
Reservoirs
30-inch RCP Discharges to Los Trancos Creek
3-foot x 4-foot Concrete Box Culvert Discharges to Beach
24-inch RCP Discharges to Bluffs above ASBS
Approximate Cal Trans Culvert Locations
School Discharges to PCH
TN
MN
13¼°
0
.5
1 MILE
0
1000 FEET
0
500
1000 METERS

Figure 2 of 2

California Regional Water Quality Control Board
Santa Ana Region

October 3, 2003

STAFF REPORT

ITEM: **8**

SUBJECT: Amendment to Cease and Desist Order No. 00-87 (as amended by Order WQ 2001-08), to Extend the Deadline for Cessation of Direct Discharges of Wastes to the Irvine Coast Area of Special Biological Significance (ASBS) (Crystal Cove), Order No. R8-2003-107

SUMMARY:

Cease and Desist Order No. 00-87 (as amended by Order WQ 2001-08) required The Irvine Company, the California Department of Transportation (Caltrans) and the California Department of Parks and Recreation to cease direct discharges of wastes to Crystal Cove by November 16, 2002. Caltrans encountered permit approval delays, will have construction restrictions once work has begun, and consequently, has requested that that deadline be extended to February 28, 2005.

DISCUSSION:

Crystal Cove is located within the Irvine Coast Area ASBS (now also referred to as State Water Quality Protection Area). The State Ocean Plan defines an ASBS as "... those areas containing biological communities of such extraordinary value that no risk of change in their environment as the result of man's activities can be entertained." As such, the 1997 update of the Ocean Plan, in Chapter V - Discharge Prohibitions, states, "Wastes shall not be discharged to areas designated as being of special biological significance."

Based on that Ocean Plan prohibition, on November 16, 2000, the Regional Board adopted Cease and Desist Order No. 00-87. This Order prohibited all new discharges of waste to the Irvine Coast ASBS, between Los Trancos Creek and Muddy Canyon Creek and required that all existing discharges of waste from areas (including roadways) where construction began on or before November 16, 1996, cease by November 16, 2002. Affected dischargers were required to submit plans by May 16, 2001 for eliminating these discharges of waste.

Discharges identified in Cease and Desist Order No. 00-87 included: discharges from Pacific Coast Highway (PCH) to storm drain pipes draining to the beach and to Los Trancos Creek, downstream of PCH; various discharges from Crystal Cove State Park to the beach and/or surf zone; and, discharges from The Irvine Company's Crystal Cove development to the beach and to Los Trancos Creek, downstream of PCH.
On December 15, 2000, the State Water Resources Control Board (State Board) received a petition for review of Cease and Desist Order No. 00-87 from Caltrans, asking that the State Board find the action of the Regional Board to have been inappropriate or improper, or both and asking State Board to rescind the Order. On April 26, 2001, State Board upheld Cease and Desist Order No. 00-87, but amended the Order to grant Caltrans an additional year to submit

their plan and to cease the direct discharge of wastes from PCH to Crystal Cove. Those dates were amended to May 16, 2002 for submission of the plan and November 16, 2003 for the cessation of discharges.

On May 14, 2002, Caltrans submitted a plan to address the direct discharges to Crystal Cove and that plan was approved by Regional Board staff. However, on July 10, 2003 Caltrans requested that the Regional Board further extend the deadline for cessation of discharges. Caltrans cited two reasons for the extension request. First, the Local Coastal Development Permit, to be issued by the California Coastal Commission was appealed and Caltrans will be unable to make any further progress on their plan until the matter is resolved. Second, Caltrans anticipates that once construction starts, there will be work restrictions during the nesting seasons of endangered and/or threatened species believed to be in the area. As a result, Caltrans requested an extension of the discharge cessation deadline to February 28, 2005. Staff believes that Caltrans request is based on unavoidable circumstances beyond their control and the request for extension is justified.

The following are the recommended changes to Order No. 00-87. (deleted text is struck out and added text is bolded and underlined)

c) Direct discharges of waste to the Irvine Coast ASBS from areas (including roadways) where construction began on or before November 16, 1996, shall cease by ~~November 16, 2003~~ **February 28, 2005**. Affected dischargers shall submit plans by May 16, 2002 for eliminating these discharges of waste. The plans shall include detailed proposals and time schedules for eliminating the discharges and shall be implemented as approved by the Executive Officer.

RECOMMENDATION:

Staff recommends that the Regional Board adopt Order No. R8-2003-0107 as presented.

Comments were solicited from the following:

U.S. Fish and Wildlife Service – Carlsbad
U.S. Army Corps of Engineers – Jae Chung
State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
State Water Resources Control Board, Division of Water Quality - James Maughan
State Department of Fish and Game - Long Beach
California Dept. of Parks and Recreation - David Pryor, Michael Tope, Donald H. Ito, Richard Rozzelle
Caltrans District 12 - Ken Nelson, Leslie Manderscheid, Grace Pina-Garrett, Sylvia Vega
California Coastal Commission – Teresa Henry, Jack Gregg, Peter Douglas, Tami Grove
Orange County Public Facilities and Resources Department - Chris Crompton, Richard Boon
Orange County Health Care Agency - Seth Daugherty
City of Newport Beach – Dave Kiff
Natural Resources Defense Council - David Beckman
Orange County Coastkeeper – Garry Brown
California CoastKeeper – Michelle Lyman
Defend the Bay – Robert Caustin
Lawyers for Clean Water - Kim Lewand, Daniel Cooper
League for Coastal Protection - Susan Jordan
Alliance to Rescue Crystal Cove – Laura Davick
Irvine Community Development Company – Roberta Marshall, Sat Tamaribuchi

California Regional Water Quality Control Board
Santa Ana Region

October 3, 2003

STAFF REPORT - REVISED

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