

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Newport Beach, CA 90802-4302
(949) 590-5071



Filed: July 23, 2001
49th Day: September 10, 2001
180th Day: January 19, 2002
270th Day: April 19, 2002
Staff: ALB-LB
Staff Report: February 14, 2002
Hearing Date: March 5-8, 2002
Commission Action:

Item Tu 17f**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-01-292

RECORD PACKET COPY

APPLICANT: City of Newport Beach**AGENT:** Orange County Coastkeeper**PROJECT LOCATION:** Buck Gully at Little Corona Beach, Newport Beach (Orange County)

PROJECT DESCRIPTION: Permanent authorization (follow-up to emergency permit) of pump-based diversion of existing freshwater flows from Buck Gully to Orange County Sanitation District from August 9, 2001 through October 15, 2001.

SUMMARY OF STAFF RECOMMENDATION:

The proposed project involves a short-term diversion of freshwater flows from an urban stream in Corona Del Mar to the local wastewater treatment system. On August 9, 2001, the Executive Director granted Emergency Permit 5-01-292-G to the City of Newport Beach, thereby allowing pump-based diversion of freshwater flows from Buck Gully to the Orange County Sanitation District from August 9, 2001 through October 15, 2001. The applicant reported that elevated runoff volumes were causing severe erosion and transporting bacteria to the beach and sediment to ASBS-designated tidepools. As such, immediate action was necessary to reduce the amount of freshwater entering the ocean via Buck Gully to address the concern of water pollution and streambed erosion.

Staff recommends **approval** of the proposed project subject to two (2) special conditions. The recommended special conditions require 1) removal of all development after project completion and 2) restoration of the site to pre-project conditions. These special conditions are necessary to bring the proposed project into conformance with Sections 30231, 30236, and 30240 of the Coastal Act regarding streams, habitat, and water quality.

STAFF NOTE: At the time of this staff report, the short-term diversion project has been completed, the development removed and the site restored. This project is the first of a multi-phased, long-term plan intended to reduce nuisance flow runoff entering the ocean at Buck Gully. City staff has given Commission staff preliminary information regarding the long-term plan. However, it is premature at this time to bring the long-term project before the Commission in conjunction with the current follow-up permit for the short-term project. The long-term project will be submitted to the Commission as a separate application once design features are finalized and technical studies are carried out.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval in Concept No. 1785-2001 dated July 17, 2001.

SUBSTANTIVE FILE DOCUMENTS: 5-01-292-G; 5-01-042-X; City of Newport Beach Certified Land Use Plan (LUP)

LIST OF EXHIBITS:

1. Vicinity Map
 2. Location Map
 3. Project Plans
 4. City of Newport Beach Report to City Council
 5. Correspondence from US Army Corps of Engineers
 6. Correspondence from Regional Water Quality Control Board, Santa Ana Region
 7. California Department of Fish and Game 1601 Agreement
-

I. STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application.

MOTION:

I move that the Commission approve CDP #5-01-292 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT WITH CONDITIONS:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent

manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS:

1. Terms of Approval and Removal of Development. The diversion of 75% to 95% of the water flow from the Buck Gully stream approved by this permit is authorized only for the 2001 summer season from August 9th through October 15th. Consistent with the Department of Fish and Game 1601 Agreement, a minimum of 10 gallons per minute (GPM) shall continue to flow past the upstream capture point to feed the downstream habitat. This permit does not authorize the diversion to continue past October 15, 2001. All structural development shall be removed as quickly as possible prior to the rainy season, but in no case shall any development remain after October 25, 2001.
2. Restoration. The bed and banks of the Buck Gully stream disturbed by the approved project shall, after the removal of the pipe, be restored, at a minimum, to the condition in which they existed prior to installation of the pipe. As part of the restoration, the applicant shall remove all non-native invasive plant species from the immediate project area. The applicant shall document and submit evidence of restoration of the streambed and banks to the Executive Director by May 15, 2002.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Location

The subject site is located within Buck Gully at Little Corona Beach in the City of Newport Beach, Orange County (Exhibits 1 and 2). Buck Gully is a 5-6 mile drainage area in eastern Corona Del Mar and Newport Coast that carries stormwater, spring water, and urban runoff to the ocean at Little Corona. The diversion project site is located within a drainage easement in the lower portion of Buck Gully, approximately 100 feet from the sandy beach. The lower portion of the Gully is vegetated with a mix of native and non-native plant species. The proliferation of non-native plant species within the area is attributed to invasion from adjacent residential landscaping.

There is a State Water Resources Control Board designated Area of Special Biological Significance (ASBS) located directly offshore of the subject site. The Newport Beach Marine Life Refuge ASBS extends oceanward from Poppy Avenue to the City limits at the easterly edge of Cameo Shores. Runoff into the Newport Beach ASBS comes from Buck Gully, Morning Canyon and at least six storm drains.

B. Project Description and Background

The proposed project involves short-term, dry weather diversion of freshwater flows from Buck Gully into the wastewater treatment system from August 9, 2001 through October 15, 2001. The project involves the installation of a capture device and sump pump in the streambed connected to a 3" diameter PVC pipe which will convey excess runoff up the stream bank approximately 150 feet to the Orange County Sanitation District (OCSD) Pump Station #214 (Exhibit 3). The capture device will consist of a 7' long by 8" diameter PVC pipe with a scoop opening facing upstream with drilled holes along the backside of the pipe to allow a portion of the stream flow to continue past the collection point. (As will be described in Section C, the Department of Fish and Game requires a minimum of 10 GPM to continue downstream.) The estimated amount of water to be collected at this pick-up point is 100 GPM. According to initial City accounts, approximately 150 gallons per minute (GPM) of freshwater enters the ASBS from Buck Gully.¹ The diversion will remove the majority of freshwater flows currently entering the beach and the ASBS, but will allow sufficient freshwater to feed the downstream habitat (minimum 10 GPM). In addition to reducing the amount of potentially contaminated water that enters the ocean, the diversion will reduce erosion (i.e. head cutting) occurring within the streambed.

The increased amount of runoff is attributed in part to nuisance flow from upstream development and surrounding residences. Run-off from urban development is commonly polluted with petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and cleaners; soap and dirt from washing vehicles and hardscape areas; dirt and vegetation from yard and common area maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts can reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

In April 2001, the City conducted a 5-day pilot test of a water quality treatment system in lower Buck Gully. Due to its temporary nature and lack of adverse effects on coastal resources, the project was deemed exempt from coastal development permit requirements (5-01-042-X). The temporary pilot project was intended to analyze the water quality effects of direct treatment / filtration of Buck Gully's flows prior to discharge to the ocean. The project involved the placement of an 8' by 10' trailer with filtration system near the Little Corona sewer pump station. The filtration system included a sump pump set down into the Gully connected to a storm drain pipe that sat adjacent to the pump station. The project was carried out between April 10 and April 14, 2001. Public access was not affected during the pilot project. Upon completion, the project site was restored to pre-existing conditions.

¹ Based on results from the 2001 short-term diversion project, upstream flows were greater than anticipated. Extensive flow monitoring was not set up due to cost, although the City estimates that flows ranged from 150 to 200GPM during the temporary diversion. Approximately 110-120 GPM was diverted, while another 40-50 GPM continued down the Gully. Therefore, the amount of freshwater entering the ASBS was greater than originally anticipated.

The purpose of the proposed diversion is to provide a short-term reduction in fresh water flows entering the ocean from the Buck Gully drainage course. Based on results of the pilot project, the runoff is known to contain contaminants, which adversely affect coastal resources. In a report to the Newport Beach City Council dated July 24, 2001, the Assistant City Manager outlines the goals and long-term plans for improving water quality at Buck Gully (Exhibit 4). The long-term plan focuses on source control, rather than diversion. Until the long-term plan can be finalized and implemented, the City is proposing short-term dry-weather diversion and further studies.

As with the pilot project, the City will ensure that public access to the recreational facilities at Little Corona beach is not impaired in any way during the short-term diversion period. The pipe leading from the streambed to the pump station will not impede use of the restrooms or the accessway that leads to the beach from Poppy Avenue, as shown in Exhibit 3. The City also assures that the project area will be restored to its current (pre-project) condition at the end of the diversion period should any of the diversion system structure, pump, or pipes impact the Gully or the surrounding beach.

Approvals or exemptions for the proposed project have been granted by the US Army Corps of Engineers (ACOE), the Regional Water Quality Control Board (RWQCB), Santa Ana District, and the Department of Fish and Game (DFG), as shown in Exhibits 5-7.

C. Streambed Alteration

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

The proposed project is located within the lower portion of the Buck Gully streambed in Corona Del Mar. The stream exhibits ephemeral flows associated with rain events as well as sustained flows associated with urban runoff. Streambed Alteration Agreement (SAA) No. R5-2001-0209, prepared by the Department of Fish and Game (DFG), states that the project may affect fish and wildlife resources within the Buck Gully streambed if not appropriately carried out (Exhibit 7). The SAA identifies these resources as specific birds, mammals and reptiles and the "disturbed riparian habitat within the drainage and surrounding coastal sage brush scrub which provide habitat for such species in the area." As such, the DFG has imposed multiple provisions to improve and limit the proposed project.

The proposed project, which includes installation of a temporary diversion system, technically constitutes a type of stream alteration pursuant to Coastal Act Section 30236. Section 30236(3) of the Coastal Act allows alteration for "developments where the primary function is the improvement of fish and wildlife habitat." The proposed project is intended to improve fish and wildlife habitat by reducing the amount of urban runoff entering the ocean via Buck Gully. According to the agent (OC CoastKeeper), the runoff contains high coliform counts and nutrient levels. Thus, the proposed project is a development that is intended to improve fish and wildlife habitat. In addition, the project is temporary in nature and will not have any long-term effects on the streambed or its habitat.

Finally, in order to be consistent with Section 30236, any stream alteration must incorporate the best mitigation measures feasible. The proposed project is a small-scale, dry weather diversion effort that will result in minimal short-term impacts. Temporary impacts to the streambed will total .0001 acres, just less than six (6) square feet, where the diversion structure will be placed. Installation of the project will require minimal disturbance of the streambed and bank, as all work will be carried out by hand. In addition, the City proposes to restore the site to its pre-project conditions, consistent with the DFG Streambed Alteration Agreement conditions. As shown in Exhibit 7, the DFG Agreement requires "*restoring the backs of the streambed to pre-construction contours.*" The DFG Agreement also requires the "*revegetation of stripped or exposed areas with vegetation native to the area.*"

To ensure that the project is carried out in conformance with these provisions, the Commission imposes Special Conditions 1 and 2. Special Condition 1 requires removal of all development after project completion and specifies that the approval only applies to the 2001 summer diversion project. Special Condition 2 requires restoration of the site to pre-project conditions. These conditions represent the best mitigation feasible for the proposed development because they will substantially reduce adverse impacts that otherwise may have resulted. These measures are feasible because they can be reasonably accomplished by the applicant. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the requirement of Section 30236 to provide the best mitigation measures feasible. Consequently, the Commission finds that the proposed project is consistent with Section 30236 of the Coastal Act regarding alteration of streams.

D. Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The City of Newport Beach Land Use Plan (LUP) considers Buck Gully an environmentally sensitive habitat area (ESHA). At the base of Buck Gully is a small stream and dense riparian vegetation. Between Pacific Coast Highway and Little Corona Beach, the sides of Buck Gully are covered in a mixture of native coastal sage scrub vegetation and introduced horticultural species. Introduced species dominate the upper areas of the slopes near the adjacent homes. The lower segment of Buck Gully provides an area of good quality habitat capable of supporting a variety of wildlife. Nonetheless, the site is considered a degraded ESHA due to the presence of both native and non-native plant species.

As part of the long-term plan to improve water quality at Buck Gully, the City intends to remove the non-native plant species and restore the area with native vegetation. However, that is beyond the scope of the current short-term project. As discussed earlier, the proposed project involves the installation of a temporary diversion structure that will be removed after October 15, 2001. The

site will be restored to its pre-project condition. To ensure that the development is removed and the project site is restored, the Commission imposes Special Conditions 1 and 2. As discussed in Section C, the special conditions require 1) removal of all development after project completion and 2) restoration of the site to pre-project conditions. These conditions are consistent with the provisions required by the DFG in Streambed Alteration Agreement R5-2001-0209. The Streambed Alteration Agreement states, "*Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel shall be restored. Restoration shall include the revegetation of stripped or exposed areas with vegetation native to the area.*" The Commission concurs with the decisions made by the DFG.

Section 30240(a) of the Coastal Act prohibits significant disruption of habitat values and limits uses within ESHA to those dependent on the resource. In addition, Section 30240(b) requires that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade those areas and that development be compatible with the continuance of the habitat area. The proposed project involves the temporary placement of a PVC capture device, a sump pump within the streambed. Approximately six (6) square feet will be impacted. In their review of the project, the US Army Corps of Engineers concludes, "*the placement of a mobile intake system into Buck Gully does not constitute a discharge of fill material and is not expected to result in disturbance of the channel bottom to result in a discharge of fill material*" (Exhibit 5). No ESHA will be displaced or degraded. No adverse impacts to the continuance of habitat in Buck Gully or the offshore ASBS will result.

The proposed project has been sited and designed to prevent impacts to ESHA and to be compatible with its continuance consistent with Section 30240(b). Special conditions have been imposed to assure that the project remains consistent with Coastal Act Section 30240. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 of the Coastal Act regarding protection of ESHA.

E. Water Quality

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30231 of the Coastal Act requires that the biological productivity and water quality of the stream and ocean be maintained and, where feasible, enhanced. The proposed project involves a diversion of nuisance flow intended to improve the biological productivity and water quality of the coastal resources at the subject site and offshore. Elevated runoff volumes are transporting bacteria and sediment to the beach and the ASBS. There is a permanent posting at the Little Corona beach tide pools explaining the health hazards associated with the contaminated pooled water. The tide pools are a popular destination for beach-goers.

The Regional Water Quality Control Board (RWQCB), Santa Ana Region has reviewed the project and notified the City that they *"have no objection to this temporary diversion of water from Buck Gully to the sanitary sewer* (Exhibit 6). Additionally, the DFG Streambed Alteration Agreement (SAA) prepared for the proposed development identifies the necessary requirements to protect the stream and to assure that adverse water quality impacts are avoided. Among the provisions included in the SAA are: limiting access to the site to existing roads and access ramps; prohibiting equipment from being operated in ponded or flowing areas; flagging the limits of the work site in order to prevent damage to the adjacent area; preventing runoff from the work site from entering the stream; and requiring that construction related material and debris must be kept out of the stream. The applicant is required by the Streambed Alteration Agreement to comply with all these provisions. Section 30231 of the Coastal Act espouses the same concerns as those identified in the SAA.

The scope and duration of the proposed diversion project are limited to the terms of the permit. The proposed project is intended to temporarily improve water quality by reducing the amount of urban runoff enters the ocean via Buck Gully. According to the agent (OC CoastKeeper), the runoff is believed to contain very high coliform counts and nutrient levels. Thus, the proposed project is a development that is intended to improve biological productivity and water quality of the stream and ocean. In addition, the project is temporary in nature and will not have any long-term effects on the streambed or its habitat. The applicant is aware that the activities proposed as part of the long-term plan are required to come back to the Commission for review under a separate application.

As conditioned for removal of the diversion structure and restoration of the site, the Commission finds the proposed project consistent with Section 30231 of the Coastal Act.

F. Public Access

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The proposed development is located between the sea and the nearest public road at Buck Gully at Little Corona Beach.

The proposed project involves short-term, dry weather diversion of freshwater flows from Buck Gully into the wastewater treatment system. The project involves the placement of a small capture device and pump in the streambed with a pipe leading from the streambed up to the pump station. The proposed development will not impede the public's use of the restrooms or access to the beach via the accessway ramp that leads from Poppy Avenue down to the beach, as shown in Exhibit 3. Additionally, the reduction in runoff will reduce downstream beach cutting, thereby allowing improved lateral access. As such, the proposed diversion project will not interfere with existing public access and may temporarily improve lateral access at Little Corona Beach from August 9, 2001 through October 15, 2001.

The proposed development will not create any new adverse impacts to existing public access or recreation in the area. Public coastal access exists in the project vicinity immediately seaward of the project site at Little Corona Beach (Exhibit 1). Therefore, the Commission finds that the project is consistent with the public access and recreation policies of the Coastal Act.

G. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

The Commission certified the Land Use Plan (LUP) for the City of Newport Beach on May 19, 1982. The LUP identifies Buck Gully as a natural canyon with environmentally sensitive areas and limits allowable development within and adjacent to the Gully. The LUP states "*Environmentally sensitive areas shall be preserved and protected.*" In addition, the LUP requires an applicant to demonstrate that a project "*does not significantly reduce consumptive (fishing, aquaculture and hunting) or nonconsumptive (e.g. water quality and research opportunity) values of the wetland or estuarine ecosystem.*" In this case, the resources in Buck Gully contain nonconsumptive value.

As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan and with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

H. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As conditioned, the proposed project has been found consistent with the streambed alteration, sensitive habitat, water quality, and public access policies of Chapter Three of the Coastal Act. These conditions also serve to mitigate any significant adverse impacts under CEQA. Mitigation measures requiring that the development be removed after project completion and that the site be restored to pre-project conditions will minimize any significant adverse effects that the activity may have on the environment.

There are no other feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

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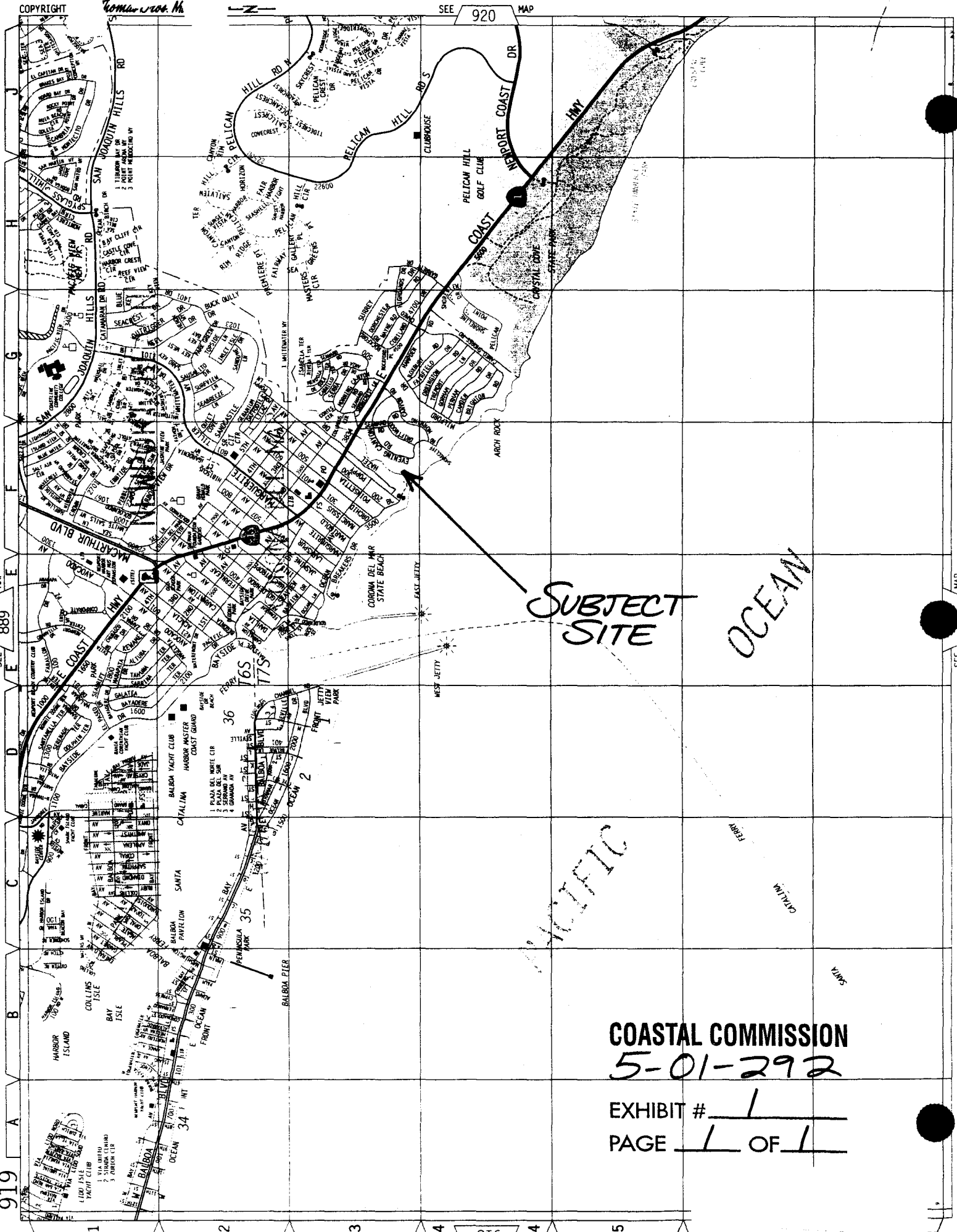
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SEE 920 MAP

SEE 889 MAP

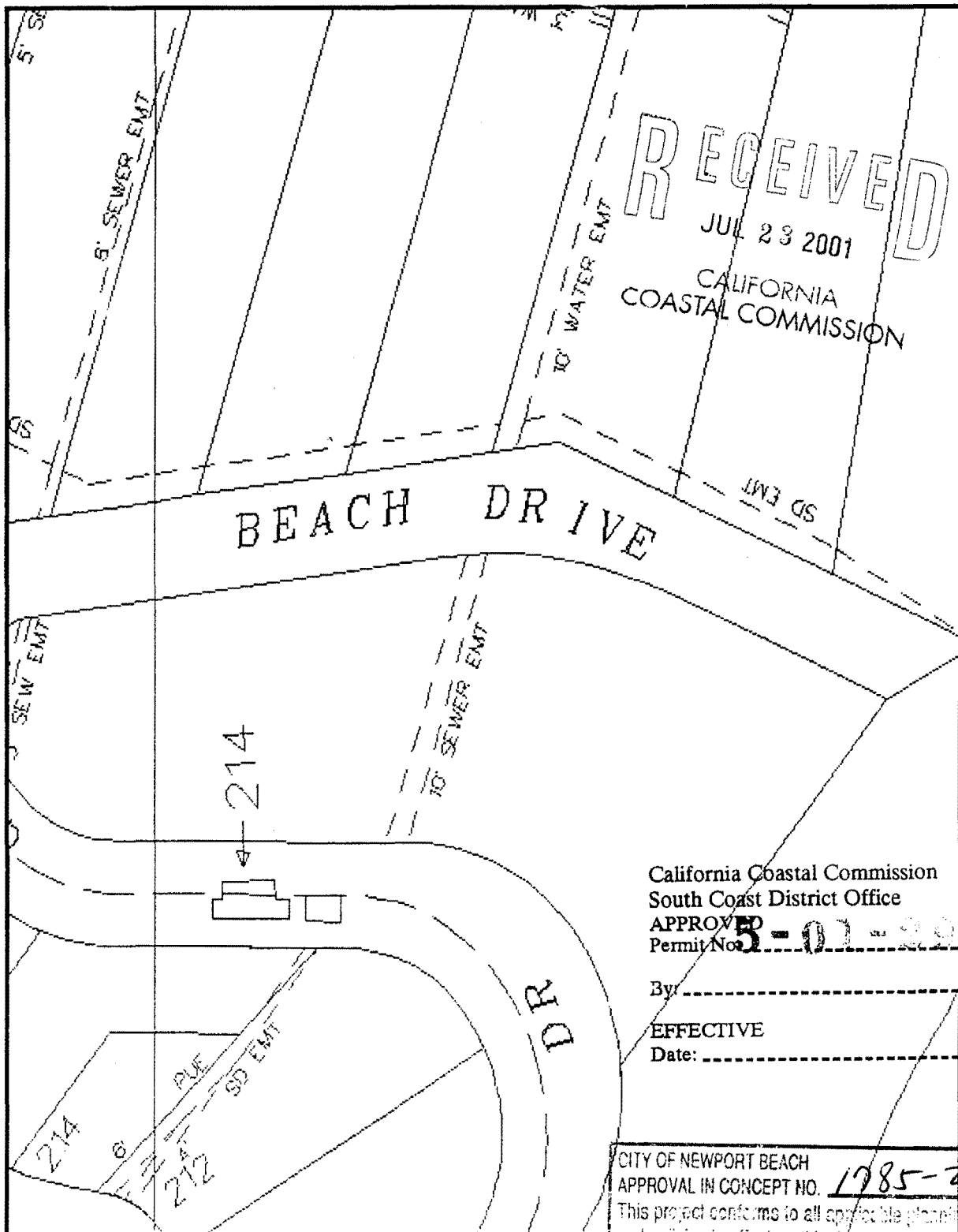
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SEE 918 MAP



COASTAL COMMISSION
5-01-292

EXHIBIT # 1
PAGE 1 OF 1



BUCK GULLY SHORT-TERM DIVERSION PROJECT
PROJECT LOCATION MAP

California Coastal Commission
South Coast District Office

APPROVED **5-01-292**
Permit No.

By: _____

EFFECTIVE
Date: _____

CITY OF NEWPORT BEACH
APPROVAL IN CONCEPT NO. **1785-2001**

This project conforms to all applicable planning regulations
and policies in effect on the date of approval.

These plans are not to be used for construction purposes. No
building permit will be issued until approval is received from
the California Coastal Commission.

PLANNING DEPARTMENT

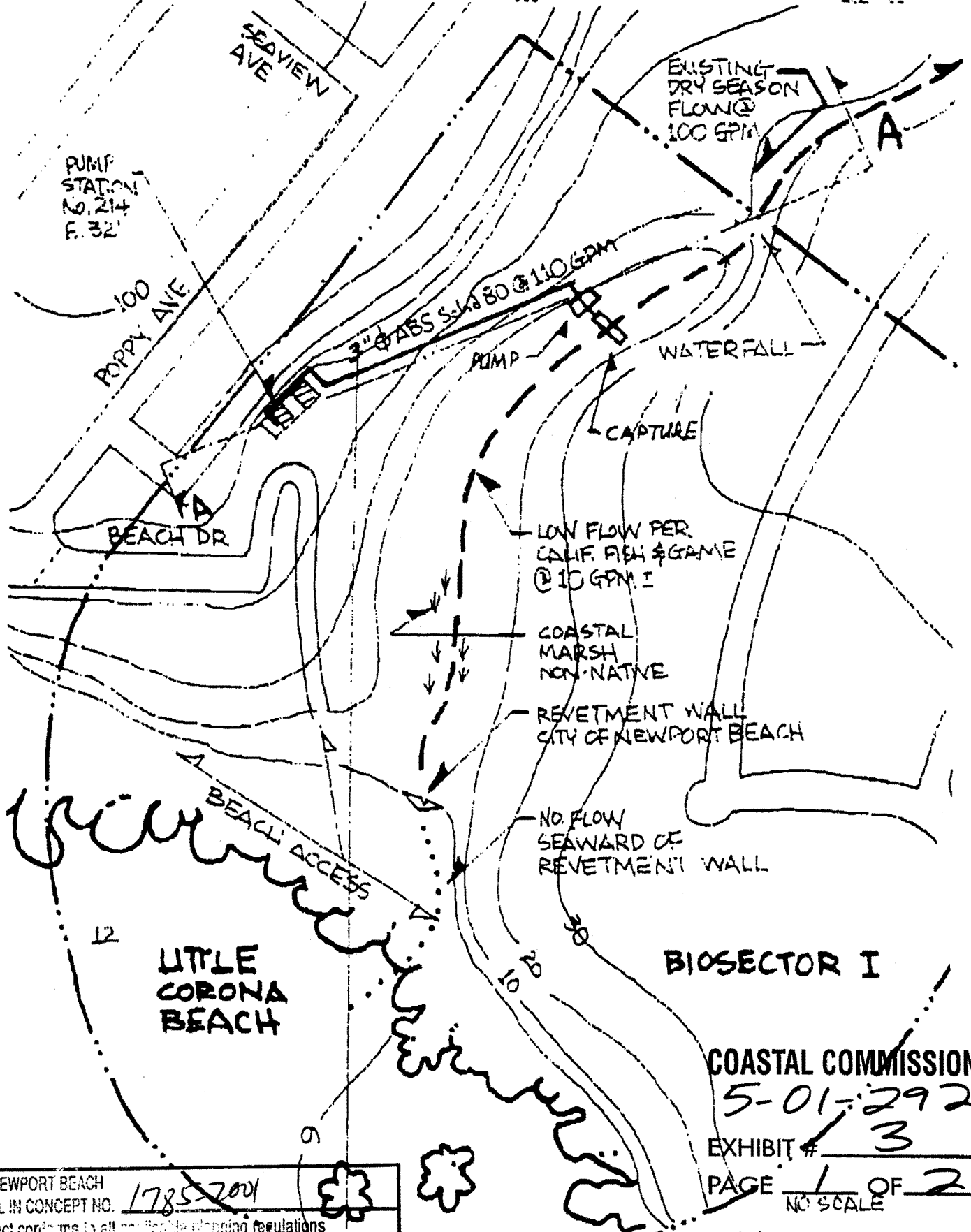
By: *R. Chavali* Date: **7/17/01**

COASTAL COMMISSION

5-01-292

EXHIBIT # **2**

PAGE **1** OF **1**



CITY OF NEWPORT BEACH
APPROVAL IN CONCEPT NO. 178552001

This project conforms to all applicable planning regulations and policies in effect on the date of approval.

These plans are not to be used for construction purposes. No building permit will be issued until approval is received from the California Coastal Commission.

PLANNING DEPARTMENT

By [Signature] Date: 7/17/01

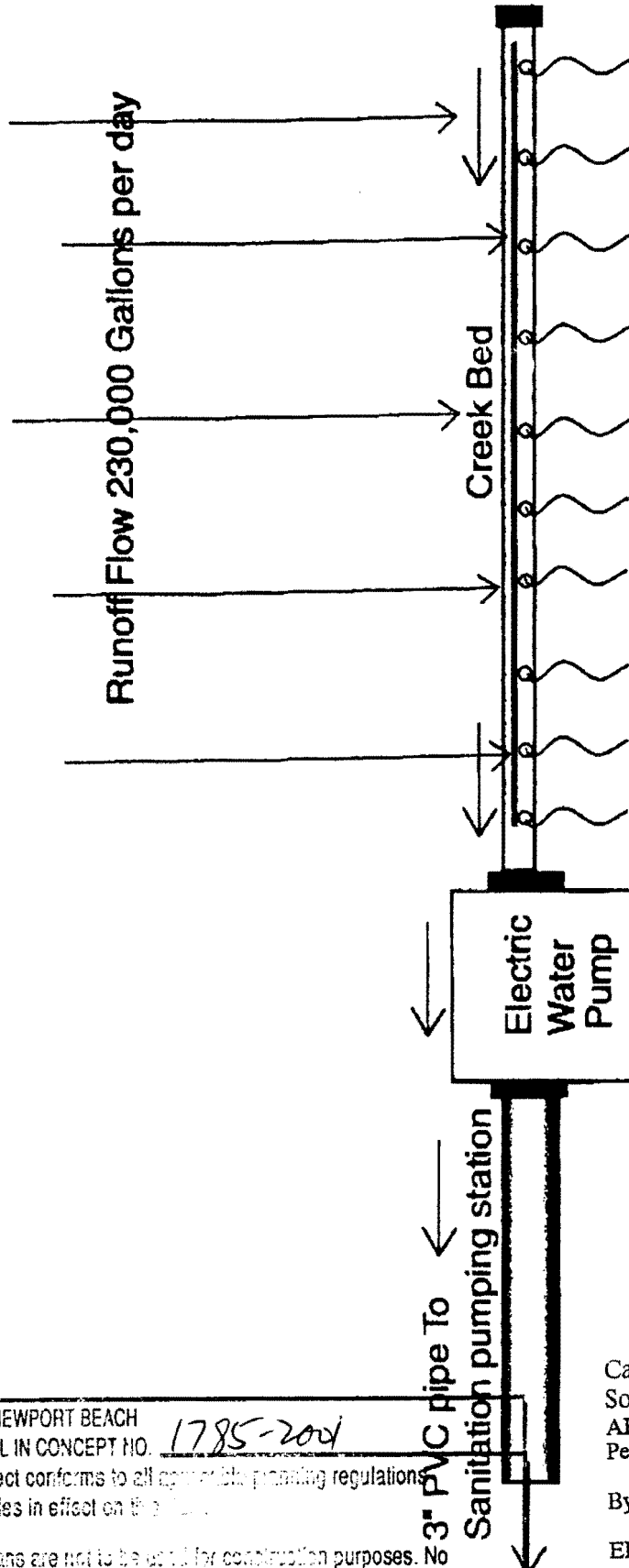
7 JUL 16 2001 10:00

California Coastal Commission
South Coast District Office
APPROVED 5-01-292
Permit No. 5-01-292

By: _____

EFFECTIVE 94%
Date: _____

Gully streambed runoff pick up configuration for Buck Gully summer runoff diversion



7' X 8" PVC pipe with scoop opening facing upstream drilled holes on backside of pipe will drain excess water for Fish and Game regulations for 10 GPM to end at revetment wall. Est. of water from this pick up is 100 GPM.

COASTAL COMMISSION

5-01-292
EXHIBIT # 3
PAGE 2 OF 2

CITY OF NEWPORT BEACH
APPROVAL IN CONCEPT NO. 1785-2001

This project conforms to all applicable planning regulations and policies in effect on the date of approval.

These plans are not to be used for construction purposes. No building permit will be issued until approval is received from the California Coastal Commission.

PLANNING DEPARTMENT

By: *[Signature]*

Date: 7/17/01

California Coastal Commission
South Coast District Office
APPROVED
Permit No. 5-01-292

By: _____

EFFECTIVE
Date: _____

NEWPORT BEACH CITY COUNCIL

July 24, 2001 Regular Meeting



TO: Members of the Newport Beach City Council
FROM: Dave Kiff, Assistant City Manager
SUBJECT: Buck Gully: Short-Term Dry Weather Urban Runoff Diversion Project

RECOMMENDED ACTION:

- (1) Authorize the City's participation in a short-term (until October 15, 2001) diversion of dry weather flows from Buck Gully into the City's sanitary sewer system;
- (2) Find that the diversion project is categorically exempt under the California Environmental Quality Act (CEQA);
- (3) Authorize the Mayor to execute an Agreement for Short-Term Dry Weather Urban Runoff Diversion at Buck Gully with the Orange County Sanitation District (OCSD);
- (4) Authorize the Public Works Department to issue and the City Clerk to record with the County an encroachment permit for the diversion project after all design criteria and environmental review is complete.
- (5) Authorize the City Manager to execute any related agreements associated with the proposed diversion where required by state or federal regulatory agencies.

BACKGROUND:

California has 34 *Areas of Special Biological Significance* (ASBSs) off of our coastline. The State Water Resources Control Board (SWRCB) designates all ASBSs. The *California Ocean Plan* (adopted in 1997 as a plan to manage California's offshore resources) directs that "wastes shall not be discharged to areas designated as being of special biological significance" and that any runoff into the ASBS is subject to discharge prohibitions established by the SWRCB and its nine regional boards (RWQCBs).

Orange County has three ASBSs:

- Newport Beach Marine Life Refuge ASBS
- Irvine Coast Marine Life Refuge ASBS; and the
- Heisler Park Ecological Reserve ASBS

In November 2000, the Santa Ana RWQCB issued a *cease and desist order* (CDO #00-87) to The Irvine Company, the California Department of Transportation (Caltrans), and the California Department of Parks and Recreation regarding the Irvine Coast ASBS. The Irvine Coast ASBS receives drainage water from a portion of the Newport Coast development, Pacific Coast Highway, Crystal Cove State Park, and El Morro Elementary School northerly of Laguna Beach.

The CDO directed that the parties "cease and desist" from *new waste discharges* (including storm water and non-storm water runoff from developed areas) and from *existing discharges* over the coming two years. The CDO -- approved November 16, 2000 by the Regional Board -- was appealed to the State Water Resources Control Board by Caltrans. The State Board later amended the CDO to direct Caltrans to "cease and desist" within five years instead of two.

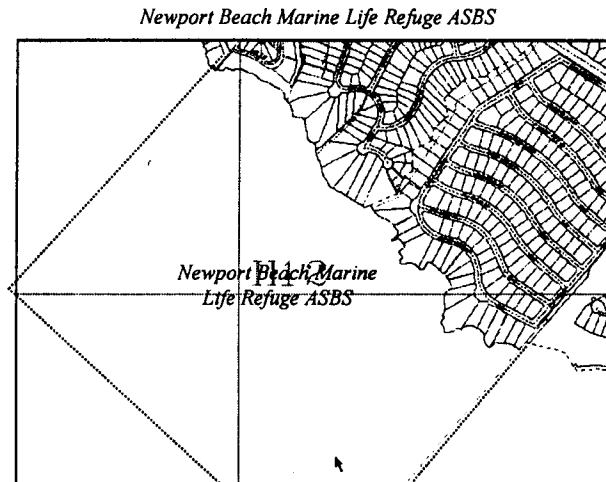
COASTAL COMMISSION

5-01-292

EXHIBIT #

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The ASBS off of Little Corona (*Newport Beach Marine Life Refuge ASBS*) extends oceanward from Poppy Avenue to the city limits at the easterly edge of Cameo Shores. The ASBS' seaward boundary is 1000' from the beach (see map). Drainage into the Newport Beach ASBS comes from Buck Gully, Morning Canyon, and at least six storm drains. To date, the City has not received any correspondence from the Regional Board regarding inflows to the Newport Beach ASBS.



In mid-2000, Nancy Gardner of the Newport Beach Surfrider Chapter approached the City via the Harbor Quality Citizens' Advisory Committee (Ms. Gardner is a member of the HQAC) to attempt to "fix Buck Gully." Buck Gully is a 5-6 mile drainage area in eastern Corona del Mar and Newport Coast that carries stormwater, spring water, and urban runoff (irrigation overflow and more) to the ocean at Little Corona – by the time the flow reaches the base of the Gully, about 160-170 gallons per minute of fresh water enters the ASBS.

Lower Buck Gully – January 2001



To Gardner, to the Harbor Quality Committee, and to other local environmental groups including Orange County CoastKeeper, "fixing Buck Gully" means:

- Cutting flows back to natural, pre-development levels;
- Cleaning up whatever flows remain via the use of natural water quality wetlands; and
- Restoring habitat along the Gully to the types of native grasses, brush, and trees that would have existed prior to development.

The Water Bond. In March 2000, the state's voters approved Proposition 13, the *Safe Drinking Water, Clean Water, Watershed Protection, and Flood Prevention Bond Act*.

EX. 4
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Included in the \$1.97 billion bond act was a \$90,000,000 authorization for the "Coastal Nonpoint Source (NPS) Control Program." The Coastal NPS Program funds projects that "restore and protect the water quality and environment of coastal water, estuaries, bays, and near shore waters and groundwaters."

In late 2000, the State Water Resources Control Board (SWRCB) issued a Request for Proposals (RFP) for grants that "reduce or prevent non-point source pollution to ground and surface waters." Projects must be located within the boundaries of the six coastal Regional Water Quality Control Boards, including our Santa Ana Regional Board.

On January 23, 2001, the City Council authorized the City to apply for a \$225,000 grant from Proposition 13 for improvements to Buck Gully based on the three improvement principles identified above. Thanks in large part to Ms. Gardner's volunteer grant-writing ability, the City received this grant in May 2001 and is prepared to return to Council to authorize the grant's execution.

Diversion of Flows to Sanitary Sewer. Much of the Buck Gully improvements proposed in the grant will require extensive and time-consuming planning, engineering, and development. But the same group of environmental advocates who helped us secure the Proposition 13 grant have proposed a short-term pilot project that would immediately eliminate fresh water flows into the ASBS by diverting the flows into the City's sewer pump station at Buck Gully. This diversion would allow researchers and others to see if any of the habitat value offshore of the Gully improves without a constant plume of fresh water and sediment feeding it (see drawings in **Attachment A**).

City staff – including the Utilities Department and the Public Works Department – have reviewed the Buck Gully Diversion project and have tentatively determined that it can be achieved without compromising the capacity of the Gully pump station or the sewer main that leads from the pump station.

Agreement and Permits Required. Any diversion of storm water or dry weather runoff into the sanitary sewer requires the approval of the Orange County Sanitation District (OCSD), since OCSD ultimately receives all of Newport Beach's sewer flows. OCSD's Dry Weather Urban Runoff Policy (adopted by OCSD via Resolution #01-07) requires the execution of a complex Diversion Agreement between the City and OCSD before any diversion can begin.

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The Agreement (included as **Attachment B**) directs the City to:

- Construct and maintain the diversion system with rapid shut-off ability (§2.1);
- Submit drawings and designs to OCSD (§2.2);
- Shut off the system during wet weather events (§2.3);
- Apply for a wastewater discharge permit from OCSD (§3.0);
- Monitor the discharge for pollutants of concern (§6.0);
- Pay a fee of \$321/million gallons per day if overall diversions into OCSD's system exceed 4.0 million gallons per day (§8.0);
- Allow OCSD staff access to the Buck Gully pump station (§10.0);
- Pay the entire cost of any damage to OCSD's sewer system resulting directly from the diversion (§14.0);
- Indemnify and hold harmless OCSD as a result of actions associated with the diversion (§15.0); and
- Only operate the diversion until October 15, 2004 (§18.14).

The short-term diversion system itself will be installed by Clear Creek Systems, a company from Bakersfield that participated in a water quality testing program in Buck Gully in April. Clear Creek has proposed a cost of approximately \$4,800.00 for the installation (see **Attachment C**). Funding for the installation is anticipated from Orange County CoastKeeper via a benefactor who has pledged resources to the Buck Gully project. Staff time – both from Utilities and Public Works – will be required to assist in the installation and monitoring of the diversion.

The short-term project requires the following approvals or permits:

- A City of Newport Beach Encroachment Permit (pending Council approval of this Agenda Item);
- Execution of a Streambed Alteration Agreement with the California Department of Fish and Game (pending);
- Written permission from the California Regional Water Quality Control Board, Santa Ana Region (approved – see **Attachment D**);
- Written permission from the US Army Corps of Engineers (received verbally);
- A Coastal Development Permit from the California Coastal Commission (pending).

Environmental Review. After consultation with the City Attorney, we propose that the City Council make a finding with this Agenda Item's actions that the temporary project at Buck Gully is categorically exempt (Public Resources Code Section 21084) under the California Environmental Quality Act (CEQA) under up to five exemption classes (CEQA Guidelines, Sections 15301-15332), including:

CEQA Exemption Classes

- #3 – New Construction of Small Structures
- #4 – Minor Alterations to Land
- #7 -- Actions by Regulatory Agencies for Protection of Natural Resources
- #11 – Accessory Structures
- #32 – Infill Development Projects

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**THIS AGENDA
ITEM:**

This Agenda Item asks the City Council to authorize the City's participation in the short-term diversion project, to make a CEQA exemption finding associated with the Project, and to authorize the Mayor to execute an Agreement with OCSD for the actual diversion. It also asks for the Council's authorization to allow City staff – via the City Manager – to complete any additional permitting or approvals that may be required in the near future. The diversion must cease October 15, 2001.

ATTACHMENTS:

- Attachment A** -- Drawings of the Diversion
- Attachment B** – OCSD/City Agreement for Short-Term Dry Weather Urban
Runoff Diversion at Buck Gully
- Attachment C** – Clear Creek Systems' Proposal
- Attachment D** – Letter from Regional Board

EX. 4
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DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO
ATTENTION OF

July 13, 2001

Office of the Chief
Regulatory Branch

City of Newport Beach
Attention: Dave Kiff
P.O. Box 1768
Newport Beach, CA 92659-1768

Dear Mr. Kiff:

Reference is made to a submittal (No. 200101245-NTC) by Orange County Coastkeeper dated July 5, 2001 for a jurisdictional determination by the Department of the Army under our permitting authority for a water quality enhancement project involving pumping water into a mobile filtration within Buck Gully in the City of Newport Beach, Orange County, California. The project is part of an overall plan to manage urban runoff involving diversion of summer flows to the Orange County Sanitation District sewer system and/or reuse of the recycled water.

Based on the information furnished in the submittal, we have determined that the proposed project does not discharge dredged or fill material into a water of the United States or an adjacent wetland. The placement of a mobile intake system into Buck Gully does not constitute a discharge of fill material and is not expected to result in disturbance of the channel bottom to result in a discharge of fill material. Therefore, the project is not subject to our jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit is not required from our office.

If you have any questions, please contact Jae Chung of my staff at (213) 452-3292. I am also forwarding a copy of this letter to Mr. Christopher Koontz, Orange County Coastkeeper, 441 Old Newport Boulevard, Suite 103, Newport Beach, California 92663.

Sincerely,

Mark Durham
Chief, South Coast Section
Regulatory Branch

COASTAL COMMISSION

5-01-292

EXHIBIT # 5

PAGE 1 OF 1



California Regional Water Quality Control Board

Santa Ana Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.

July 3, 2001

Dave Kiff, Assistant City Manager
City of Newport Beach
P. O. Box 1768
Newport Beach, CA 92659-1768

BUCK GULLY DRY WEATHER FLOW DIVERSION PROJECT

Dear Mr. Kiff:

This is in response to your June 22, 2001 request for our approval to conduct a short-term diversion of all flows from the Buck Gully area. You are proposing to divert flows in Buck Gully from July through October 2001 into the sanitary sewer system for treatment and disposal. This test is to determine if the current flows through Buck Gully are a source of microbial contamination at the Little Corona Beach. At the end of this test program, the City will ensure that the area is restored to its current conditions. This is to notify you that we have no objection to this temporary diversion of water from Buck Gully to the sanitary sewer system.

If you have any questions, please contact Mark Smythe at 909-782-4998 or me at 909-782-3238.

Sincerely,

Michael J. Adackapara
Division Chief

Cc: Orange County Coastkeeper - Mike Beanan/Garry Brown
Surfrider Foundation - Nancy Gardener

Post-It™ brand fax transmittal memo 7671		* of pages *	
To	Michael Beanan	From	Mike Adackapara
Co	O.C. Coastkeeper	Co	RWQCB-8
Dept.		Phone #	909 782-3238
Fax #	949 675-7091	Fax #	

California Environmental Protection Agency



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COASTAL COMMISSION

5-01-292

EXHIBIT # 6

PAGE 1 OF 1

CALIFORNIA DEPARTMENT OF FISH AND G.A
4949 Viewridge Avenue
San Diego, California 92123

Notification No. R5-2001-0209

Post-it* Fax Note	7571	Date	8-6-01	# of pages	4
To	Garry Brown	From	David Kiff		
Co./Dept		C.			
Phone #		Phone #			
Fax #	675-7091	Fax #			

AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and David Kiff, representing the City of Newport Beach, State of California, hereinafter called the Operator, is as follows.

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 20th day of July, 2001, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): Buck Gully, tributary to the Pacific Ocean, Orange County, California Section Township Range .

WHEREAS, the Department (represented by Tamara Spear) has determined that such operations may substantially adversely affect those existing fish and wildlife resources within the streambed of Buck Gully, tributary to the Pacific Ocean specifically identified as follows: Birds: raven (*Corvus corax*), California towhee (*Pipilo crissalis*), Bewick's wren (*Thryomanes bewickii*), spotted towhee (*Pipilo erythrophthalmus*), house finch (*Carpodacus mexicanus*), house sparrow (*Passer domesticus*), mourning dove (*Zenaidura macroura*), turkey vulture (*Cathartes aura*); Reptiles: western fence lizard (*Sceloporus occidentalis*); Mammals: Coyote (*Canis latrans*), desert cottontail rabbit (*Sylvilagus auduboni*), California ground squirrel (*Spermophilus beecheyi*), including the disturbed riparian habitat within the drainage and surrounding coastal sage brush scrub which provide habitat for such species in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, and 5948, may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of Department's signature and terminates October 15, 2001, any amendment of the termination date shall be by written mutual consent of the Operator and the Department, and shall be in compliance with the Department's regulations, policies and procedures in effect as of the date of such amendment.

COASTAL COMMISSION

5-01-292

EXHIBIT # 7

PAGE 1 OF 4

STREAMBED ALTERATION AGREEMENT #R5-2001-0209

1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.
2. The Operator proposes to alter the streambed within Buck Gully, tributary to the Pacific Ocean to accommodate the installation of a sump pump for the short-term diversion of surplus surface flow (100 gallons per minute, approximately half the current flow) through October 15, 2001 of polluted urban runoff into the sewer system for treatment. The project is located at 214 Glen Drive in the City of Newport Beach, Orange County impacting approximately 0.0001 acre of streambed.
3. The agreed work includes activities associated with No. 2 above. The project area is located within Buck Gully, tributary to the Pacific Ocean, Orange County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including "Buck Gully Pilot Test Urban Runoff Treatment System", prepared by Clear Creek Systems, Inc.; "Buck Gully/Little Corona Beach Bioregional Watershed Management Program Phase One Report, and Phase Two Demonstration Project" and shall be implemented as proposed unless directed differently by this agreement.
4. The Operator shall not impact more than 0.0001 acre of jurisdictional habitat comprised of disturbed riparian habitat. All impacts are temporary. Mitigation for the project shall include restoring the banks of the streambed to pre-construction contours.
5. The Operator shall provide the Department copies of any formal reports, and internal staff studies/evaluations concerning the effectiveness of the project, and the project's short-term and long-term effects on fish and wildlife, and/or fish and wildlife resources. Copies shall be sent to the Department at 4949 Viewridge Avenue, San Diego, CA 92123-1662, Attn: Tamara Spear, Environmental Specialist III, and shall reference SAA#R5-2001-0209.
6. The Operator shall not remove vegetation within the stream from February 15 to July 15 to avoid impacts to nesting birds.
7. The Operator shall have a qualified biologist onsite daily during any impacts to vegetation for the purpose of monitoring and enforcing conditions of this agreement.
8. No equipment shall be operated in ponded or flowing areas.
9. Disturbance or removal of vegetation shall not exceed the limits approved by the Department. The disturbed portions of any stream channel shall be restored. Restoration shall include the revegetation of stripped or exposed areas with vegetation native to the area.
10. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
11. Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.
12. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
13. The perimeter of the work site shall be adequately flagged to prevent damage to adjacent riparian habitat.

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COASTAL COMMISSION

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STREAMBED ALTERATION AGREEMENT #R5-2001-0209

14. Staging/storage areas for equipment and materials shall be located outside of the stream.
15. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.
16. If a stream's low flow channel, bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
17. Access to the work site shall be via existing roads and access ramps.
18. Spoil sites shall not be located within a stream, where spoil shall be washed back into a stream, or where it will cover aquatic or riparian vegetation
19. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. These materials, placed within or where they may enter a stream/lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.
20. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.
21. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.
22. The Operator shall provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand.
23. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.
24. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 4849 Viewridge Avenue, San Diego, CA 92123 Attn: Tamara A. Spear
25. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator. The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.
26. The Operator shall request an extension of this agreement prior to its termination. Extensions may be granted for up to 12 months from the date of termination of the agreement and are subject to Departmental approval. The extension request and fees shall be submitted to the Department's

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COASTAL COMMISSION

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STREAMBED ALTERATION AGREEMENT #R5-2001-0209

Region 5 office at the above address. If the Operator fails to request the extension prior to the agreement's termination, then the Operator shall submit a new notification with fees and required information to the Department. Any activities conducted under an expired agreement are a violation of Fish and Game Code Section 1600 et. seq.

27. The Department reserves the right to suspend or cancel this Agreement for other reasons, including but not limited to the following.

- a. The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;
- c. The project or project activities as described in the Notification/Agreement have changed;
- d. The conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment.

28. Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of this notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification. The Operator shall not continue the specified activities until that time when the Department notifies the Operator in writing that adequate methods and/or measures have been identified and agreed upon to mitigate or eliminate the significant adverse effect.

CONCURRENCE

(David Kiff)

California Dept. of Fish and Game

David Kiff 8/3/01
(signature) (date)

(signature) (date)

Assistant Com Manager
(title)

C.F. Raysbrook, Regional Manager
(title)

COASTAL COMMISSION**5-01-292**

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